


Tax Cuts and Jobs Act – What’s Next?
A review of selected individual, trust and business changes

Financial and Estate Planning Council of Metropolitan Detroit
February 12, 2019


Presented By: Jordan Rosen, CPA, MST, AEP®
Director – Estate & Trust Section
Belfint, Lyons & Shuman, P.A.
jrosen@belfint.com/302.573.3911



BELFINT • LYONS • SHUMAN
Certified Public Accountants

To Download a Copy For Your Record


- Please go to : www.MetroDetroitFEPC.org
- Click: ABOUT
- Click: DOCUMENTS
- Click: 2-12-19 MEETING MATERIALS



BELFINT • LYONS • SHUMAN
Certified Public Accountants

Copyright © 2018 Belfint, Lyons & Shuman, P.A.

Individual, Estate and Trust Provisions



BELFINT • LYONS • SHUMAN
Certified Public Accountants

Copyright © 2018 Belfint, Lyons & Shuman, P.A.


Individual Tax Rates (2018 - 2025)

2017	2018 - 2025
10%	10%
15%	12%
25%	22%
28%	24%
33%	32%
35%	35%
39.6%	37%

BLS
 BELFINT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfint, Lyons & Shuman, P.A.

Certain Phase-outs Suspended (2018 - 2025)

- Phase-out of personal exemptions suspended
- Phase-out of itemized deductions suspended



BLS
 BELFINT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfint, Lyons & Shuman, P.A.

For Married Individuals Filing Joint Returns and Surviving Spouses

If taxable income is:	The tax is:
Not over \$19,050	10% of the taxable income
Over \$19,050 but not over \$77,400	\$1,905 plus 12% of the excess over \$19,050
Over \$77,400 but not over \$165,000	\$8,907 plus 22% of the excess over \$77,400
Over \$165,000 but not over \$315,000	\$28,179 plus 24% of the excess over \$165,000
Over \$315,000 but not over \$400,000	\$64,179 plus 32% of the excess over \$315,000
Over \$400,000 but not over \$600,000	\$91,379 plus 35% of the excess over \$400,000
Over \$600,000	\$161,379 plus 37% of the excess over \$600,000

BLS
 BELFINT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfint, Lyons & Shuman, P.A.

For Single Individuals (Other Than Heads of Households and Surviving Spouses)

If taxable income is:	The tax is:
Not over \$9,525	10% of the taxable income
Over \$9,525 but not over \$38,700	\$952.50 plus 12% of the excess over \$9,525
Over \$38,700 but not over \$82,500	\$4,453.50 plus 22% of the excess over \$38,700
Over \$82,500 but not over \$157,500	\$14,089.50 plus 24% of the excess over \$82,500
Over \$157,500 but not over \$200,000	\$32,089.50 plus 32% of the excess over \$157,500
Over \$200,000 but not over \$500,000	\$45,689.50 plus 35% of the excess over \$200,000
Over \$500,000	\$150,689.50 plus 37% of the excess over \$500,000

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

For Heads of Households

If taxable income is:	The tax is:
Not over \$13,600	10% of the taxable income
Over \$13,600 but not over \$51,800	\$1,360 plus 12% of the excess over \$13,600
Over \$51,800 but not over \$82,500	\$5,944 plus 22% of the excess over \$51,800
Over \$82,500 but not over \$157,500	\$12,698 plus 24% of the excess over \$82,500
Over \$157,500 but not over \$200,000	\$30,698 plus 32% of the excess over \$157,500
Over \$200,000 but not over \$500,000	\$44,298 plus 35% of the excess over \$200,000
Over \$500,000	\$149,298 plus 37% of the excess over \$500,000

