

# SHORT AND LONG-TERM STRATEGIES TO REDUCE PERSONAL AND BUSINESS TAX LIABILITIES

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# PERSONAL STRATEGIES

1. Personal threshold planning (Tax bracket/Capital gains/NIIT/AMT, etc.), TCJA items and sunset awareness
2. Bunching of deductions/charitable rollover/other charitable planning
3. Roth IRAs and ongoing conversion possibilities
4. Tax-deferred plans (HSAs, retirement plans, 529 plans)
5. Income tax basis planning
6. Real estate (principal residence exclusion, like-kind exchanges, installment sales, opportunity zones)

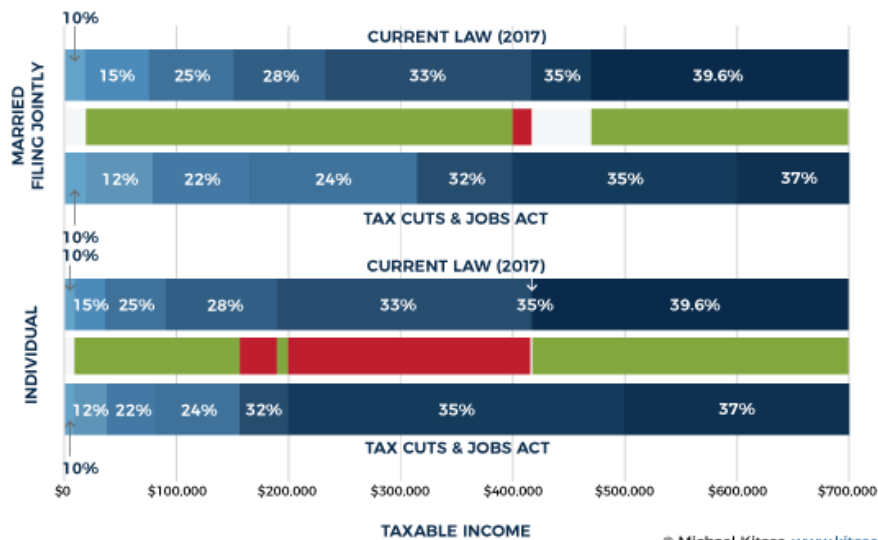
MARRIED FILING JOINTLY & SURVIVING SPOUSES			
2018 Tax Rates		2017 Tax Rates	
10%	0 to \$19,050	10%	0 to \$18,650
12%	\$19,050 to \$77,400	15%	\$18,650 to \$75,900
22%	\$77,400 to \$165,000	25%	\$75,900 to \$153,100
24%	\$165,000 to \$315,000	28%	\$153,100 to \$233,350
32%	\$315,000 to \$400,000	33%	\$233,350 to \$416,700
35%	\$400,000 to \$600,000	35%	\$416,700 to \$470,700
37%	Over \$600,000	39.6%	Over \$470,700

SINGLE TAXPAYERS			
2018 Tax Rates		2017 Tax Rates	
10%	0 to \$9,525	10%	0 to \$9,325
12%	\$9,525 to \$38,700	15%	\$9,325 to \$37,950
22%	\$38,700 to \$82,500	25%	\$37,950 to \$91,900
24%	\$82,500 to \$157,500	28%	\$91,900 to \$191,650
32%	\$157,500 to \$200,000	33%	\$191,650 to \$416,700
35%	\$200,000 to \$500,000	35%	\$416,700 to \$418,400
37%	Over \$500,000	39.6%	Over \$418,400

## I. PERSONAL THRESHOLD PLANNING (TAX BRACKET/CAPITAL GAINS/NIIT/AMT/QBI, ETC.), TCJA ITEMS AND SUNSET AWARENESS

- Tax Cuts and Jobs Act (“TCJA”) became law 12/22/17. Many implications
- “Stratified” system still applies; income is taxed at lower brackets first
- Utah now has 4.95% “flat” rate, although phase-ins can mean lower rate at lower income levels, and higher rate during “phase-in” stage
- Observations on new Federal tax brackets. Also see Kitces chart, following.
  - Single
    - All brackets 0-4% rate decrease
    - Some income now taxed at 4% higher rate (i.e. from \$158-\$191K)
  - MFJ
    - Again, all brackets up to 4% rate decrease
    - Some income now taxed at 9% lower rate (i.e. new 24% bracket vs old 33% bracket)
  - HOH
    - Tax bracket benefit now applies at fewer brackets

