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BY DANIEL L. HESS

Tax Cuts *and* Jobs Act of 2017

Key provisions are likely to affect professionals, high-net worth individuals, and businesses

THE highly anticipated Tax Cuts and Jobs Act (TCJA) was signed into law by President Trump on December 22, 2017.[1] Although a number of proposals were changed or rejected prior to final passage to enable the bill to pass in the Senate on a narrow 51-48 vote,[2] the TCJA will impact nearly every taxpaying and tax-exempt entity in the United States as well as many outside the country. Nevertheless, most of the changes that affect individuals expire after 2025, many of the business provisions change over time, and many items are indexed for inflation.[3] Moreover, since the passage of the act was entirely partisan, the provisions are likely to change if there is a change in the controlling party, which makes long-term planning uncertain.[4]

Beginning in 2018, taxable income on a married filing jointly basis of $400,000 to $600,000 is subject to tax of $91,379 (22.8 percent) plus 35 percent of the excess over $400,000. Joint taxable income over $600,000 is subject to tax of $161,379 (26.9 percent) plus 37 percent of the excess over $600,000.[5] Taxable income on a single filing basis of $200,000 to $500,000 is subject to tax of $45,689.50 (22.8 percent) plus 35 percent on the excess over $200,000. Single income over $500,000 is subject to tax of $150,689.50 (30.1 percent) plus 37 percent on the excess over $500,000.[6]

The long-term capital gains rate for most capital assets and the rate on qualified dividends remain at a maximum of 20 percent.[7] Carried interests in partnerships must now be held for three years to qualify for the 20 percent rate.[8] The alternative minimum tax (AMT) was retained for individuals only with a rate of up to 28 percent and increased exemption amounts of $109,400 for married joint taxpayers and $70,300 for single taxpayers.[9] Most AMT long-term capital gains are still taxed at a maximum of 20 percent.[10] With the new controversial limit on deductions for state and local taxes by individuals of $10,000 per year, fewer individual taxpayers will be subject to the AMT. The net investment income tax (NIIT) of 3.8 percent continues to apply to investment

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and passive income if the taxpayer's modified adjusted gross income exceeds $250,000 joint and $200,000 single.[11] The additional Medicare tax of .9 percent also remains.[12] Earned income of a child is taxed at the single rates, and net unearned income of a child is now taxed according to the less favorable trusts and estates brackets.[13]

Alimony or separate maintenance payments will no longer be deductible to the payor or taxable to the recipient for agreements executed after December 31, 2018, or for earlier agreements modified to apply the change in the law.[14]

Out-of-pocket medical expenses over 7.5 percent of adjusted gross income (AGI) are deductible for 2017 and 2018.[15] It has been well publicized that the state and local tax deduction for individual income and nonbusiness property and sales taxes will now be limited to a total of $10,000 per year.[16] Deductible mortgage interest on qualified residence debt issued after December 15, 2017, is limited to interest on principal up to $750,000 (the mortgage interest deduction for mortgages up to $1 million is grandfathered in for mortgages in effect prior to December 15, 2017).[17] Beginning in 2018, the deduction for interest on home equity debt up to (and even exceeding) $100,000 is generally only deductible so long as the combined $750,000 of debt threshold is not exceeded.[18] Cash donations to public charities may now be deductible up to 60 percent of AGI.[19] Charitable deductions will no longer be allowed for payments for college athletic event seating rights.[20] Casualty and theft losses will only be allowed for presidentially declared disaster areas.[21] The individual health insurance mandate penalty is repealed beginning in 2019.[22] Miscellaneous itemized deductions will not be allowed from 2018 to 2025, which potentially affects law firm employees and partners who incur unreimbursed employee business expenses. Other examples of nondeductible miscellaneous expenses include tax preparation fees, investment advisory fees, and union dues.[23] The phase-out on itemized deductions has been suspended from 2018 to 2025.[24]

The standard deduction has been increased to $12,000 for individuals, $18,000 for heads of households, and $24,000 for joint filers for 2018 to 2025.[25] Personal exemptions are suspended from 2018 to 2025.[26] With the increased standard deduction and the new limits on itemized deductions, the great majority of individuals will be able to avoid itemizing and thereby simplify their federal tax returns. The child tax credit has been increased to $2,000 per child ($1,400 of which is refundable) and $500 for other dependents.[27] This credit is available to joint filers with AGI up to $400,000 and single filers with AGI up to $200,000.[28] The TCJA allows Section 529 plans to distribute up to $10,000 per student per year for enrollment in a public, private, or religious elementary or secondary school.[29]

The act did not repeal the estate and gift tax. However, it doubled the estate and gift tax exemption amount from $5 million to $10 million per person ($11.2 million per person and $22.4 million per married couple after adjusting for inflation) beginning in 2018 with any excess subject to tax at 40 percent.[30] This increased exemption amount remains indexed for inflation but expires in 2026 (like most of the individual changes), so wealthy individuals should consider making gifts before the increased amount expires.