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

For Married Filing Separately

If taxable income is:	The tax is:
Not over \$9,525	10% of the taxable income
Over \$9,525 but not over \$38,700	\$952.50 plus 12% of the excess over \$9,525
Over \$38,700 but not over \$82,500	\$4,453.50 plus 22% of the excess over \$38,700
Over \$82,500 but not over \$157,500	\$14,089.50 plus 24% of the excess over \$82,500
Over \$157,500 but not over \$200,000	\$32,089.50 plus 32% of the excess over \$157,500
Over \$200,000 but not over \$300,000	\$45,689.50 plus 35% of the excess over \$200,000
Over \$300,000	\$80,689.50 plus 37% of the excess over \$300,000

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

For Estates and Trusts

If taxable income is:	The tax is:
Not over \$2,550	10% of the taxable income
Over \$2,550 but not over \$9,150	\$255 plus 24% of the excess over \$2,550
Over \$9,150 but not over \$12,500	\$1,839 plus 35% of the excess over \$9,150
Over \$12,500	\$3,011.50 plus 37% of the excess over \$12,500

Capital Gain and Qualified Dividend Tax Rates

- Retain 0%, 15% and 20% rates
- Retain pre-act dollar break points, but indexed for inflation

Standard Deduction Doubles (2018 - 2025)

- MFI : \$24,000
 Single: \$12,000
 HH \$18,000
- There was no change to the additional standard deduction for those taxpayers age 65 and/or blind
 - More taxpayers are expected to use the standard deduction



Personal Exemptions Suspended (2018 - 2025)

- TCJA suspends all personal and dependent exemptions

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

13

Kiddie Tax Modified (after 2017)

- Earned income taxed at rates for single individuals
- Net unearned income (ordinary and preferred) taxed at rates for estates and trusts.

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

14

Alternative Minimum Tax (2018 - 2025)

- TCJA increases the exemption amounts

	2017	2018 - 2025
MFJ & SS	\$84,500	\$109,400
Single/H.H.	\$54,300	\$70,300
MFS	\$42,450	\$54,700

- Increases the threshold at which the exemptions starts to phase-out

	2017	2018 - 2025
MFJ & S.S.	\$160,900	\$1,000,000
Single/H.H.	\$120,700	\$500,000

*No Change to computation for estates and trusts other than for inflation adjustments beginning after 2018

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

15

Medical Expense Deduction (2017 and 2018 only)

- AGI threshold reduced to 7½ % for all taxpayers
- Rule limiting medical deduction to amount over 10% of AGI for AMT purposes is suspended



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

16

State and Local Tax Deduction (2018 - 2025)

- State, local and foreign property taxes and state and local sales tax are only deductible in carrying out a trade on business, or in connection with the production of income, with the following exception
- A taxpayer may claim as an itemized deduction up to \$10,000 (\$5,000 for MFS) of state and local property taxes not paid as T&B or investment purposes (but not foreign property taxes) plus state and local income or sales taxes paid).
- See proposed regulations and IR 2018-172 dated August 23, 2018 which address reduction of charitable contributions by the amount of state tax credit provided, in response to state work arounds.

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

17

Mortgage and Home Equity Loan Interest Deduction (2018 - 2025)

- All home equity loan interest is suspended
- Pre 12/16/17 acquisition indebtedness interest up to the prior \$1 million limitation can still be deducted
- Post 12/15/17 acquisition indebtedness interest deduction is limited to \$750,000 (\$375,000 for MFS)
- Binding contract exception
- Refinancing the \$1 million (\$500,000 of MFS) of existing acquisition debt continues to be grandfathered as long as proceeds do not exceed the amount of refinanced debt



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

18

Charitable Contribution Limit Increased (2018 - 2025)

Section 170 (b) Limit increased from 50% to 60% for cash contributions



BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A.

Business Loss Limitation for Non-Corporate Taxpayers

- A.K.A. "Excess Business Loss" (2018 - 2025)
- Loss limitation rule limits the business loss of a non-C corporate taxpayer to \$500,000 each year (MFJ) or \$250,000 (all others); and creates an excess business loss for amounts above those thresholds
 - Excess business loss applies after the application of the passive loss rules (Section 469)
 - Excess business loss for the year is carried over as an N.O.L. to the subsequent year (no limitation on number of years carried forward)
 - For partnerships and S Corporations, the limitation is applied at the partner or shareholder level
 - Excess farm loss limitation rules don't apply
 - Draft Form 461, Limitation on Business Losses issued by IRS

BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A.