### COMPARISON OF INDIVIDUAL & MFJ TAX BRACKETS: CURRENT VS FINAL GOP TAX PLAN



## I. PERSONAL THRESHOLD PLANNING (TAX BRACKET/CAPITAL GAINS/NIIT/AMT/QBI, ETC.), TCJA ITEMS AND SUNSET AWARENESS (CONT'D)

- Capital gains/qualified dividends
  - 15% rate now available at up to \$479K MFJ, \$426K single
- Net investment income tax (“NIIT”, 3.8%) thresholds were unchanged
  - >\$250K MFJ
  - >\$200K single
- Alternative minimum tax (“AMT”) repeal was hoped for but did not happen (only for C Corps)
  - Changes will mean less common application, but still must consider
  - Exemptions raised (by about \$23K MFJ, \$15K single)
  - Exemption phaseout now starts at \$1M MFJ, \$500K single (was \$164K and \$123K)
  - State income tax and misc. itemized deduction changes will reduce AMT add-backs
  - 26% / 28% rates unfortunately still apply

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## I. PERSONAL THRESHOLD PLANNING (TAX BRACKET/CAPITAL GAINS/NIIT/AMT/QBI, ETC.), TCJA ITEMS AND SUNSET AWARENESS (CONT'D)

- Other threshold-related TCJA items
  - New 20% “pass-through” deduction (qualified business income or “QBI”), will discuss more in-depth later
    - Applies to “blessed” industries regardless of income level (other rules apply)
    - For most service industries (other than engineers and architects), no reduction if taxable income <\$315K MFJ, \$157.5K single
  - Expanded child tax credit
    - Previously phased out around \$150K MFJ/\$75K single AGI; now begins phasing out at \$400K AGI MFJ/\$200K single
  - Kiddie tax now imposed using fiduciary brackets and rates
    - Simplifies return preparation process but likely increases effective rate (top rate reached at just under \$13K of AGI)

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## I. PERSONAL THRESHOLD PLANNING (TAX BRACKET/CAPITAL GAINS/NIIT/AMT/QBI, ETC.), TCJA ITEMS AND SUNSET AWARENESS (CONT'D)

- Social Security taxability planning
  - 0% / 50% / 85% taxability, depending on “MAGI”
  - 50% of Social Security benefits are considered in tiered calculation
  - Below \$32K MFJ/\$25K single 0% taxable; above \$44K MFS/\$34K single 85% taxable
- Medicare Part B premiums- 2-year lookback
  - Spike in income can more than triple these premiums
  - Can be challenged if significant change in circumstance, or if more recent tax return shows lower income than previously reported
- Multi-year tax projections best- watch for significant tax “events”
- Many TCJA items are temporary and sunset after 2025. Uncertain political environment could mean significant changes before then

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## 2. BUNCHING OF DEDUCTIONS/CHARITABLE ROLLOVER/OTHER CHARITABLE PLANNING

- Personal exemptions (including “PEP” limitation) repealed
- “Pease” limitation (itemized deduction haircut for higher income taxpayers) repealed
- Standard deduction now \$24K MFJ/\$12K single; additional \$1,300 per person for 65+. Itemized deductions “squeezed”
- State/local income/property tax deduction now limited to 10K/year
- Misc. itemized deductions (investment management fees, tax prep fees, unreimbursed employee business expense, etc.) repealed
- Alimony deduction/income not available for divorces finalized post-12/31/18
- Charitable and real estate lobbies essentially got their way!

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## 2. BUNCHING OF DEDUCTIONS/CHARITABLE ROLLOVER/OTHER CHARITABLE PLANNING (CONT'D)

- Mortgage interest changes
  - Now limited to \$750K of principal (down from effectively \$1.1M)
  - Old loans and refinancing grandfathered (if no additional principal)
  - 2<sup>nd</sup> homes still qualify (early bill versions eliminated this)
  - Home equity loans now considered qualified mortgage interest per IRS guidance, IF proceeds used to buy, build, improve home
- Charitable deduction essentially unchanged
  - 60% of AGI limit now applies to most cash gifts, up from 50%
- Donations of appreciated property still available

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## 2. BUNCHING OF DEDUCTIONS/CHARITABLE ROLLOVER/OTHER CHARITABLE PLANNING (CONT'D)

