Federal Tax Alert

Provided by the National Tax Office

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Tax reform following the midterm elections

Federal tax developments created a challenging environment for businesses and individuals over the past year. The Tax Cuts and Jobs Act (TCJA) was enacted in December 2017, and the Treasury Department and Internal Revenue Service (IRS) continually issue new guidance implementing those changes. The recent midterm Congressional election also created an environment of uncertainty, with the future of the TCJA and other tax legislation hanging in the balance of the election results. Following the election, now is the time to survey the tax landscape and identify planning opportunities for year-end and beyond.

Changes are coming to Congress

The Nov. 6 midterm election has significantly altered the future dynamics of Congress. The current Congress, which began its two-year term in Jan. 2017, includes Republican majorities in both the House and Senate. Under this Republican leadership, the TCJA was quickly passed in late 2017. However, beginning in January 2019, the new Congress will feature divided government, with a Democratic majority in the House and a Republican majority in the Senate. This means there will be a Democratic majority on the House Ways and Means Committee, and a Republican majority on the Senate Finance Committee. These committees are responsible for all tax legislation.

The changes in Congressional composition are likely to result in different legislative priorities within each chamber beginning in 2019, making it difficult for any tax legislation to progress. However, the current Congress still has a limited amount of time left to enact legislation. A lame-duck session is now beginning, and is expected to consider several tax matters.

Tax issues are still on the agenda

One of the first tax issues facing Congress involves technical corrections to the TCJA. Following enactment of the TCJA, several issues were identified with the legislative text. For example, qualified improvement property is currently ineligible for both a 15-year recovery period and bonus depreciation, despite legislative history to the contrary. The current Congress could use the remainder of its session to consider this correction and other changes to the TCJA.

Various other tax provisions expired at the end of 2017 and could be considered in a "Tax Extenders" bill. This list is much smaller than it has been in prior years because many provisions were made permanent at the end of 2015, while others were only extended to the end of 2017. These provisions were not addressed in the TCJA and their fate is currently unclear.

Additional tax cuts for "middle class" taxpayers were publicly discussed by President Trump and other Congressional leaders during the weeks leading up to the midterm election. Additional tax cuts face an uncertain future, as they would require bipartisan support of Republicans and Democrats. So far, this level of bipartisanship has not existed, particularly around tax policy. Another significant hurdle to any new tax cut is the impact on federal revenues, which might necessitate an increase in the corporate tax rate.

Republican leadership may also attempt to advance their proposals from July 2018 for a second round of tax changes (the so-called Tax Reform 2.0). The first proposal would make the individual tax rates and the qualified business income deduction permanent, rather than expiring after Dec. 31, 2025. The second proposal would create and expand retirement saving programs and family-related savings programs. The third proposal is intended to spur new business innovation by enhancing start-up cost deductions and removing unnamed "barriers to growth." Some, or all, of these proposals could be advanced during the remainder of the session. This is particularly true for the retirement and family savings programs because similar prior proposals have garnered bipartisan support.

Under Democratic leadership, the Ways and Means Committee is expected to take aim at a number of tax issues. This will likely include oversight hearings related to particular aspects of the TCJA. However, any potential changes to the TCJA will run into a roadblock in the Republican-controlled Senate unless a bipartisan deal can be negotiated.

Regulations continue to advance

The Treasury Department and IRS have issued several proposed regulations, notices, and revenue procedures to implement the TCJA over the past several months. Those cover the following topics:

- Qualified business income deduction under Section 199A
- Bonus depreciation under Section 168(k)
- New small business accounting method changes
- Transition tax under Section 965
- Qualified opportunity zones under Sections 1400Z-1 and -2
- Business interest expense limitation under Section 163(j)

Additional proposed regulations are in process, some of which are anticipated to be issued before the end of the year:

- State and local tax deduction limitation in the case of pass-through entities
- Carried interest rules under Section 1061

Planning to maximize current rules

There is always a possibility of future changes to the Tax Code, but the only certainty is the rules as they exist today. While some provisions of the TCJA impacted the 2017 tax year, the vast majority were not effective until 2018. With less than two months left in this calendar year, there are several actions that can be taken now in order to maximize benefits under the existing tax rules.

- *Evaluate recent guidance implementing the TCJA*

  The guidance issued by the Treasury Department and IRS over the past year have gone a long way towards implementing the TCJA. Some interpretational questions remain open, but in many cases guidance is sufficiently available to evaluate tax planning opportunities.

- *Consider year-end planning opportunities*

  A great opportunity now exists to maximize tax benefits under the TCJA through year-end planning. Plante Moran will highlight these opportunities during year-end planning webinars on November 29. Alternatively, please consider the points outlined in our annual year-end planning guide. Plante Moran will continue to issue additional alerts and analyses as new guidance is released.

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