Expanded Use of Section 529 Funds (after 2017)

For distributions after 2017, up to \$10,000 per beneficiary can be used per tax year for tuition at an elementary or secondary public, private, or religious school



BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A.

Estate and Gift Taxes (2018 - 2025)

- Doubles the base exemption to \$10 million per person
- Indexed for inflation after 2011
- Retains portability rules
- 2019 amount will be \$11,400,000
- Rate remains at 40%
- Proposed Regulations (Reg. 106706-18) issued November 20, 2018 provides that there would be no "clawback" for taxpayers who use their increased exclusion amounts before 2026



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

22

Effect of Other Changes on Estates and Trusts

- State and local income tax deduction
- State and local real estate tax deduction
- 2% deductions
- Other deductions – Section 67(e)
 - Tax preparation
 - Attorney fees
 - Fiduciary fees
- Section 691(c) remains deductible (need clarification)



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

23

Qualified Beneficiaries of an ESBT (after 2017)

- Existing Law - ESBT - Electing Small Business Trust - may be a shareholder in an S Corporation
- New law now allows a nonresident alien individual to be a potential current beneficiary of an ESBT (in addition to resident individuals, estates, and certain charitable organizations)



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

24

Charitable Contribution Deduction for an ESBT (after 2017)

Deduction for charitable contributions will be determined using rules applicable to individuals (not trusts)

- Percentage limitation
- Carry forward provisions



Section 199A: Qualified Business Income (QBI) Deduction

Treasury/ IRS Issue Proposed Regulations

- Proposed Regulations on Section 199A issued on August 8, 2018 (184 pages)*
- Also, Notice 2018-64 issued to provide methods for calculating Form W-2 wages for purposes of the limitations on deduction
- IRS issued Draft Publication 535 on December 19, 2018

**Qualified Business Income Deduction:
Section 199A**

Overview

- Applies to non-corporate taxpayers
 - Individuals (including children subject to the Kiddie tax)
 - Estates
 - Non-granter trusts
- Applies to tax years beginning 2018 → 2025

28

**Qualified Business Income Deduction:
Section 199A - Continued**

Overview

- Applies to income from an S Corporation, Schedule E real estate rentals*, partnerships, or sole proprietors
- Applies only to QBI effectively connected with conduct of a trade or business within the U.S.
- QBI includes items of income, gain, deduction, and loss
- No distinction between passive and active income
- Effectively reduces top rate of 37% to 29.6%

*That rise to the level of a trade/business

29

QBI Does Not Include

Overview

- Certain investment income, including short-term and long-term capital gains
- Reasonable compensation paid to the taxpayer
- Guaranteed payments paid to the taxpayer

30

Section 199A (QBI deduction) Does Not Apply To

- Computation of Net Investment Income Tax (NIIT)
- Computation of SSA benefits
- Computation of S. E. Tax

31

QBI – The Basic Calculation

- Qualified Business Income x 20%
- Limited to 20% of NET taxable income
 - Net of capital gains

32

QBI Examples: Example #1

- John is a married accountant with business income of \$150,000
 - QBI Deduction: $\$150,000 \times .20 = \$30,000$
 - Net Taxable Income: \$200,000
 - $\$200,000 \times .20 = \$40,000$
 - QBI deduction is not limited
- Mary is a married accountant with business income of \$250,000
 - QBI Deduction: $\$250,000 \times .20 = \$50,000$
 - Net Taxable Income: \$200,000
 - $\$200,000 \times .20 = \$40,000$
 - QBI deduction is limited to \$40,000

