PASS-THROUGHS

New Deduction for Pass-Through Income

Under pre-Act law, the net income of these pass-through businesses- sole proprietorships, partnerships, limited liability companies (LLCs), and S corporations-was not subject to an entity-level tax and was instead reported by the owners or shareholders on their individual income tax returns. Thus, the income was effectively subject to individual income tax rates.

New Law. Generally for tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the Act adds a new section, Code Sec. 199A , "Qualified Business Income," under which a non-corporate taxpayer, including a trust or estate, who has qualified business income (QBI) from a partnership, S corporation, or sole proprietorship is allowed to deduct:

(1) the lesser of: (a) the "combined qualified business income amount" of the taxpayer, or (b) 20% of the excess, if any, of the taxable income of the taxpayer for the tax year over the sum of net capital gain and the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year; plus

(2) the lesser of: (i) 20% of the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year, or (ii) taxable income (reduced by the net capital gain) of the taxpayer for the tax year. (Code Sec. 199A(a) , as added by Act Sec. 11011)

The "combined qualified business income amount" means, for any tax year, an amount equal to: (i) the deductible amount for each qualified trade or business of the taxpayer (defined as 20% of the taxpayer's QBI subject to the W-2 wage limitation; see below); plus (ii) 20% of the aggregate amount of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership income of the taxpayer for the tax year. (Code Sec. 199A(b))

QBI is generally defined as the net amount of "qualified items of income, gain, deduction, and loss" relating to any qualified trade or business of the taxpayer. (Code Sec. 199A(c)(1) , as added by Act Sec. 11011) For this purpose, qualified items of income, gain, deduction, and loss are items of income, gain, deduction, and loss to the extent these items are effectively connected with the conduct of a trade or business within the U.S. under Code Sec. 864(c) and included or allowed in determining taxable income for the year. If the net amount of qualified income, gain, deduction, and loss relating to qualified trade or businesses of the taxpayer for any tax year is less than zero, the amount is treated as a loss from a qualified trade or business in the succeeding tax year. (Code Sec. 199A(c)(2) , as added by Act Sec. 11011) QBI does not include: certain investment items; reasonable compensation paid to the taxpayer by any qualified trade or business for services rendered with respect to the trade or business; any guaranteed payment to a partner for services to the business under Code Sec. 707(c) ; or a payment under Code Sec. 707(a) to a partner for services rendered with respect to the trade or business.

The 20% deduction is not allowed in computing adjusted gross income (AGI), but rather is allowed as a deduction reducing taxable income. (Code Sec. 62(a) , as added by Act Sec. 11011(b))

Limitations. Except as provided below, the deduction cannot exceed the greater of:

(1) 50% of the W-2 wages with respect to the qualified trade or business; or

(2) the sum of 25% of the W-2 wages paid with respect to the qualified trade or business plus 2.5% of the unadjusted basis, immediately after acquisition, of all "qualified property." Qualified property is defined in Code Sec. 199A(b)(6) as meaning tangible, depreciable property which is held by and available for use in the qualified trade or business at the close of the tax year, which is used at any point during the tax year in the production of qualified business income, and the depreciable period for which has not ended before the close of the tax year.

The above limit does not apply for taxpayers with taxable income below the "threshold amount" ($315,000 for married individuals filing jointly, $157,500 for other individuals, indexed for inflation after 2018). The application of the limit is phased in for individuals with taxable income exceeding the threshold amount, over the next $100,000 of taxable income for married individuals filing jointly ($50,000 for other individuals). (Code Sec. 199A(b)(3) , as added by Act Sec. 1101) Thus, for 2018, the limit fully applies to married taxpayers with taxable income over $415,000 and other individuals with taxable income over $207,500.

For a partnership or S corporation, each partner or shareholder is treated as having W-2 wages for the tax year in an amount equal to his or her allocable share of the W-2 wages of the entity for the tax year. A partner's or shareholder's allocable share of W-2 wages is determined in the same way as the partner's or shareholder's allocable share of wage expenses. For an S corporation, an allocable share is the shareholder's pro rata share of an item.

