Business Alert - Tax Bill Provisions and Upcoming Changes

McGlinchey Corporate Law Alert

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With the expected signature of the president to the Tax Cuts and Jobs Act (TCJA), which has now been passed by Congress, significant tax changes will occur for U.S. taxpayers.

Due to the Pay-As-You-Go Act of 2010 (PAYGO), however, which requires cuts in federal spending if at the end of the year bills increase the deficit over five or 10 years, TCJA will most likely not be signed by the president until next year to avoid spending cuts this month. This will give Congress a year to fix the PAYGO problem.

TCJA is the largest change to the federal tax code since 1986. Tax planning will become increasingly important for such sections as the “pass-through income” deduction, which will likely result in a potential shift of many employees to independent contractor and lower-tiered “partners/members” status.

It should be noted that significant portions of TCJA are only applicable through 2025, which, if not amended or extended prior to such time, set up remembrances of 2010 when, for 2011, Estate and Gift Taxes were set to revert to the law in effect in 2001. This, however, could be reversion on a much larger scale.

Changes to the current tax code in TCJA that have been widely reported include the:

1. Cut in the corporate tax rate to 21%
2. Special deduction for “pass-through income”
3. Lowering of the top individual rate to 37% and the increase in amounts subject to the lower rates
4. Increase of the standard deduction, for joint filers, to $24,000
5. Elimination of personal exemptions for individual taxpayers
6. Modification of the child tax credit
7. Limitation on the deductibility of state and local taxes to a maximum of $10,000
8. Limitation on the deductibility of mortgage interest to interest on mortgage loans with a combined principal amount of $750,000 or less
9. Doubling of the estate and gift tax exclusion to $11,200,000 per individual
10. Elimination of the Affordable Care Act health care mandate penalty

Other less widely reported but significant changes in TCJA that affect many taxpayers include the repeal of miscellaneous deductions for individuals, the ability to use 529 Plans for elementary/secondary school expenses up to $10,000 per year, the increase in percentage limitations for charitable contributions of cash to public charities, non-deductibility of fines and penalties, new rules on the deductibility of sexual harassment settlements, and the repeal of tax exempt interest for certain types of bonds.

Of particular importance to businesses will be the changes in cost recovery provisions such as the increase of the bonus depreciation percentage, the increase to depreciation/expensing limits on “luxury” automobiles, the decrease in the depreciable periods for certain real property improvements, the increase in expensing limits of qualified depreciable assets by small businesses, and changes in deprecation and expensing for farm property and farm businesses, along with the repeal of the deductibility of certain entertainment expenses and certain employee fringe benefits. Additionally, the 20% tax credit for certified historic structures was retained, but now must be claimed over a five-year period; however, the 10% tax credit for non-certified historic structures built before 1936 was eliminated. Like kind exchanges were retained but are now specifically limited to exchanges of real property.

Obviously, TCJA will institute sweeping changes to the current tax code. There are numerous provisions not mentioned here that could have substantial tax effects on a taxpayer depending on their individual circumstances. Additionally, many states have tax statutes that incorporate sections of the Internal Revenue Code, so there may also be unexpected changes in state taxes for states in which you do business and/or reside. Taxpayers need to consider tax planning now for the end of this year and begin planning for subsequent years.

For more information about this alert, please contact one of the authors or any member of McGlinchey Stafford’s Corporate Law team.

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