- Bunching of deductions
  - Old strategy now becomes more important
  - Timing/maximizing state income/property tax much less important than in past due to new annual \$10K limit, but don't overlook
  - Taxpayers without mortgages will generally need \$14K+ in charitable deductions (\$16.6K if both 65+) in order to itemize
- Charitable options
  - Prepay several years' donations in one year outright
  - Fund a DAF, private foundation, CRT, charitable gift annuity, etc.
  - Charitable rollover ("QCD") preserved- excellent tool for 70 ½+. \$100K max per person per year
    - No income, no deduction
    - Avoid "wasting" donations

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### 3. ROTH IRA AND ONGOING CONVERSION POSSIBILITIES

- Roth IRAs still a powerful tool
  - Generally tax-free distributions if 5-year holding period met
  - No lifetime required distributions
  - No built-in income tax burden to heirs
  - Reduce AGI to avoid income-based taxes (such as NIIT)
  - Principal deemed to be withdrawn first, not earnings or pro-rated
  - Particularly powerful if cash distributions not needed
  - No 70 ½ age limit (compensation income needed)
  - Protection against future tax increases?

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### 3. ROTH IRA AND ONGOING CONVERSION POSSIBILITIES (CONT'D)

- Roth IRA contribution income limits essentially unchanged (phaseout begins at \$189K AGI MFJ/\$120K AGI single)
  - “Backdoor” Roth still available. Remember that all IRAs must be considered
  - Roth 401(k) contributions not subject to income limits
- Roth IRA recharacterization (full or partial) no longer available for conversions done 1/1/2018 or later. Roth conversions still available and may make sense
  - During “low income” year
  - “Staggered” conversions over multiple years, such as after early retirement
  - Unlike in the past, now better to “come up short” than “over-shoot”

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#### 4. TAX-DEFERRED PLANS (HSA, RETIREMENT PLANS, 529 PLANS)

- Maximize 401(k) contributions (plus \$6K catchup if 50+)
- Consider Solo 401(k)/SEP or similar plan for self-employed income
  - Fidelity and Vanguard both offer strong options here
  - Combine 401(k) with profit sharing component
- Consider DB plan (can be good fit for professional practice)
- Max-fund health savings account each year
  - Nearly 8K for family plan if 55+
  - Avoid 7.5% of income “floor” for medical expenses
  - Qualified medical expenses always tax-free
  - Definition is broad and generally follows IRS deductible medical expense rules
  - After age 65 can withdraw funds for most any reason penalty-free
  - Be sure paired with qualifying health insurance coverage

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#### 4. TAX-DEFERRED PLANS (HSA, RETIREMENT PLANS, 529 PLANS), CONT'D

- Section 529 plans
  - Utah plan one of highest-rated, uses Vanguard/Dimensional/PIMCO funds. Can open plans in other states (we have NH and UT plans, for example)
  - Annual contribution of up to \$3,920 MF/\$1,960 single per beneficiary eligible for 5% credit against Utah tax (\$196 tax savings). Additional contributions allowed, and can even do 5-year “front load”
  - Can contribute to unlimited number of accounts
  - Qualifying expense definition extremely broad
    - Tuition, fees, housing, computers, supplies
    - Housing available only if at least “half-time” student, can’t exceed standard allowance
    - K-12 tuition of 10K per year now allowed
    - Public and private, and non-Utah schools allowed

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#### 4. TAX-DEFERRED PLANS (HSA, RETIREMENT PLANS, 529 PLANS), CONT'D

- Section 529 plans (cont'd)
  - Beneficiary change flexibility
    - In-laws and first cousins qualify
    - Generally no limit on number of rollovers or beneficiary changes
  - Earnings on nonqualifying withdrawals subject to tax and 10% penalty but exceptions exist
    - Beneficiary change, scholarship, death, disability
  - Watch out for some “gotchas”
    - Recapture of prior credit if funds transferred to other plan
    - Financial aid ramifications- withdrawals from (not balances in) grandparent-owned accounts can significantly harm FAFSA calculations
    - Contributions allowed on calendar year basis only
    - Some may prefer more “flexible” grandchildren’s trusts

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#### 5. INCOME TAX BASIS/CAPITAL GAINS PLANNING