Service businesses. Except as provided below, the deduction does not apply to specified service businesses (i.e., trades or businesses described in Code Sec. 1202(e)(3)(A) , but excluding engineering and architecture; and trades or businesses that involve the performance of services that consist of investment-type activities). However, the disallowance of the deduction for specified service trades or businesses of the taxpayer does not apply for taxpayers with taxpayer income below the threshold amount described above. And, the benefit of the deduction for service businesses is phased out over the next $100,000 of taxable income for joint filers ($50,000 for other individuals). (Code Sec. 199A(d)) Thus, for 2018, the limit fully applies to married taxpayers with taxable income over $415,000 and other individuals with taxable income over $207,500.

The deduction does not apply to the trade or business of being an employee.

The new deduction for pass-through income is also available to specified agricultural or horticultural cooperatives, in an amount equal to the lesser of (i) 20% of the co-op's taxable income for the tax year, or (ii) the greater of (a) 50% of the W-2 wages of the co-op with respect to its trade or business, or (b) or the sum of 25% of the W-2 wages of the cooperative with respect to its trade or business plus 2.5% of the unadjusted basis immediately after acquisition of qualified property of the cooperative. (Code Sec. 199A(g) , as added by Act Sec. 11012)

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PARTNERSHIP PROVISIONS

Repeal of Partnership Technical Termination

Under a "technical termination" under Code Sec. 708(b)(1)(B), a partnership is considered as terminated if, within any 12-month period, there is a sale or exchange of 50% or more of the total interest in partnership capital and profits. A technical termination gives rise to a deemed contribution of all the partnership's assets and liabilities to a new partnership in exchange for an interest in the new partnership, followed by a deemed distribution of interests in the new partnership to the purchasing partners and the other remaining partners. As a result of a technical termination, some of the tax attributes of the old partnership terminate; the partnership's tax year closes; partnership-level elections generally cease to apply; and the partnership depreciation recovery periods restart.

New Law. For partnership tax years beginning after Dec. 31, 2017, the Code Sec. 708(b)(1)(B) rule providing for the technical termination of a partnership is repealed. The repeal doesn't change the pre-Act law rule of Code Sec. 708(b)(1)(A) that a partnership is considered as terminated 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. (Code Sec. 708(b) , as amended by Act Sec. 13504)

Look-Through Rule Applied to Gain on Sale of Partnership Interest

Gain or loss from the sale or exchange of a partnership interest generally is treated as gain or loss from the sale or exchange of a capital asset. However, the amount of money and the fair market value of property received in the exchange that represent the partner's share of certain ordinary income-producing assets of the partnership give rise to ordinary income rather than capital gain.

A foreign person that is engaged in a trade or business in the U.S. is taxed on income that is "effectively connected" with the conduct of that trade or business (i.e., effectively connected gain or loss). Partners in a partnership are treated as engaged in the conduct of a trade or business within the U.S. if the partnership is so engaged.

In a Revenue Ruling, in determining the source of gain or loss from the sale or exchange of an interest in a foreign partnership, IRS applied an asset-use test and business activities test at the partnership level to determine the extent to which income derived from the sale or exchange is effectively connected with that U.S. business. However, a Tax Court case has instead held that, generally, gain or loss on sale or exchange by a foreign person of an interest in a partnership that is engaged in a U.S. trade or business is foreign-source.

New Law. For sales and exchanges on or after Nov. 27, 2017, gain or loss from the sale or exchange of a partnership interest is effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. Any gain or loss from the hypothetical asset sale by the partnership must be allocated to interests in the partnership in the same manner as non-separately stated income and loss. (Code Sec. 864(c) , as amended by Act Sec. 13501)

For sales, exchanges, and dispositions after Dec. 31, 2017, the transferee of a partnership interest must withhold 10% of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation. (Code Sec. 1446(f) , as amended by Act Sec. 13501)

Partnership "Substantial Built-In Loss" Modified

In general, a partnership does not adjust the basis of partnership property following the transfer of a partnership interest unless either the partnership has made a one-time election under Code Sec. 754 to make basis adjustments, or the partnership has a substantial built-in loss immediately after the transfer. If an election is in effect, or if the partnership has a substantial built-in loss immediately after the transfer, adjustments are made with respect to the transferee partner. These adjustments are to account for the difference between the transferee partner's proportionate share of the adjusted basis of the partnership property and the transferee's basis in his or her partnership interest.