33

QBI – Wage/Asset Limitation

- Wage Limitation does not apply if taxable income does not exceed \$315,000
 - Limitation phases in when taxpayer's taxable income exceeds \$315,000 for MFJ (\$157,500 for others)
 - Phase-in is over the next \$100,000 of taxable income for MFJ (\$50,000 for others)

34

QBI – Wage/Asset Limitation

- If taxable income > \$415,000 - MFJ (\$207,500 for others) - the deduction cannot exceed the greater of:
 - 50% of (allocated share of) W-2 wages of the trade or business, **or**
 - 25% of (allocated share of) W-2 wages of the trade or business, **PLUS** 2.5% of the unadjusted basis of all qualified property held by and available for use in the T/B at the close of the year

35

QBI Examples: Example #2

- Bruce is married and has a yard cleaning company and has taxable income of \$600,000 and the QBI amount from the company is \$100,000. The company pays wages of \$50,000 and has nominal assets
- Lesser of:
 - $\$100,000 \times .20 = \$20,000$
 - Limited to: $\$50,000 \text{ (wages)} \times .50\% = \$25,000$
 - Bruce's QBI deduction is not limited

36

QBI Examples: Example #3

- Bruce also owns a commercial rental property that generates \$8,000 of QBI, assume the property is fully depreciated and there are no employees
- The QBI deduction is \$0

37

QBI Examples: Example #4

- Same as example #3 except the building is not fully depreciated and was purchased for \$250,000, which includes land cost of \$50,000
 - QBI deduction is $\$8,000 \times .20 = \$1,600$
 - $(\$0 \text{ wages} \times .25) \text{ PLUS } \$200,000 \text{ (net of land)} \times .025 = \$5,000$
 - QBI deduction of \$1,600 is not limited

38

QBI Examples: Example #5

- Jordan is married and has a widget producing business that generates \$100,000 of QBI. His taxable income is over \$415,000. In addition, he paid wages of \$30,000 and has qualified property of \$50,000.
 - $\$100,000 \times .20 = \$20,000$
 - Wage Test 1: $\$30,000 \times .50 = \$15,000$
 - Wage Test 2: $(\$30,000 \times .25) + (\$50,000 \times .025) = \$8,750$
 - QBI deduction is limited to \$15,000 (the greater of \$15,000 or \$8,750)

39

QBI Deduction for Specified Service Industry

- Generally does not apply
- Exception if taxable income of individual does not exceed \$315,000 (MFJ), \$157,500 (for others)
- Exception is phased-out over the next \$100,000 (MFJ), \$50,000 (for others)

QBI Deduction for Specified Service Industry - Continued

- Specified services include any trade or business involving the performance of services in the field of:
 - health, law, accounting, actuarial sciences, 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 or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interest, or commodities (but not engineers and architects)

QBI Examples: Example #6

- John is a married accountant with business income of \$150,000
 - QBI Deduction: $\$150,000 \times .20 = \$30,000$
 - Net Taxable Income: \$500,000
 - QBI deduction is not available

**ENTITY SELECTION
NEW CONSIDERATIONS UNDER NEW RULES**

- The new 21% flat rate for C corporations eliminates any opportunity to benefit from a run through the lower 15% rate bracket previously available.
- The basic structure of the corporate tax system remains the same – corporate earnings are taxed twice, once when earned and again when distributed. Even with the preferential rate on qualified dividends, the C Corp. structure may be less tax-efficient than pass-through entity choices.
 - The double tax means that \$100 of C Corp. earnings nets \$64.15 upon distribution to an individual shareholder when dividend income is taxed at the 15% rate and the 3.8% Net Investment Income Tax applies – a 35.85% combined tax rate
 - If a QBI deduction is available, the C Corp. structure is substantially less attractive

46

ENTITY SELECTION CONSIDERATIONS (CONT'D)