- TCJA changes continue trend toward income tax basis planning vs estate tax exemption planning
- Vast majority of clients won't hit \$11.2M single (\$22.4M MFJ) lifetime exemption amount
- Traditional transfer of assets out of estate possibly unnecessary
- Consider portability, revisit old formula clause estate plans
- Don't gift loss assets; do donate appreciated assets; watch out for kiddie tax; harvest loss assets in years of other capital gains
- Consider 0% LTCG/QD tax bracket (up to 38K single/77K MFJ)

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## 6. REAL ESTATE (PRINCIPAL RESIDENCE EXCLUSION, LIKE-KIND EXCHANGES, INSTALLMENT SALES, OPPORTUNITY ZONES)

- IRC Section 121 \$500K MFJ/\$250K single exclusion survived TCJA
  - Old “rollover” rules no longer apply
  - Own and use as principal residence for 24 of prior 60 months
  - Available once every two years
  - Depreciation recapture and nonqualifying use will reduce benefit
    - Rental at end of ownership period generally not a problem
  - Reduced exclusion may still apply in hardship cases- broad definition
- Installment sales
  - Can be excellent tool for multi-year taxable income management
  - Watch out for depreciation recapture, recognized in year one
  - Only available for gains
  - Capital gain rates must be considered; may reduce anticipated benefit

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## 6. REAL ESTATE (PRINCIPAL RESIDENCE EXCLUSION, LIKE-KIND EXCHANGES, INSTALLMENT SALES, OPPORTUNITY ZONES), CONT'D

- Opportunity zones
  - Treasury regulations issued earlier this month; 46 zones in Utah
  - Gain reinvestment required, fund by 12/31/19 to maximize long-term benefit
- Like-kind exchanges
  - Significant tax deferral opportunity
  - Not elective, but must have greater or equal value and equity in replacement property as in relinquished property
  - Principal residences not eligible. Watch out for five-year rule of IRC Sec. 121(d)(10) if trying to do this long-term
  - Tax basis in replacement property will be lower than purchase price (i.e. “carryover basis”)
  - Exchange expenses reduce gain
  - Technicalities and exchange costs mean smaller transactions often not optimal

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## IRC SECTION 1031 TRANSACTIONAL ALTERNATIVES

- Straight sale may be better in some cases
  - Selling at a loss?
  - Expiring tax attributes?
  - Is current year a low-income year?
  - Possibility of higher tax rates in future?
  - Consider the zero % Federal long-term capital gain rate bracket?
  - Personal use past and/or future?
  - Significant deferred passive losses on property which would be triggered on sale?
- Donation (outright or in trust)
- Installment sale
- Refinance
- Ownership restructure

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## LIKE-KIND EXCHANGE “RULES OF THUMB”

- Three rules of thumb under Section 1031
  - Rule #1- Trade up or remain equal in both value and equity from relinquished to replacement property(ies)
    - Clearly explaining this rule will save many headaches and needless work
    - Transaction costs affect this calculation
    - Post-exchange debt added to property should be considered
  - Rule #2- Taxed on the greater of
    - Trade-down in value or equity from relinquished to replacement
    - Only to the extent of realized gain
  - Rule #3- Basis in replacement property is FMV of replacement property less gain deferred

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## “BOOT” IN AN EXCHANGE

- Boot can come in form of cash or debt relief, and is taxable. Receipt of boot normally causes only partial taxability
- Placing mortgages on relinquished property prior to exchange or replacement property shortly after exchange?
  - Not barred by statute, although a provision was included in some old proposed regulations and later stricken
  - Step transaction doctrine could apply. Was successfully used by IRS and courts in Ltr Rul 8434015 and TC Memo 1985-195. Was NOT upheld in TC Memo 1994-27

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## SECTION 1031 STATUTORY REQUIREMENTS

- IRC Section 1031(a)(1)
  - “No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind which is to be held either for productive use in a trade or business or for investment”
- Basic requirements are
  - Qualifying property
  - Qualified purpose
  - Like-kind definition
  - Same taxpayer requirement
  - Exchange requirement

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## REQUIREMENT #1- QUALIFYING PROPERTY

- Real property qualifies
- Personal property no longer qualifies- no more business vehicle trade-in 1031s
- Other excluded properties (IRC Sec. 1031(a)(2))
  - Partnership and REIT interests (but not real estate owned by those entities)
  - Inventory
  - Stocks, bonds, or notes
  - Beneficial interests in certain trusts
- Delaware Statutory Trust (DSTs) interests may qualify (Rev. Ruls. 92-105 and 2004-86). Other state land trusts (such as IL, CA, HI) have also been upheld. Tenancy in common (TIC) structures are also used