Under pre-Act law, a substantial built-in loss exists if the partnership's adjusted basis in its property exceeds by more than $250,000 the fair market value of the partnership property. Certain securitization partnerships and electing investment partnerships are not treated as having a substantial built-in loss in certain instances and thus are not required to make basis adjustments to partnership property. For electing investment partnerships, in lieu of the partnership basis adjustments, a partner-level loss limitation rule applies.

New Law. For transfers of partnership interests after Dec. 31, 2017, the definition of a substantial built-in loss is modified for purposes of Code Sec. 743(d) , affecting transfers of partnership interests. In addition to the present-law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest. (Code Sec. 743(d) , as amended by Act Sec. 13502)

Charitable Contributions & Foreign Taxes in Partner's Share Of Loss

Under pre-Act law, a partner was allowed to deduct his or her distributive share of partnership loss only to the extent of the adjusted basis of the partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of the loss over basis was allowed as a deduction at the end of the partnership year in which the excess was repaid to the partnership. IRS has taken the position in a private letter ruling that the Code Sec. 704(d) loss limitation on partner losses does not apply to limit the partner's deduction for its share of the partnership's charitable contributions. While the regs relating to the Code Sec. 704(d) loss limitation do not mention the foreign tax credit, a taxpayer may choose the foreign tax credit in lieu of deducting foreign taxes.

New Law. For partnership tax years beginning after Dec. 31, 2017, in determining the amount of a partner's loss, the partner's distributive shares under Code Sec. 702(a) of partnership charitable contributions and taxes paid or accrued to foreign countries or U.S. possessions are taken into account. However, in the case of a charitable contribution of property with a fair market value that exceeds its adjusted basis, the partner's distributive share of the excess is not taken into account. (Code Sec. 704(d), as amended by Act Sec. 13503)

S CORPORATIONS

Treatment of S Corporation Converted to C Corporation

Under present law, in the case of an S corporation that converts to a C corporation, distributions of cash by the C corporation to its shareholders during the post-termination transition period (PTTP), to the extent of the amount in the accumulated adjustment account),are tax-free to the shareholders and reduce the adjusted basis of the stock.

The PTTP is:

(1) the period beginning on the day after the last day of the corporation's last tax year as an S corporation and ending on the later of (a) the day that is one year after that day, or (b) the due date for filing the return for the corporation's last tax year as an S corporation (including extensions);

(2) the 120-day period beginning on the date of any determination (as defined in Reg. § 1.1377-2(c)) with respect to an audit of the taxpayer that follows the termination of the corporation's election and that adjusts a Subchapter S income, loss or deduction item that arises during the S corporation period (i.e., the most recent continuous period during which the corporation was an S corporation); and

(3) the 120-day period beginning on the date of a determination that the corporation's S election had terminated for an earlier year.

New Law. Effective Dec. 22, 2017, any Code Sec. 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 an accrual method) is taken into account ratably during 6-tax year period beginning with the year of change. An eligible terminated S corporation is any C corporation which (1) is an S corporation the day before Dec. 22, 2017; (2) during the 2-year period beginning on Dec. 22, 2017 revokes its S corporation election; and (3) all of the owners of which on the date the S corporation election is revoked are the same owners (and in identical proportions) as the owners on Dec. 22, 2017.

In the case of a distribution of money by an eligible terminated S corporation, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the amount of the accumulated adjustments account bears to the amount the accumulated earnings and profits. (Code Sec. 1371(f) and Code Sec. 481(d) , as amended by Act Sec. 13543)

TAX-EXEMPT ORGANIZATION PROVISIONS

Excise Tax on Excess Tax-Exempt Organization Executive Compensation

Under pre-Act law, there were reasonableness requirements and a prohibition against private inurement with respect to executive compensation for tax-exempt entities, but no excise tax tied to the amount of compensation paid.

New Law. For tax years beginning after Dec. 31, 2017, a tax-exempt organization is subject to a tax at the corporate tax rate (21% under the Act) on the sum of: (1) the remuneration (other than an excess parachute payment) in excess of $1 million paid to a covered employee by an applicable tax-exempt organization for a tax year; and (2) any excess parachute payment (as newly defined) paid by the applicable tax-exempt organization to a covered employee. A covered employee is an employee (including any former employee) of an applicable tax-exempt organization if the employee is one of the five highest compensated employees of the organization for the tax year or was a covered employee of the organization (or a predecessor) for any preceding tax year beginning after Dec. 31, 2016. Remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration. (Code Sec. 4960 , as amended by Act Sec. 13602)

Excise Tax Based on Investment Income of Private Colleges And Universities

Private colleges and universities generally are treated as public charities rather than private foundations and thus are not subject to the private foundation excise tax on net investment income.