> **Example:** Harry and Jessica are married with two young children and earn annual salaries as law firm associates of $180,000 and $210,000, respectively. They have interest income of $12,000, interest expense of $46,000 on mortgage debt of $1.4 million (which includes $100,000 as a home equity line of credit), charitable contributions of $13,500, California state income tax of $24,000, and Los Angeles County property tax of $13,000. Their projected U.S. income tax for 2017 (pre-TCJA) and 2018 would be $79,356 and $73,985, respectively.[31] Their projected California income tax for 2017 and 2018 would be $26,408 and $26,377, respectively.

Professional and Business Taxpayers

The TCJA has the potential to greatly benefit profitable domestic-based businesses. This includes C corporations, which are generally subject to tax at the corporate level with their shareholders paying tax on dividends, and certain pass-through (flow-through) businesses, including S corporations, limited liability companies, partnerships, and proprietorships in which the tax is generally only incurred at the shareholder, member, partner, or proprietor level. Thus, law firm clients will likely be affected by the act in varying degrees. However, California attorneys with high earnings may not notice a significant reduction in their own or their firms' federal income tax liabilities on earnings from their law practice. Some may see an increase in federal tax based on the new limitation on deducting personal state and local taxes.

Despite the potential business tax savings under the act for C corporations, the choice of entity decision for U.S. tax purposes would generally be expected to remain the same except in narrow circumstances. Considerations that may affect the decision include the extent to which the C corporation or its shareholders would be subject to state income tax, whether the C corporation intends to distribute its income currently, the extent to which the new IRC Section 250 37.5 or 50 percent exclusions would be available to the C corporation, and whether the new Section 199A 20 percent deduction would be available to the flow-through entity. California attorneys are generally most tax-efficient as sole proprietorships, professional corporations with S corporation elections, or as registered limited liability partnerships.[32]

The taxable income of C corporations will now be taxed at a flat rate of 21 percent effective January 1, 2018.[33] Also, the corporate AMT has been repealed.[34] The combined 2018 rate for a California C corporation that distributes qualified dividends to California shareholders can range from 45.3 to 54.7 percent if the corporation distributed all of its income currently, depending on how much of the new foreign derived intangible income deduction (FDII) allowed under Section 250 of the Internal Revenue Code is available to the domestic C corporation. The combined rate for a California-based pass-through entity for California residents in 2018 can range from 42.9 to 50.3 percent, depending on the extent to which the new IRC Section 199A qualified business income deduction is available to the individual taxpayer. The highest combined federal and California rates would have been 60.9 percent for C corporations as opposed to 47.6 percent for individually owned pass-through entities, respectively, in 2017 (i.e. pre-TCJA).[35]

The TCJA will have an impact on current and deferred tax balances of publicly traded and private companies under GAAP beginning in the fourth quarter of 2017.[36] Annual compensation in excess of $1 million each paid to certain officers of publicly traded corporations is no longer deductible regardless of whether it is paid as commissions or as performance-based compensation.[37] The act allows a qualified employee to elect to defer income for up to five years from qualified stock received from his or her employer.[38]

Taxpayers that have average annual gross receipts of $25 million or less for the three prior tax years can now use the cash method of accounting regardless of whether the purchase, production, or sale

MCLE Test No. 280

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1. The Tax Cuts and Jobs Act of 2017 (TCJA) passed Congress on a bipartisan basis.
True.
False.

2. Most provisions in the TCJA that affect individuals are permanent changes.
True.
False.

3. Effective January 1, 2018, the highest federal individual income tax rate is 37 percent.
True.
False.

4. The TCJA repealed the net investment income tax of 3.8 percent.
True.
False.

5. Under the TCJA, individuals may still deduct state and local income taxes in excess of $10,000 so long as such taxes are attributable to their trade or business.
True.
False.