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## DELAWARE STATUTORY TRUST (DST)

- Treated as fractional interest in underlying property, not as personal property or as a prohibited trust interest
- If qualifies, individual owners can “1031 out” of their interest (which can not be done with a partnership interest)
- Trustee’s duties limited or else fails
  - Collection and distribution of income among owners OK
  - No debt renegotiation
  - No ability to enter new leases
  - No ability to make structural improvements
- Involve legal counsel

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## TENANCY IN COMMON (TIC)

- Common real estate ownership structure- owners may want to sell their fractional TIC interest
- Rev. Proc. 2002-22 provides 15 guidelines for a TIC to qualify- these are “informal” and can’t be relied upon as authority, but are a reason that TICs have become less favored. Notably
  - No more than 35 owners in TIC
  - TIC must not file a partnership tax return
  - Profits and losses must be shared proportionately
  - Debt must be shared proportionately- this is often a problem
  - Rental income must not be contingent on net profits of other entity
  - Material management decisions must be approved by all owners

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## REQUIREMENT #2- QUALIFIED PURPOSE

- Property must be “held for investment” or “held for productive use in trade or business”
- No statutory definition of above terms exists; IRC Sec. 162 and 212 definitions often used
- Personal use property is ineligible
- Rev. Proc. 2008-16 “safe harbor” for rental/vacation properties (some tie-in with IRC Sec. 280A rules)
  - Own relinquished property at least 24 months pre-exchange, replacement property at least 24 months post-exchange
  - Rent at least 14 days/year and personal use may not exceed greater of 14 days or 10% of rental days, for each year within the 24-month period
  - Personal use includes related party use

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## REQUIREMENT #2- QUALIFIED PURPOSE (CONT'D)

- Holding period matters, both for relinquished and replacement properties
- Short pre or post-exchange holding periods are dangerous
  - No statutory bright-line test
  - Court cases have varied in their interpretation
  - Two-year period is generally considered bullet-proof; going less than one year increases risk
  - Burden of proof on taxpayer in all cases to show “intent”
  - Inherited or gifted property holding period generally does not “tack” for this purpose

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## REQUIREMENT #3- LIKE-KIND DEFINITION

- “Like-kind” means character or class of property. Definition is broad. Depreciable for non-depreciable, commercial for residential OK
- No requirement of condition, location, etc.
- Pre-TCJA personal property qualification required allocation of proceeds across classes of property. Presumably allocation will still be required although gain deferral not available on personal property
- 30-year leasehold interest exchanges for outright real property ownership have been upheld (see Rev. Rul. 78-72)
- TIC interest for outright interest (see Rev. Rul. 79-44)
- Timberland and water rights qualify as real property

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## REQUIREMENT #4- SAME TAXPAYER RULE

- Be careful with husband and wife ownership. IRS has successfully attacked ownership shifts between spouses
- Grantor trust and/or SMLLC ownership should not kill exchange
- Collateral and/or security agreement issues may necessitate putting differing names on title; side agreements should be used
- Estate may acquire replacement property if taxpayer dies during replacement period
- Partnerships may be owners but name on title may not change
  - Partnership spin-offs, split-ups, etc. can be attempted, but must respect qualified purpose/holding period requirements and are not without risk

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## REQUIREMENT #5- EXCHANGE REQUIREMENT

- Intent doesn't matter; exchange must actually occur
- Deferred exchanges or use of "qualified intermediary" (for third party exchange) OK
- Taxpayer must have no access to proceeds
- Time periods if not doing a "direct" exchange (which is the case in almost all exchanges)
  - 45 calendar days from the date property is transferred to identify like-kind property to be exchanged. Must be clear and in writing
  - Acquisition of replacement property must be completed (closed) within 180 calendar days (or due date including extensions of related tax return, if earlier)

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## REQUIREMENT #5- EXCHANGE REQUIREMENT (CONT'D)

- Identification time period of 45 days goes quickly! Multiple replacement properties can be identified- not all need be purchased. Contingencies/option agreements may be needed
- Reverse exchange also available (replacement property is found and “parked” before old property is relinquished). Qualified intermediary, EAT, and/or accommodator is a must. See Rev. Proc. 2000-37
- “Build to suit” exchanges may work, at least partially
  - Improvements made by end of 180-day period will be “like-kind” replacement property; non-completed improvements will not
  - Proper structuring and control of funds is necessary

