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Real Estate Industry: Opportunities in the Tax Reform Act

REAL ESTATE, TAX, TAX REFORM
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On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act (The Act) into law. The Act provides opportunities for all facets of the real estate industry, including many real estate investment and developer-friendly provisions, with few industry offsets. The following are highlights of the recently signed legislation's impact on the real estate industry:

- **Internal Revenue Code (IRC) Section 1031 like-kind exchanges** retained for real property
- Ability to elect out of the 30% of adjusted business income **interest expense limitation** and fully deduct interest expense in exchange for a nominal increase in asset life on building property lives (Non-residential: 39 yr. to 40 yr.; Residential: 27.5 yr. to 40 yr.)
- **Bonus depreciation increased to 100%** from 50% for qualifying assets place in service after *September 27, 2017* and before January 1, 2023. *(Yes, this applies to 2017 tax year!)*
- **Bonus depreciation** rules **expanded definition to "used" property** (as long as property is first used by the taxpayer)
- **IRC Section 179 expensing** increased to $1 million; Phase-out begins at $2.5 million
- Roofs, heating, ventilation and air conditioning, fire protection, alarm systems and security systems in non-residential property are now eligible for IRC Section 179 expensing
- **Historic Rehabilitation Tax Credit** retained at 20% of qualified rehabilitation expenditures; however, the credit will be required to be claimed ratably over a five-year period in the year the structure is placed into service
- **Low-Income Housing Tax Credit** retained (name changed to Affordable Housing Credit)
- **Pass-through and Rental Real Estate income eligible for 20% deduction** – limited to greater of 50% of qualified W-2 wages allocated from trade or business, OR 2.5% of unadjusted property basis plus 25% of qualified W-2 wages
- **Carried interest** provision retained for capital gains tax treatment; however, three-year holding period will apply to partnership interest and/or business assets
- **Aggregate pass-through business losses** are limited to $500,000 for married filing joint filers; unallowed pass-through business losses carry forward as a net operating loss and can be utilized in future years (subject to 80% taxable income limitation)
- **Technical termination** of partnerships is eliminated. Formerly applied when more than

a 50% ownership change occurs. This will eliminate short-period returns or restarting depreciable lives for ownership changes/transfers.

- **Top individual rates** reduced to 37% (phasing in at $600,000) from 39.6% (phased in at $466,000)
- **Estate tax exemption** limit increased from $5.5 million to $11 million for each taxpayer and spouse ($22.4 million for married couples for 2018). Basis step-up retained and 40% tax rate remains unchanged.

The combination of the above provisions and lower tax rates should favorably impact the real estate industry. Taxpayers should begin to analyze how these new provisions will impact their future tax liabilities. For more information on how the new provisions can present both opportunities and challenges, please contact any of our Real Estate Industry Group members.

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