6. Effective for 2018, the estate and gift tax exclusion amount is $10 million per person before adjusting for inflation, which increases the exclusion amount to approximately $11.2 million per person.
True.
False.

7. Beginning in 2018, the federal income tax rate for domestic subchapter C corporations is 21 percent.
True.
False.

8. Beginning in 2018, only the corporate alternative minimum tax has been repealed.
True.
False.

9. The new qualified business income deduction under Section 199A of the Internal Revenue Code is generally up to 20 percent of qualified business income from pass-through entities other than most professional and investment service providers with high levels of income.
True.
False.

10. Manufacturers with average annual gross receipts of $25 million or less for the prior three years may now use the cash method of accounting.
True.
False.

11. Domestic businesses can expense 100 percent of the cost of eligible property placed in service from September 27, 2017, through December 31, 2022.
True.
False.

12. Beginning in 2018, the deduction for investment interest expense will generally be limited to 30 percent of a taxpayer's adjusted taxable income.
True.
False.

13. The limitation on the deduction for business interest expense does not apply to an electing real property trade or business.
True.
False.

14. The TCJA limits the deduction for net operating losses to 70 percent of taxable income before net operating losses.
True.
False.

15. Beginning in 2018, active excess business losses for noncorporate taxpayers will now be limited to the extent they exceed $500,000 on joint returns and $250,000 on single returns.
True.
False.

16. The TCJA did not modify the existing rules with respect to "like-kind" exchanges of property under IRC Section 1031.
True.
False.

17. The TCJA generally denies a deduction for amounts paid at the direction of a government or governmental entity in relation to the violation of any law or the investigation or inquiry by the government or entity into the potential violation of any law.
True.
False.

18. The TCJA's provisions comprise a modified territorial system of taxation of foreign earnings as not all foreign income is exempt.
True.
False.

19. The tax for the transition to the modified territorial system of taxation is generally payable over 8 years by 10 percent or greater U.S. corporate and individual shareholders of most foreign corporations with such shareholders.
True.
False.

20. Under the TCJA, domestic C corporations may be taxed at a federal rate as low as 13.125 percent on foreign-derived intangible income from serving foreign markets.
True.
False.

MCLE Answer Sheet #280

TAX CUTS AND JOBS ACT OF 2017

Name ______________________

Law Firm/Organization

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Address ______________________

City ______________________

State/Zip ______________________

E-mail ______________________

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State Bar # ______________________

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ANSWERS

Mark your answers to the test by checking the appropriate boxes below. Each question has only one answer.

1.	☐ True	☐ False
2.	☐ True	☐ False
3.	☐ True	☐ False
4.	☐ True	☐ False
5.	☐ True	☐ False
6.	☐ True	☐ False
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16.	☐ True	☐ False
17.	☐ True	☐ False
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19.	☐ True	☐ False
20.	☐ True	☐ False

of merchandise is an income-producing factor.[39] The current-law exceptions from the use of the accrual method of accounting were retained, so qualified personal service corporations and most partnerships without C corporation partners, S corporations, and other pass-through entities continue to be allowed to use the cash method even if they exceed the $25 million gross-receipts test, as long as the use of the cash method clearly reflects income.[40] This includes large law firms. The $25 million gross-receipts threshold is indexed for inflation after 2018.[41] Note that accrual-method taxpayers subject to the all-events test must now recognize gross income for tax purposes in the year they recognize the income on their applicable or IRS-specified financial statement.[42]

The act allows domestic businesses to immediately deduct 100 percent of the cost of eligible property in the year placed in service.[43] This now includes new and used property.[44] This increase in bonus depreciation applies for property placed in service from September 27, 2017, through 2022 and includes a wider class of property than under prior law.[45] The similar IRC Section 179 expense amount has been increased to $1 million with the phase-out of the expense beginning when the cost of property placed in service exceeds $2.5 million.[46] Luxury auto depreciation deductions were increased for taxpayers who do not want to or do not qualify to fully expense the cost of their luxury vehicles under the bonus depreciation rules.[47]

