# Business Highlights of the Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Donald Trump signed into law H.R. 1, the Tax Cuts and Jobs Act of 2017 (TCJA). This new tax legislation, 185 pages in length, is the most significant revision to the U.S. federal tax code since the Tax Reform Act of 1986.

TCJA impacts a wide range of business taxpayers, from street vendors to multi-national corporations with world-wide operations. To some degree, almost every individual and business in the U.S. will be affected by it.

What follows is a brief, high-level summary of a few of the *business* provisions contained in the TCJA. Provisions affecting *individuals* are discussed separately.

One notable feature of this legislation is that most of the provisions affecting businesses are permanent. The majority of the individual tax provisions, however, "sunset" after eight years. Unless noted otherwise, the business provisions discussed here are effective for tax years beginning after December 31, 2017 and are permanent.

| Item | Prior Law | TCJA 2017 |
|---|---|---|
| **Reduction in corporate tax rate** | Generally, corporate income was taxable under a graduated, four-bracket rate structure, with taxable income in excess of $10,000,000 taxed at a top marginal rate of 35.0%. Personal service corporations paid tax on all taxable income at the 35.0% rate. | Corporate taxable income (including for personal service corporations) is taxed at a flat 21.0% rate. |
| **Dividends received deduction** | Prior law allowed a deduction for dividends received from another taxable domestic corporation. The deduction was generally equal to 70.0% of the dividends received. For 20.0% owned corporations, the deduction was 80.0% of the dividends received. | The provision reduces the 70.0% dividends received deduction to 50.0% and the 80.0% dividends received deduction to 65.0%. |
| **Repeal of corporate alternative minimum tax** | The corporate alternative minimum tax was a parallel tax system that re-calculated a corporation's income in a manner that negated the regular tax treatment of certain deductions and preferences. If the AMT re-calculation resulted in a higher tax, the corporation paid the higher amount. | The new Act repeals the corporate alternative minimum tax. |

# Business Highlights of the Tax Cuts and Jobs Act of 2017

| Item | Prior Law | TCJA 2017 |
| --- | --- | --- |
| **Enhanced expensing – "Bonus" depreciation** | Prior law generally allowed an additional depreciation deduction equal to 50.0% of the adjusted basis of qualified new business property acquired and placed into service before January 1, 2020 (January 21, 2021 for certain long-lived property). The allowable depreciation percentage was gradually reduced for years 2018-2020. | The new Act allows for 100.0% first-year bonus depreciation for specified new and used business property. The 100.0% deduction allowance applies to property (including specified plants) acquired and placed in service after September 27, 2017 and before January 1, 2023 (January 1, 2024 for certain, longer-lived property). The 100% allowance is phased down by 20% per calendar year for property placed in service in tax years beginning after 2022 (2023 for certain longer-lived property). |
| **Enhanced expensing – IRC Section 179** | Under IRC Section 179 a taxpayer could elect to "expense" up to $500,000 of qualifying property placed into service for a taxable year. The $500,000 was reduced by the amount by which the qualifying property place in service exceeded $2,000,000. | TCJA increases the maximum amount a taxpayer may expense under IRC Section 179 to $1,000,000, and increases the phase-out threshold amount to $2,500,000. The provision also expands the definition of IRC Section 179 property. |
| **Luxury auto and personal use property** | Prior law limited the depreciation deduction for certain "luxury" automobiles. For 2017, the maximum allowable amount of depreciation was generally[1] $3,160 for the year the vehicle is placed in service, $5,100 for the second year, $3,050 for the third year, and $1,875 for the fourth and later years. Computers and peripheral equipment were considered "listed" property, subject to certain depreciation limitations. | The maximum allowable amount of depreciation is generally[1] $10,000 for the year in which the vehicle is placed in service, $16,000 for the second year, $9,600 for the third year, and $5,760 for the fourth and later years. Computers and peripheral equipment are no longer treated as "listed" property. |
| **Net Operating Loss (NOL)** | A net operating loss (NOL) generally means the amount by which a taxpayer's business deductions exceed its gross income. Under | Generally, for NOLs arising from tax years after 2017, the TCJA limits the deduction for a NOL to |

[1] Assuming no first-year "bonus" depreciation is added.