- Earnings left within a C Corp. won't be subject to the shareholder level tax, creating an incentive to accumulate earnings instead of distributing them.
 - The accumulated earnings tax functions as a disincentive – when a C Corp. accumulates earnings beyond the "reasonable needs of the business" a second level of corporate tax can be imposed at a 20% rate.
 - The personal holding company tax may also apply to a C Corp. which has a small number of shareholders and derives most of its income from "passive" sources (dividends, interest, and rents, for example) – the penalty is the same – a second corporate tax at a 20% rate.
 - *Deemed dividends* provide a relief valve for avoiding the taxes – but they can be an expensive cure.
 - These taxes have been dead letters for a long time but may regain importance under the flat rate C Corp. tax regime.

47

ENTITY SELECTION CONSIDERATIONS (CONT'D)

- Reasonable compensation may take on added significance, particularly for pass-through entities. There are several reasons:
 - Even if all of an S Corp.'s pass-through income is taxed at the same income tax rate, compensation is subject to payroll taxes as well, giving the IRS an incentive to assure that a stockholder/employee is being compensated adequately for services provided to the S Corp.
 - Regardless of the choice of entity, QBI doesn't include reasonable compensation or, in the case of a tax partnership, guaranteed payments. If a QBI deduction is in play, the IRS again has incentive to assure that every owner/employee is being compensated properly.
 - *Note, however,* the recently issued Proposed Regs do not extend the principle of "reasonable compensation" to impute the concept to partnerships and proprietorships – thereby providing a distinct advantage to these structures over an S Corp. in maximizing available QBI.
 - In a C Corp. structure in which the C Corp. can demonstrate the requisite need to accumulate earnings (and thus avoid the accumulated earnings tax), the IRS has considerable incentive to assure payment of reasonable compensation which, in turn, reduces corporate income that qualifies for the low C Corp. tax rate and, instead, exposes it to payroll taxes and earned income.

48

ENTITY SELECTION CONSIDERATIONS (CONT'D)

- For many businesses currently organized as pass-through entities, converting to C Corp. status for the presumed benefit of a lower rate won't make sense
 - In any case, a careful analysis of the business's assets is important – for example, it might be tax-advantageous to leave some assets, such as real property, within the pass-through entity even if the decision is made to conduct business operations through a C Corp.
 - If assets are stripped off, assure that appropriate rental agreements between the pass-through entity and the C Corp. are in place.

49

ENTITY SELECTION CONSIDERATIONS (CONT'D)

- What about converting a C Corp. to an S Corp. to take advantage of the QBI deduction?
 - Some C Corp. stockholders may not qualify to hold stock in an S Corp. – generally, corporations, partnerships and many types of trusts aren't eligible S Corp. stockholders.
 - A C Corp. with two classes of stock outstanding can't make an effective S election, unless the only difference in classes are voting power.
 - A C Corp. with substantial accumulated earnings may be able to make an S election but may not be able to maintain it for more than three years. A deemed dividend distribution may be a fix, but may be expensive.
 - A change in the method of accounting for inventory may, as a practical matter, rule out such an election.

50

FACTORS INFLUENCING ENTITY SELECTION

- Taxable Income Threshold Limits
 - Below the Threshold Amount
 - Within the Threshold Range
 - Greater than the Threshold Range
- Specified Service Trade or Business
- W-2/Unadjusted Basis of Qualified Property
- Reasonable Compensation Requirements
- Need to Retain Earnings
- State Tax Considerations

51

CHOICE OF ENTITY EXAMPLE #4

Same facts, except the business earns \$550,000 in annual profit, before attributing any compensation to Paul for his services, *and*

- (i) the business is a specified service business; or
- (ii) the business utilizes independent contractors instead of employees and therefore pays no wages.

Also, Paul wishes to maintain a reserve of \$200,000 annually to allow for future flexibility in growth.