Pass-Through Businesses

While certain individually owned U.S. pass-through businesses will now be allowed to deduct 20 percent of their qualified domestic business income, it is generally limited to 50 percent of the reported wages paid to employees.[48] New Section 199A, which taxes qualified domestic business income at rates as low as 29.6 percent (assuming the taxpayer is in the highest bracket) and benefits a broader range of taxpayers than the repealed Section 199 Domestic Production Activities deduction that favored manufacturers. This complex new provision applies to each separate qualified business and includes a number of limitations. Qualified business income is nonwage income that is calculated according to a formula, and the benefit is applied at the partner, member, shareholder, and individual level.[49] In lieu of the 50 percent of wages limitation, taxpayers may use 25 percent of allocable wages plus 2.5 percent of the unadjusted basis in qualified property for each qualified business.[50] Note that the 20 percent benefit is phased out for professional services and consulting businesses such as attorneys whose taxable income exceeds $315,000 for married individuals filing jointly or $157,500 for single filers.[51] For taxpayers who fall under those taxable income thresholds, the 20 percent deduction is not subject to the wage limitation.[52]

Example: John is a partner at a four-man law partnership. His share of income from the partnership is $120,000. His share of W-2 wages paid to employees is $40,000. His reduction in income under new Section 199A is $24,000.[53]

The deduction for business interest expense will now be limited to the sum of 1) business interest income plus 2) 30 percent of the taxpayer's "adjusted taxable income" for the tax year and 3) auto dealers' floor plan financing interest for the tax year.[54] Business interest is interest allocable to a trade or business that is not investment interest.[55] Adjusted taxable income is trade or business income before interest, depreciation, and amortization, the Section 199A 20 percent deduction, and net operating losses (NOLs).[56] Any disallowed business interest expense may be carried forward indefinitely.[57] Taxpayers that meet the $25 million gross-receipts test are exempt from the interest deduction limitation.[58] The business interest expense limitation also does not apply to a trade or business that consists of performing services as an employee or any electing real property trade or business, among others.[59]

The act limits the deduction for NOLs created after December 31, 2017, to 80 percent of pre-loss taxable income.[60] The two-year NOL carryback provisions were repealed.[61] Unused NOLs may be carried forward indefinitely.[62] Further, net "excess business losses" for non-C corporation taxpayers will now be limited to the extent they exceed $500,000 on joint returns and $250,000 on individual returns.[63] This provision limits taxpayers with large losses from their active businesses from offsetting other income such as from wages, interest, and dividends.

This new active loss limitation is effectively an expansion of the passive loss rules under Section 469 of the Internal Revenue Code. Like-kind exchanges under Section 1031 will be limited only to exchanges of real property that is not primarily held for sale.[64] The act disallows deductions for 1) an activity generally considered to be entertainment, amusement, or recreation; 2) membership dues for any club organized for business, pleasure, recreation, or other social purposes; or 3) a facility or portion of a facility used in connection with such items.[65]

The act repealed rules providing for the technical terminations of partnerships.[66] Specified domestic research or experimental expenditures must be capitalized and amortized ratably over a five-year period for tax years beginning after December 31, 2021.[67] The act denies a deduction for amounts paid or incurred to, or at the direction of, a government or governmental entity in relation to the violation of any law or investigation into the potential violation of any law.[68] This increases the scope of nondeductible fines and penalties. Restitution payments are excluded from this provision.[69] New reporting rules apply to payments that may constitute nondeductible fines and penalties.[70]

For 2018 and 2019, employers may claim a credit equal to 12.5 percent of wages paid to qualifying employees on family and medical leave if the payment is 50 percent or more of the employee's normal wages.[71] Contributions to the capital of a corporation by a customer, potential customer, governmental entity, or civic group are now taxable unless the contribution is by a shareholder or is a contribution pursuant to a government preapproved master development plan.[72]

Foreign Income

Foreign income subject to a low foreign tax rate tends to accumulate offshore. A major purpose of the TCJA was to reengineer the taxation of foreign corporations' non-U.S. trade or business income into a territorial system in which such earnings would not be subject to U.S. tax when distributed to U.S. corporate shareholders.[73]

This was in conjunction with the act's attempt to incentivize U.S.-based businesses to increase the scope of their domestic activities and increase U.S. employment and gross national product. The act's provisions comprise a modified territorial system as not all foreign income is exempt, the Subpart F provisions continue to tax passive income, the passive foreign investment company[74] rules remain, and foreign branch income that flows through to a U.S. owner is still subject to U.S. tax. The act also makes foreign tax credit utilization more difficult.

It is unknown whether the act's provisions will lead to increased U.S. employment given that existing foreign corporations that use low-cost foreign labor and pay a low foreign income tax rate have limited additional incentive to move jobs back to the U.S. The act generally allows post-2017 foreign earnings in foreign corporations to be distributed back to the foreign corporations' U.S. corporate shareholders without incurring U.S. tax. However, with the U.S. corporate tax rate at 21 percent or less, there is more of an incentive for profits to remain in the U.S. (e.g., via transfer pricing) on sales of products or services rendered to foreign affiliates.

