

# 2017 TAX CUTS & JOBS ACT

## *Business Tax Provisions*

Substantial changes and new concepts were worked into the Act for business income, both of corporations and individuals.

**Corporate Tax Rate Reduced:** The maximum corporate tax rate is 21%, down from 35%.

**AMT Repealed for Corporations:** The AMT has been repealed entirely for corporations. The credit for prior years' AMT remains with some favorable modifications.

**Deduction for Qualified Business Income:** For the tax years 2018 through 2025, some individuals, estates, and trusts will be able to deduct 20% of their qualified business income ("QBI"). The deduction is "below the line" and reduces taxable income but not AGI. Itemizing deductions is not required to take the deduction.

QBI comes from certain pass-through entities including sole proprietorships, partnerships, s corporations, and limited liability companies (taxed as partnerships or s corporations). QBI is determined for each qualified trade or business of the taxpayer and generally means the net amount of qualified items of income, gain, deduction, and loss with respect to the qualified trade or business (but only to the extent such items are taken into account for determining taxable income).

The deduction is based on a somewhat complicated formula: "In the case of a taxpayer other than a corporation, there shall be allowed as a deduction for any taxable year an amount equal to the sum of (1) the lesser of (A) the combined qualified business income amount of the taxpayer, or (B) an amount equal to 20 percent of the excess (if any) of (i) the taxable income of the taxpayer for the taxable year, over (ii) the sum of any net capital gain (as defined in section 1(h)), plus the aggregate amount of the qualified cooperative dividends, of the taxpayer for the taxable year, plus (2) the lesser of (A) 20 percent of the aggregate amount of the qualified cooperative dividends of the taxpayer for the taxable year, or (B) taxable income (reduced by the net capital gain (as so defined)) of the taxpayer for the taxable year. The amount determined under the preceding sentence shall not exceed the taxable income (reduced by the net capital gain (as so defined)) of the taxpayer for the taxable year." 26 U.S.C. §199A.

Taxpayers with taxable income above \$157,500 (\$315,000 for married taxpayers filing jointly) are subject to a phase-in of a limitation on the deduction. The phase-in of this limitation applies such that less and less of the deduction is permitted as income goes from \$157,500 to \$207,500 (\$315,000 to \$415,000 for married taxpayers filing jointly).

A qualified trade or business is any trade or business other than a specified service trade or business or a trade or business of "being an employee." If the taxpayer's taxable income is below the threshold discussed above, however, the deduction may still apply with respect to QBI from a specified service trade or business.

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**Net Operating Loss Deduction Revised:** The net operating loss ("NOL") can no longer be carried back to prior years and only 80% can be taken against current income. The deduction can be carried forward indefinitely.

**Limitations Altered:** The limitations for expensing certain depreciable business assets have been altered, with many limitations increased during 2018 through 2025.

**Like-Kind Exchanges Limited:** Only real estate that is not held primarily for sale can be used in a like-kind exchange under Section 1031 now. Previously, airplanes, art, and many other personal property assets qualified for like-kind exchanges. (This change does not expire after 2025 as many other provisions do.)