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## MULTIPLE PROPERTIES

- Generally limited to three replacement properties (see Treas. Reg. 1.1031(k)-1(c))
- Can go higher as long as “200%” rule is not violated
  - FMV of replacement properties can’t exceed 200% of FMV of relinquished properties
- If don’t meet 200% rule, the 95% rule can be used
  - No limit to value or number of replacement properties, but must end up closing on 95% of value of identified properties
  - Helps limit frivolous identification
- Watch for changes in value

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## BUSINESS STRATEGIES

7. Choice of entity- early stage, projected rate considerations, exit strategy planning
8. Threshold increases under TCJA (Cash method, UNICAP exemption, interest expense deductibility limit)
9. Income tax nexus issues
10. Understanding the new Section 199A (“pass-through”) deduction
11. R&D credit (Federal and state)
12. Accelerated depreciation

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## 7. CHOICE OF ENTITY- EARLY STAGE, PROJECTED RATE CONSIDERATIONS, EXIT STRATEGY PLANNING

- New 21% C Corporate rate appears to make these more attractive but must consider “double tax” on distribution out of corporation, timing of exit, etc.
- Some factors to consider in choice of entity (sometimes two are better than one)
  - Current and future ownership, desired flexibility
  - Need for capital
  - Type of business and anticipated liability exposure
  - Desired fringe benefits
  - Taxable income projections- flow through of losses/income?
  - Self-employment tax

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## 7. CHOICE OF ENTITY- EARLY STAGE, PROJECTED RATE CONSIDERATIONS, EXIT STRATEGY PLANNING (CONT'D)

- Common tax-related misunderstandings in choice of entity
  - Planning on 100% of S Corp earnings as not subject to self-employment tax
  - Insufficient basis in entity to deduct losses (especially S Corps)
  - Ignoring passive activity loss limits
  - Reasonable compensation issues (too low in an S Corp, too high in a C Corp)
  - Ignoring effect of double tax on “end game” of C Corp or PTPP/re-election issues for S Corp
  - Not planning for exit. Disregarding personal goodwill, not planning for stock sale or other tax-favored exit, etc.
  - Ignoring annual income/deduction/contribution distribution adjustments when calculating basis of S Corp/partnership owner
  - Ignoring political risk (i.e. assuming that TCJA provisions won't change)

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## 8. BUSINESS THRESHOLD INCREASES UNDER TCJA (CASH METHOD, UNICAP EXEMPTION, INTEREST EXPENSE DEDUCTIBILITY LIMIT)

- TCJA raises applicable threshold to \$25 million limit in several areas. \$25 million is based on three prior years' avg. annual gross receipts
  - UNICAP applicability (previously \$10M in most cases)
  - Cash method availability (previously \$5M, or \$1M if had inventory)
  - New interest expense deductibility limit
    - Inapplicable if over \$25M
    - Limited to 30% of taxable income as adjusted
    - Excess interest expense carries over to future years
    - Appears to apply on a separate company basis; may need to consider debt restructuring
    - Reporting for flow-throughs will be messy as some limits apply at entity level
    - Farming and real estate businesses may opt out but lose accelerated depreciation

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## 9. INCOME TAX NEXUS ISSUES

- Nexus- defines the level of connection between a taxing jurisdiction and an entity/individual
- States are becoming more aggressive in enforcing and more efficient in sharing data (within departments and across states)
- Economic nexus standard becoming more popular. Usually contains revenue and transaction “or” threshold (such as South Dakota’s \$100K revenue or 200 transactions). Currently only sales tax
- PL 86-272 still available
  - Protects sales of tangible personal property
  - Specifically lists 21 “unprotected” (meaning these cause nexus) and the 13 “protected” (meaning these do not create nexus) activities
  - Not applicable to non-income based taxes, like franchise taxes (such as TN and TX)
- Recent Wayfair ruling (eliminating physical presence requirement for sales tax) has many concerned
- Specific state laws should be considered

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## 10. UNDERSTANDING THE NEW SECTION 199A (“PASS-THROUGH”) DEDUCTION