The toll charge for the transition to a territorial system is a onetime tax of 8 to 15.5 percent on the deemed repatriation of accumulated post-1986 foreign earnings and profits as of year-end 2017.[75] This tax is on all 10 percent or greater U.S. shareholders of most foreign corporations.[76] The tax is generally payable over eight years on a backloaded basis and foreign tax credits are allowed at a reduced rate.[77]

> **Example:** Smith & West LLP, is an eight-partner law firm that operates in Los Angeles. Four of the partners own 20 percent each of the firm and the other four own 5 percent each. All partners are unrelated. Smith & West LLP opened a Hong Kong office in 1998 to provide services to their clients based in Asia. The Hong Kong office is held in a controlled foreign corporation owned by the limited liability partnership known as S&W (HK) Ltd. S&W (HK) Ltd. has been profitable and has accumulated the U.S. equivalent of US$24 million in foreign earnings and profits without making any distributions through December 31, 2017. The greater of the cash and net receivables balances as of December 31, 2017, or the average of the prior two years is $18 million. S&W (HK)'s basis in other assets is $8 million. For 2017, each 20-percent partner will be required to recognize US$4.8 million of the previously untaxed earnings and profits. The tax will be $654,000 for each of these parnters but may be paid in installments over eight years.[78] Later distributions of cash will be free of federal tax to the extent of the $4.8 million subject to the transition tax.[79]

In general, distributions of post- 2017 foreign-source earnings from most foreign corporations that have 10 percent or greater U.S. C corporation shareholders are excluded from income.[80] Disguised as a tax reduction, so called "global intangible low-taxed income" (GILTI) is actually a potential zero to 37+ percent tax on a foreign corporation's post-2017 unrepatriated income that exceeds certain thresholds.[81] The GILTI tax rate for a U.S. C corporation

is only 10.5 percent on the gain before foreign tax credits that would reduce the GILTI tax to zero so long as the foreign tax rate on the GILTI is at least 13.125 percent.[82] Individuals are potentially subject to full 37 percent rates on GILTI.[83] California tax may apply to the actual distributions. The GILTI is based on all income regardless of whether there are foreign intangibles. GILTI serves as a limit on post-2017 territorial income that would have otherwise been exempt from U.S. tax for U.S. corporate shareholders.[84]

> **Example:** In 2018, S&W (HK) Ltd settles a contingency fee case in Hong Kong for the equivalent of US$80 million after costs. S&W earns a net US$83 million for the year before Hong Kong income tax of US$12.3 million. S&W has depreciable assets with an adjusted basis of US$10 million. For 2018, the four U.S. 20 percent partners noted in the former example will each be subject to tax of up to $5.2 million on the unremitted income.[85]

The TCJA also provides domestic C corporations with a reduced tax rate as low as 13.125 percent on foreign derived intangible income (FDII) earned from serving foreign markets.[86] FDII is intended to encourage U.S.-based businesses to generate income from foreign activities and is the domestic version of the GILTI provision. To qualify as foreign market income, the U.S. corporation must earn the income 1) from the sale, exchange, lease, or license of property to foreign persons for a foreign use; or 2) from services provided to foreign persons or with respect to foreign property. The income must be earned through the United States as opposed to a foreign office.[87]

There is also a new 10 percent (5 percent in 2018) "base erosion minimum tax" on a corporation's "modified taxable income" to the extent the 10 percent amount exceeds the corporation's regular tax, as adjusted.[88] Modified taxable income is defined as income without deductions for certain "base erosion" payments to 25 percent or more commonly owned foreign entities.[89] This applies to C corporations with average annual U.S. receipts of $500 million for the prior three years.[90] Section 367 of the Internal Revenue Code now applies to tax certain transfers of foreign goodwill including going concern value, workforce in place, and other designated items. Post-2017 branch losses deducted for U.S. tax purposes must be recaptured if the branch assets are transferred by the U.S. shareholder to a specified 10-percent owned foreign corporation.[91]

State Conformity

The extent to which California and other state and local jurisdictions will conform to the TCJA's provisions is unknown. The act includes tax savings provisions such as the deduction for qualified business income and enhanced bonus depreciation as well as tax-raising provisions such as the active loss limitation, interest disallowance, and the deemed repatriation of foreign earnings. Such items may or may not be of interest to the California legislature.

