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Overview of provisions in the TCJA on partnerships, S corporations, and pass through income (“TCJA”)

Here's a look at some of the more important elements of the new tax law that have an impact on partnerships, S corporations, and pass-through income. In general, they are effective starting in 2018.

- 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, 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, consulting, athletics, financial or brokerage services, or where the principal asset is the reputation or skill of one or more employees or owners.
- S corporation conversion to C corporation. Under the new law, on the date of its enactment, any Code Section 481(a) adjustment of an “eligible terminated S corporation” attributable to the revocation of its S corporation election (i.e., a change from the cash method to the accrual method) is taken into account ratably during the 6-tax-year period starting with the year of change. An “eligible terminated S corporation” is any regular (C) corporation which meets the following tests: (1) it was an S corporation the day before the enactment of the new law, (2) during the 2-year period beginning on the date of enactment it revokes its S corporation election, and (3) all of the owners on the date the election is revoked are the same owners (in identical proportions) as the owners on the date of enactment. If money is distributed by the eligible corporation after the post-termination transition period, the distribution will be allocated between the accumulated adjustment account and the accumulated earnings and profits, in the same ratio as the amount in the accumulated adjustments account bears to the amount of the accumulated earnings and profits.
- Partnership “technical termination” rule repealed. Before the new law, partnerships experienced a “technical termination” if, within any 12-month period, there was a sale or exchange of at least 50% of the total interest in partnership capital and profits. This resulted in a deemed contribution of all partnership assets and liabilities to a new partnership in exchange for an interest in it, followed by a deemed distribution of interests in the new partnership to the purchasing partners and continuing partners from the terminated partnership. Some of the tax attributes of the old partnership terminated, its tax year closed, partnership-level elections ceased to apply, and depreciation recovery periods restarted. This often imposed unintended burdens and costs on the parties. The new law repeals this rule. A partnership termination is no longer triggered if within a 12-month period, there is a sale or exchange of 50% or more of total partnership capital and profits interests. A partnership termination will still occur only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.
- Partnership loss limitation rule. A partner can only deduct his share of partnership loss to the extent of his basis in his partnership interest as of the end of the partnership tax year in which the loss occurred. IRS has ruled, however, that this loss limitation rule should not apply to limit a partner's deduction for his share of partnership charitable contributions. Additionally, while the regulations under the loss limitation rules do not address the foreign tax credit, taxpayers may elect the credit instead of deducting foreign taxes, thus avoiding a basis adjustment. The new law addresses these issues by providing that

the rule limiting a partner's losses to his basis in his partnership interest is applied by reducing his basis by his share of partnership charitable contributions and foreign taxes paid. However, in the case of partnership charitable contributions of property with a fair market value that exceeds its adjusted basis, the partner's basis reduction is limited to his share of the basis of the contributed property.

- Look-through rule on sale of partnership interest. Under the new law, gain or loss on the sale of a partnership interest is effectively connected with a U.S. business to the extent the selling partner would have had effectively connected gain or loss had the partnership sold all of its assets on the date of sale. Such hypothetical gain or loss must be allocated as non-separately stated partnership income or loss is. Unless the selling partner certifies that he is not a nonresident alien or foreign corporation, the buying partner must withhold 10% of the amount realized on the sale. This rule applies to transfers on or after 11/27/2017 and will cause gain or loss on the sale of an interest in a partnership engaged in a U.S. trade or business by a foreign person to be foreign source.