- “Pass-through” 20% deduction is effort to level the playing field for qualifying entities/income as compared to C Corps
- “Specified service businesses” begin losing benefit when owner hits \$315K of taxable income MFJ (\$157.5K others). Fully lost at \$415K/\$207.5K TI. Income in phase-out range pays heavy effective tax rate
- Real estate lobbyists did good work here- got benefits for REITs AND got basis last-minute add-in
- Does not reduce AGI and is not an itemized deduction
- Qualified income is domestic ordinary trade or business income. W-2 wages, capital gains, non-business interest/dividend income ineligible
- Still much uncertainty even though proposed regulations have been issued

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## 10. UNDERSTANDING THE NEW SECTION 199A (“PASS-THROUGH”) DEDUCTION (CONT’D)

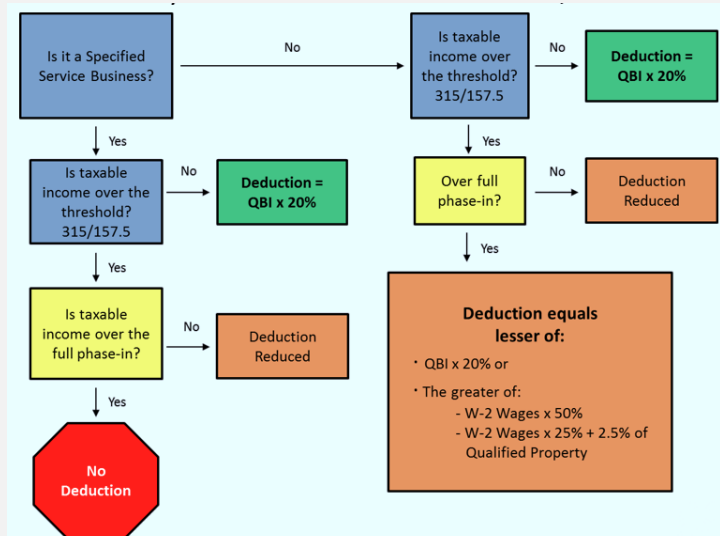


Chart courtesy of  
Robert Keebler &  
Associates

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## 10. UNDERSTANDING THE NEW SECTION 199A (“PASS-THROUGH”) DEDUCTION (CONT’D)

- Aggregated trades or businesses are treated as one; ownership, functional interdependence, and other rules apply, affirmative election must be made. Can pick and choose entities, SSBs ineligible. Aggregation applies for all future years
- For MFJ with taxable income  $\geq$  \$415K (\$207.5K other), the 20% of QBI deduction for each trade or business (if no aggregation election made) is limited to the greater of
  - 50% of W-2 income allocable to qualified business income or
  - The sum of 25% of W-2 wages plus 2.5% of the unadjusted basis immediately after acquisition (UBIA) of domestic tangible, depreciable property for which the depreciable period has not ended
    - The depreciable period begins on the date the property is first placed in service and ends on the later of 10 years after that date or the last full year in which the applicable recovery period ends
    - Land does not qualify

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## 11. R&D CREDIT (FEDERAL AND STATE)

- Utah has perhaps most robust research credit of any state
- Credit (dollar for dollar tax savings) is more powerful than deduction
- Not just available for traditional “laboratory research”; many customized software and process costs also qualify
- Can be claimed on amended returns
- Startups can claim against payroll taxes in certain situations
- Qualifying costs include payroll, a portion of independent contractor costs, and supplies related to the activity

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## 12. ACCELERATED DEPRECIATION

- Section 179 and Section 168(k) “bonus” depreciation both enhanced by TCJA. Bonus is generally preferred
- Bonus depreciation
  - Original use requirement is changed to “first use”!
  - 100% (up from 50%) of qualifying property purchased and placed in service after 9/27/2017. Scales back to 80% by 2023
  - “Qualified improvement property” (QIP), 15-year life and likely qualifies, but awaiting technical correction bill
  - Not limited by taxable income, but must apply to all properties within each class
  - Must “elect out” if not desired

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## 12. ACCELERATED DEPRECIATION (CONT'D)

- Section 179
  - Can pick and choose properties, as well as portion of cost of property
  - \$1M per taxpayer maximum write-off per year (up from 520K). Phaseout begins when total property purchases reach \$2.5M (up from \$2.07M).
  - Subject to recapture if business use drops below 50% (or disposed of)
  - \$25K limit for heavy SUVs was retained, now indexed for inflation
  - Not available to trusts or estates.
  - Look at ultimate taxpayer when making depreciation decisions