The TCJA is a pro-business enactment that has the potential to benefit a wide spectrum of Americans. However, the projected deficit from the bill of $1.5 trillion over 10 years is problematic. The various effective dates in the act will need to be addressed by future houses of Congress. Also, given the length and complexity of the bill, there will likely need to be a number of technical corrections by Congress. The Treasury Department and the IRS will be issuing detailed notices and regulations pursuant to the act's many grants of interpretive and legislative authority. The resource-constrained IRS may find it difficult to meet the challenges of providing timely regulatory guidance on the new legislation and policing its provisions. ■

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1 Tax Cuts and Jobs Act (TCJA), H.R. 1, 115th Cong. (2017), Pub. L. No. 115-97. Final statutory language is available at: https://www.congress.gov/115/bills/hr1/BILLS-15hr1enr.pdf. The House Ways and Means, Senate Finance, and Joint Committee reports are available at: http://docs.house.gov/billsthisweek/20171218-/Joint%20Explanatory%20Statement.pdf (last viewed May 14, 2018).

2 *See id.* (the table at the end of the Joint Committee explanation: Estimated Budget Effects of the Conference Agreement for H.R. 1, the "Tax Cuts And Jobs Act" Fiscal Years 2018 – 2027) (last viewed May 14, 2018) [hereinafter Estimated Budget Effects].

3 I.R.C. §1(f)(6).

4 Estimated Bduget Effects, *supra* note 2.

5 I.R.C. §1(j)(2)(A). There are seven tax brackets: 10, 12, 22, 24, 32, 35, and 37 percent The compressed trust tax brackets are now 10, 24, 35, and 37 percent per I.R.C. §1(j)(2)(E).

6 I.R.C. §1(j)(2)(C).

7 I.R.C. §1(h)(1)(D). I.R.C. §1202 gains on sales of qualified small business stock continue to qualify for zero percent tax.

8 I.R.C. §1061.

9 I.R.C. §§55(b)(1)(A), (d)(4)(A).

10 I.R.C. §55(b)(3).

11 I.R.C. §§1411(b)(1), (3).

12 I.R.C. §3101(b)(2).

13 I.R.C. §1(j)(4).

14 TCJA §11051(a) repeals I.R.C. §215, and TCJA §11051(b) repeals and replaces I.R.C. §61(a)(8).

15 I.R.C. §213(f). The temporary reduction in the threshold does not apply for AMT purposes. The threshold is 10.5 percent of AGI for regular and AMT purposes beginning in 2019.

16 I.R.C. §164(b)(6).

17 I.R.C. §163(h)(3)(F). Interest on home equity debt is disallowed to the extent such debt plus other mortgage debt exceeds the $750,000 threshold.

18 Press Release, Interest on Home Equity Loans Often Still Deductible Under New Law (IR-2018-32), IRS (Feb. 21, 2018), *available at* https://www.irs.gov.

19 I.R.C. §170(b)(1)(G).

20 I.R.C. §170(l).

21 I.R.C. §165(h)(5). I.R.C. §165(h) allows deductions for casualty losses that exceed 10 percent of AGI plus $100 per loss.

22 I.R.C. §5000A(c)(2)(B)(iii) (effective after 12/31/2018).

23 I.R.C. §67(g).

24 I.R.C. §68(f).

25 I.R.C. §63(c)(7).

26 I.R.C. §151(d)(5)(A).

27 I.R.C. §24(h). These changes apply from 2018-2025.

28 I.R.C. §24(h)(3).

29 I.R.C. §§529(c)(7) and (e)(3)(A).

30 I.R.C. §2010(c)(3)(C).

31 2017 and 2018 would also include NIIT of approximately $420 and additional Medicare of $1,260.

32 From William C. Staley, outline from "Choice of Entity for Practicing Law in California," address before the Business Law Section of the San Fernando Valley Bar Association *(*December 9, 2015).

33 I.R.C. §11(b).

34 I.R.C. §55(a).

35 I.R.C. §§1, 11; Rev. & Tax Code §§23151(f), 17041 *et seq.*

36 *See* Staff Accounting Bulletin No. 118, 17 C.F.R. Pt. 211, SEC, a*vailable at* https://www.sec.gov/interps/account/staff-accounting-bulletin-118.htm (last viewed May 14, 2018).