New Law. For tax years beginning after Dec. 31, 2017, an excise tax equal to 1.4% is imposed on net investment income of certain private colleges and universities. The tax applies only to private colleges and universities with at least 500 students, more than 50% of the students of which are located in the U.S., and with assets (other than those used directly in carrying out the institution's exempt purpose) of at least $500,000 per student. The number of students is based on the daily average number of full-time equivalent students (full-time students and part-time students on an equivalent basis). Net investment income is gross investment income minus expenses to produce the investment (but disallowing the use of accelerated depreciation methods or percentage depletion). (Code Sec. 4968 , as amended by Act Sec. 13701)

UBTI Separately Computed for Each Trade or Business Activity

A tax-exempt organization determines its unrelated business taxable income (UBTI) by subtracting, from its gross unrelated business income, deductions directly connected with the unrelated trade or business. Under regs, in determining UBTI, an organization that operates multiple unrelated trades or businesses aggregates income from all such activities and subtracts from the aggregate gross income the aggregate of deductions. As a result, an organization may use a deduction from one unrelated trade or business to offset income from another, thereby reducing total unrelated business taxable income

New Law. For tax years beginning after Dec. 31, 2017 (subject to an exception for net operating losses

(NOLs) arising in a tax year beginning before Jan. 1, 2018, that are carried forward), losses from one unrelated trade or business may not be used to offset income derived from another unrelated trade or business. Gains and losses have to be calculated and applied separately. (Code Sec. 512(a) , as amended by Act Sec. 13702)

ESBT PROVISIONS

Qualifying Beneficiaries of an ESBT

An electing small business trust (ESBT) may be a shareholder of an S corporation. Generally, the eligible beneficiaries of an ESBT include individuals, estates, and certain charitable organizations eligible to hold S corporation stock directly. Under pre-Act law, a nonresident alien individual may not be a shareholder of an S corporation and may not be a potential current beneficiary of an ESBT.

New Law. Effective on Jan. 1, 2018, the Act allows a nonresident alien individual to be a potential current beneficiary of an ESBT. (Code Sec. 1361(c) , as amended by Act Sec. 13541)

Charitable Contribution Deduction for ESBTs

Under pre-Act law, the deduction for charitable contributions applicable to trusts, rather than the deduction applicable to individuals, applied to an ESBT. Generally, a trust is allowed a charitable contribution deduction for amounts of gross income, without limitation, which pursuant to the terms of the governing instrument are paid for a charitable purpose. No carryover of excess contributions is allowed. An individual is allowed a charitable contribution deduction limited to certain percentages of adjusted gross income, generally with a 5-year carryforward of amounts in excess of this limitation.

New Law. For tax years beginning after Dec. 31, 2017, the Act provides that the charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts but rather by the rules applicable to individuals. Thus, the percentage limitations and carryforward provisions applicable to individuals apply to charitable contributions made by the portion of an ESBT holding S corporation stock. (Code Sec. 641(c) , as amended by Act Sec. 13542)

RETIREMENT PLAN PROVISIONS

Repeal of the Rule Allowing Recharacterization of IRA Contributions

Under pre-Act law, if an individual makes a contribution to an IRA (traditional or Roth) for a tax year, the individual is allowed to recharacterize the contribution as a contribution to the other type of IRA (traditional or Roth) by making a trustee-to-trustee transfer to the other type of IRA before the due date for the individual's income tax return for that year. In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original contribution. Both regular contributions and conversion contributions to a Roth IRA can be recharacterized as having been made to a traditional IRA.

New Law. For tax years beginning after Dec. 31, 2017, the rule that allows a contribution to one type of

IRA to be recharacterized as a contribution to the other type of IRA does not apply to a conversion contribution to a Roth IRA. Thus, recharacterization cannot be used to unwind a Roth conversion. (Code Sec. 408A(d) , as amended by Act Sec. 13611)

Length of Service Award Programs for Public Safety Volunteers

Under pre-Act law, any plan that solely provides length of service awards to bona fide volunteers or their beneficiaries, on account of qualified services performed by the volunteers, is not treated as a plan of deferred compensation for purposes of the Code Sec. 457 rules. Qualified services are fire fighting and prevention services, emergency medical services, and ambulance services, including services performed by dispatchers, mechanics, ambulance drivers, and certified instructors. The exception applies only if the aggregate amount of length of service awards accruing for a bona fide volunteer with respect to any year of service does not exceed $3,000.