| Item | Prior Law | TCJA 2017 |
|---|---|---|
| | prior law, an NOL deduction could generally be carried back two years (five years for farming losses) and carried forward 20 years. | 80.0% of taxable income, eliminates the two-year carryback (except for farms), and allows for an indefinite carryforward. |
| **Excess business losses** | No comparable provision. | For taxpayers other than corporations, an "excess business loss" is, generally, the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer, over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. Any excess business loss is not allowed as a deduction in the current year, but must be carried forward as a NOL. For 2018 the threshold amounts are \$500,000 (MFS) and \$250,000 for all others.[1] |
| **Like-kind exchanges** | Allowed for like-kind exchanges (and deferral of recognized gain) on both personal and real property. | The new law limits the application of the like-kind exchange rules to real property that is not held primarily for sale. |
| **Orphan drug credit** | Provided a 50.0% business tax credit for qualified clinical testing expenses incurred in testing of certain drugs for rare diseases or conditions, generally referred to as "orphan drugs." | TCJA reduces the credit to 25.0% of qualified clinical testing expenses. |
| **Small business cash accounting** | A C corporation, a partnership that had a C corporation as a partner, or a tax-exempt trust, or corporation with unrelated business income, generally could not use the cash method of accounting. An exception was made for businesses which had less than \$5,000,000 in gross receipts based on three prior years. | The new law allows taxpayers with annual average gross receipts that do not exceed \$25,000,000 for the three prior taxable years to use the cash method of accounting. |

[1] This provision is effective for tax years beginning after December 31, 2017 and before January 1, 2026. The provision applies after the application of the passive loss rules.

# Business Highlights of the Tax Cuts and Jobs Act of 2017

| Item | Prior Law | TCJA 2017 |
|---|---|---|
| **Deduction of business interest** | Business interest was generally deductible as it was paid or incurred. | TCJA limits the deduction for business interest paid to the sum of business interest income plus 30.0% of the taxpayer's adjusted taxable income. Exceptions apply for "small" businesses (average gross receipts less than $25,000,000 in three prior tax years), a real property trade or business, or "floor plan" financing (such as a car dealer). Unused interest deductions may generally be carried forward indefinitely. |
| **Domestic production activities deduction** | Prior law allowed a deduction from taxable income equal to 9.0% (6.0% for oil and gas) of the lesser of the taxpayer's qualified domestic qualified production income, or taxable income. Qualified domestic production income, generally, included income derived from goods manufactured, produced, grown, or extracted within the United States. | Repeals the deduction for tax years beginning after December 31, 2017. |
| **Amortization of research and experimentation expenses** | Under prior law a taxpayer could generally choose to account for research and experimentation expenses in one of three ways: (1) deduct the expenses when paid; (2) amortize them over a 60-month period; or (3) amortize the expenses over a 10-year period. Software development costs were deductible in the year paid or incurred. | The new Act repeals method 1 (current deduction) and method 2 (60 month amortization) on December 3, 2021. For tax years after 2021, TCJA generally requires that research and experimentation expenditures be amortized ratably over a five-year period (15 years for foreign research). Software development expenses will be required to be amortized over the appropriate period, either five or 15 years. |
| **Certain employer fringe benefits** | Prior law generally allowed a taxpayer to deduct as a business expense 50.0 % of expenditures for business-related entertainment. A business taxpayer could | TCJA generally repeals the deduction for 50.0% of expenditures for business-related entertainment. The Act also |

| Item | Prior Law | TCJA 2017 |
|---|---|---|
| | also deduct certain qualified transportation fringe benefits provided to employees. | repeals the deduction for qualified transportation fringe benefits. |
| **Excessive employee compensation** | Prohibited a publicly-held corporation from deducting employee compensation of more than $1,000,000 paid to certain "covered" employees. The definition of "compensation" for this limit excluded performance-based compensation as well as commission-based compensation. | TCJA expands the number of employees who are considered "covered" employees. The Act also repeals the exclusion for commission-based and performance-based compensation from the definition of compensation subject to the $1,000,000 limit. |
| **Carried interest** | In some situations, a general partner of a partnership may receive an interest in the partnership as compensation for services rendered to the partnership. Gain on the sale of the partnership interest was accorded long-term capital gain treatment if sold by the taxpayer after being held more than one year. | The new law generally provides that a partnership interest received as compensation for services rendered must be held for three years in order for any gain realized on the sale of the interest to receive long-term capital gain treatment. |

## Seek Professional Guidance

Many of the provisions of the Tax Cuts and Jobs Act of 2017 involve complex areas of law. Further, the Internal Revenue Service (IRS) will need to create and issue guidance explaining how the various sections of this new act are to be applied. To receive maximum benefit from the new legislation, the advice and guidance of trained, experienced income tax and legal professionals is highly recommended.