	C Corporation	S Corporation	Partnership/LLC
W-2 Wages	\$120,000	\$120,000	\$ 0
Qualified Business Income	\$ 0	\$430,000	\$550,000
QBI Deduction	--	Not eligible	Not eligible
Dividends (Net of 21% Corp. Tax Paid)	\$139,700	--	--
Tax on Wages and QBI	(\$ 18,280)	(\$143,880)	(\$143,880)
Tax on Dividends	(\$ 21,320)	--	--
QBI Taxed but Not Distributed	--	(\$200,000)	(\$200,000)
Net to Paul	\$220,100	\$206,120	\$206,120

55

TENDENCIES* TO KEEP IN MIND ON ENTITY SELECTION

If the taxpayer has taxable income less than the QBI threshold amount (MFJ \$315K):

- A pass-through entity will typically be preferable to a C-corporation
- In determining the type of pass-through entity, an LLC taxed as a partnership (or disregarded and taxed as a proprietorship) is likely to provide somewhat better tax treatment than an S-corporation
 - Below the threshold, the payment of wages is immaterial to determination of the QBI deduction
 - Unlike an S-corporation, there is no requirement that a partnership/proprietorship pay reasonable compensation to its owners, so available QBI is not otherwise "wasted" by payment of wages

Applies equally to a specified service trade or business or a qualified trade or business

* *Note: These are intended as guidelines, and not to be applied as hard and fast rules*

56

TENDENCIES (CONT'D)

If the taxpayer has taxable income greater than the QBI threshold amount (MFJ \$315K), but less than the upper limit of the QBI phase-out range (MFJ \$415K):

- A pass-through entity will typically be preferable to a C-corporation
- In determining the type of pass-through entity, an LLC taxed as a partnership (or disregarded and taxed as a proprietorship) is likely to provide somewhat better tax treatment than an S-corporation
 - In this range, W-2 wages paid are taken into account and can have a positive impact on determination of the QBI deduction
 - However, any benefit to be gained by the addition of reasonable compensation payments to owners required in an S-corporation is often outweighed by the corresponding reduction to available QBI

The S-corporation analysis here does not apply to a specified service trade or business, and W-2 wages (including to owners) have a greater impact in this range that must be accounted for

57

TENDENCIES (CONT'D)

If the taxpayer has taxable income greater than the upper limit of the QBI phase-out range (MFJ \$415K):

- *Specified Service Trade or Business* – QBI does not apply once a taxpayer’s taxable income exceeds the upper limit of the QBI phase-out range, and is not a factor in entity selection
- *Qualified Trade or Business* – While a pass-through entity will typically be preferable to a C-corporation, once a taxpayer’s taxable income exceeds the upper limit of the QBI phase-out range, the QBI deduction is fully subject to the Wage/Asset limitation rules which must be accounted for in the entity selection process

58

Section 199A Application to Trusts, Estates and Beneficiaries

- A trust or estate is treated as a passthrough entity to the extent it allocates QBI and other items to its beneficiaries and is treated as an individual to the extent it retains the QBI and other items

59

Section 199A – Grantor Trusts

- To the extent the grantor or another person is treated as owning all or part of a trust under sections 671 through 679, such person computes its section 199A deduction as if that person directly conducted the activities of the trust with respect to the portion of the trust treated as owned by that person

60

Section 199A – Non-Grantor Trusts and Estates

- Trust or estate must allocate qualified items of deduction in computing QBI
- Depletion, amortization, and depreciation that are otherwise properly included in the computation of QBI are included in such computation, regardless of how they may otherwise be allocated between the trust, or estate and its beneficiaries
- QBI is to be allocated to each beneficiary and to the trust or estate based on relative proportion of DNI for the taxable year, or is to be retained by the trust or estate
- If no DNI for the taxable year, all items are allocated to the trust or estate