New Law. For tax years beginning after Dec. 31, 2017, the Act increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer with respect to any year of service, from $3,000 to $6,000, and adjusts that amount to reflect changes in cost-of-living for years after the first year the proposal is effective. Also, if the plan is a defined benefit plan, the limit applies to the actuarial present value of the aggregate amount of length of service awards accruing with respect to any year of service. Actuarial present value is calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan, with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan or the participant's age at the time of the calculation. (Code Sec. 457(e) , as amended by Act Sec. 13612)

Extended Rollover Period for Rollover of Plan Loan Offset Amounts

If an employee stops making payments on a retirement plan loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. Such a distribution is generally taxed as though an actual distribution occurred, including being subject to a 10% early distribution tax, if applicable. A deemed distribution isn't eligible for rollover to another eligible retirement plan.

Under pre-Act law, a plan may also provide that, in certain circumstances (for example, if an employee terminates employment), an employee's obligation to repay a loan is accelerated and, if the loan is not repaid, the loan is cancelled and the amount in employee's account balance is offset by the amount of the unpaid loan balance, referred to as a loan offset. A loan offset is treated as an actual distribution from the plan equal to the unpaid loan balance (rather than a deemed distribution), and (unlike a deemed distribution) the amount of the distribution is eligible for tax free rollover to another eligible retirement plan within 60 days. However, the plan is not required to offer a direct rollover with respect to a plan loan offset amount that is an eligible rollover distribution, and the plan loan offset amount is generally not subject to 20% income tax withholding.

New Law. For plan loan offset amounts which are treated as distributed in tax years beginning after Dec. 31, 2017, the Act provides that the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution would be extended from 60 days after the date of the offset to the due date (including extensions) for filing the Federal income tax return for the tax year in which the plan loan offset occurs-that is, the tax year in which the amount is treated as distributed from the plan. A qualified plan loan offset amount is a plan loan offset amount that is treated as distributed from a qualified retirement plan, a Code Sec. 403(b) plan, or a governmental Code Sec. 457(b) plan solely by reason of the termination of the plan or the failure to meet the repayment terms of the loan because of the employee's separation from service, whether due to layoff, cessation of business, termination of employment, or otherwise. A loan offset amount under the Act (as before) is the amount by which an employee's account balance under the plan is reduced to repay a loan from the plan. (Code Sec. 402(c) , as amended by Act Sec. 13613)

BOND PROVISIONS

Repeal of Advance Refunding Bonds

The exclusion for income for interest on State and local bonds applies to refunding bonds, but there are limits on advance refunding bonds. A refunding bond is defined as any bond used to pay principal, interest, or redemption price on a prior bond issue (the refunded bond). A current refunding occurs when the refunded bond is redeemed within 90 days of issuance of the refunding bonds. Conversely, a bond is classified as an advance refunding if it is issued more than 90 days before the redemption of the refunded bond. Proceeds of advance refunding bonds are generally invested in an escrow account and held until a future date when the refunded bond may be redeemed.

New Law. For advance refunding bonds issued after Dec. 31, 2017, the exclusion from gross income for interest on a bond issued to advance refund another bond is repealed. (Code Sec. 149(d) , as amended by Act Sec. 13532)

Credit Bonds Repealed

Tax-credit bonds provide tax credits to investors to replace a prescribed portion of the interest cost. The borrowing subsidy generally is measured by reference to the credit rate set by the Treasury Department. Current tax-credit bonds include qualified tax credit bonds, which have certain common general requirements, and include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds.

New Law. For bonds issued after Dec. 31, 2017, the authority to issue tax-credit bonds and direct-pay bonds is prospectively repealed. (Code Sec. 54A , Code Sec. 54B , Code Sec. 54C , Code Sec. 54D , Code Sec. 54E , Code Sec. 54F and Code Sec. 6431 , as amended by Act Sec. 13404)