37 I.R.C. §162(m).

38 I.R.C. §83(i).

39 I.R.C. §§448(b)(3), (c). Accrual-based taxpayers that want to use the cash basis must file for an automatic change in accounting method with the adjustment for the change in method to be taken over 6 years. The attribution rules in I.R.C. §448(c)(2) continue to apply to prevent commonly controlled businesses whose combined sales exceed $25 million from taking advantage of the new increased limit. Per I.R.C. §471(c)(1)(B), taxpayers that meet the $25 million gross-receipts test will not be required to account for inventories under I.R.C. §471. Instead, they will be allowed to treat inventories as nonincidental materials and supplies or to conform their method of accounting for inventories to their financial accounting treatment of inventories. Similarly, taxpayers that meet the cash-method $25 million gross-receipts test are exempted from the uniform capitalization rules of I.R.C. §263A. I.R.C. §263A(i).

40 I.R.C. §448(a).

41 I.R.C. §448(c)(4).

42 I.R.C. §451(b).

43 I.R.C. §168(k).

44 I.R.C. §168(k)(2)(A)(ii).

45 I.R.C. §168(k)(2)(A)(iii).

46 I.R.C. §179(b).

47 I.R.C. §280F(a)(1)(A).

48 I.R.C. §199A. The deduction is not available to "…any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees" except on lower income thresholds. Architectural and engineering firms are not subject to these restrictions. Income from real estate investment trusts, cooperatives, and publicly traded partnerships also qualifies for the 20 percent benefit. The wage and basis limitations do not apply to taxpayers at the $315,000 joint and $157,500 single thresholds.

49 *Id.*

50 I.R.C. §199A(b)(2)(B)(ii).

51 I.R.C. §199A(e).

52 I.R.C. §199A(b)(3)(A).

53 $120,000 * 20% = $24,000. The wage limitation does not apply as the income is under the $315,000 joint threshold ($157,500 single) of I.R.C. §199A(e)(2). I.R.C. §199A(b)(3).

54 I.R.C. §163(j).

55 I.R.C. §163(j)(6).

56 I.R.C. §163(j)(8).

57 I.R.C. §163(j)(2).

58 I.R.C. §163(j)(3).

59 I.R.C. §163(j)(7)(a).

60 I.R.C. §172(a).

61 TCJA §13302(b).

62 I.R.C. §172(b)(1)(A)(ii).

63 I.R.C. §461(l).

64 I.R.C. §1031(a).

65 I.R.C. §274(a). Meals for the convenience of the employer are no longer deductible under I.R.C. §274(o).

66 TCJA §13504(a) repealed I.R.C. §708(b)(1)(B).

67 I.R.C. §174(a)(2)(B) and TCJA §13206(e).

68 I.R.C. §162(f)(1).

69 I.R.C. §162(f)(2).

70 I.R.C. §6050X.

71 I.R.C. §45S.

72 I.R.C. §118(b).

73 Prior to enactment of the TCJA, repatriated income from a foreign corporation was subject to U.S. tax at the U.S. shareholder level with possible foreign tax credits.

74 *See* I.R.C. §§1291 *et seq.*

75 I.R.C. §965.

76 I.R.C. §965. S corporations generally qualify for an indefinite deferral of the payment of the tax.

77 I.R.C. §965(g).

78 Foreign earnings & profits $24,000,000 *20% ownership = $4,800,000. Cash $18,000,000 * 20% ownership = $3,600,000 *15.5% tax rate on cash or near cash equals $558,000 plus $4,800,000 – 3,600,000 * 8.0% tax rate on other assets = $96,000. $558,000 + 96,000 = $654,000.

79 I.R.C. §959. Additional California tax may be due by the partners when cash is distributed to the LLP.

80 I.R.C. §245A.

81 I.R.C. §§250, 951A. GILTI income can then be repatriated to U.S. C corporations without further U.S. tax. Foreign withholding tax and state income tax may apply to actual distributions.

82 *Id.*

83 *Id.*

84 *Id.*

85 Foreign income $83,000,000 – Hong Kong Taxes $12,300,000 – 10% of Adjusted Basis $1,000,000 = $69,700,000 * Per 20 percent partner * 37 percent = $5.2 million.

86 I.R.C. §250.

87 *Id.*

88 I.R.C. §59A.

89 I.R.C. §59A(c).

90 I.R.C. §59A(e)(1)(B).

91 I.R.C. §367(a)(1).