61

ESBTs

- S portion
- Grantor portion
- Non-S portion

62

Threshold and Anti-Abuse Rules

- \$157,500 → \$207,500 in 2018
- Increased by COLA 2019 → 2025
- Taxable income of estate/trust is determined before taking into account any distribution deduction under section 651 or 661
- Trusts formed or funded with significant purpose of receiving a deduction under Section 199A will not be respected
- Two or more trusts will be aggregated and treated as a single trust if such trusts have substantially the same grantor(s), beneficiaries and if the principal purpose* for establishing such trusts or for contributing additional cash or other property, is the avoidance of Federal income tax. Spouses will be treated as one person. Reg. Section 1.643 (f)-1

*significant non-tax purpose

63

Permissive Aggregation of Trades and Businesses

Proposed Regulations allow – but do not mandate (except in certain circumstances) – the aggregation of multiple QTBs owned directly by individuals and/or the individual's share of QBI, W-2 wages, and UBI/A of qualified property from trades or businesses operated through RPEs.

- RPEs cannot aggregate; only individuals, estates, and trusts can aggregate

63

Four factors to aggregate

(1) same person, or group of persons, must directly or indirectly, own 50% or more of each trade or business to be aggregated for a majority of the taxable year in which the items attributable to each trade or business to be aggregated are included in income

- No attribution between siblings

(2) all the items attributable to each trade or business to be aggregated must be reported on returns within the same taxable year, not considering short taxable years

64

Four factors to aggregate

(3) none of the aggregated trades or businesses may be an SSTB

(4) two out of three of the following enumerated factors demonstrating that the businesses are in fact part of a larger, integrated trade or business must exist

(a) the trades or businesses provide products and services that are the same or customarily offered together

(b) the trades or businesses share facilities or share significant centralized business elements, such as personnel, accounting, legal, manufacturing, purchasing, human resources, or information technology resources

(c) the trades or businesses are operated in coordination with, or reliance upon, one or more of the businesses in the aggregated group (for example, supply chain interdependencies)

65

Operational Rules for Aggregating

- If an individual chooses to aggregate, it must combine the QBI, W-2 wages, and UBIA of qualified property for all aggregated trades or businesses for purposes of applying the wage and property limitations
- Owners of RPE do not have to aggregate in same manner

66

Consistency and Reporting Requirements:

- Once aggregated must consistently report aggregated trades or businesses in all subsequent taxable years, but can add a new business to the aggregation and can disaggregate under certain factual changes
- If one chooses to aggregate, one must attach statement to return with certain information
- IRS can disaggregate for failure to provide information

67

How To Determine Which Trades Or Businesses MAY Be Aggregated

Ownership →	Taxable year →	No SSTB →	Necessary factors
Does the same person or group of persons, directly or indirectly, own 50% or more of each trade or business to be aggregated?	Does such ownership exist for the majority of the applicable taxable year? Are all items attributable to each trade or business to be aggregated reported on returns with the same taxable year?	Are any of the trades or businesses to be aggregated an SSTB?	Do the trades or businesses exhibit at least 2 of the following 3 factors? 1). Products and services provided are the same or customarily provided together 2). Shared facilities or shared significant centralized business elements 3). Operated in coordination with, or reliance on, one or more of the businesses in the aggregated group

68

Selected Clarifications In Proposed Regulations

- "Reasonable compensation" concept does not apply outside the context of S corporations for purposes of section 199A
- Concept is not extended to partnerships

69

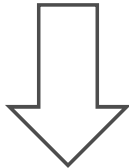
Business Provisions

BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A.

71

Corporate Tax Rates Reduced (after 2017)

- Prior rates: 15%, 25%, 34%, and 35% (Personal Service Corps. paid at the 35% rate)
- For tax years beginning in 2018: Flat 21% (including Personal Service Corps)



BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A.

72


Dividends-Received Deduction Reduced (after 2017)

	2017	After 2017
If corporation owns at least 20%	80%	65%
Less than 20%	70%	50%

BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A. 73

Corporate Alternative Minimum Tax

- Repealed for tax years beginning after 2017
- 2018 - 2020: AMT credit is refundable and can offset the regular tax liability equal to 50% of the excess of the minimum tax credit for the year over the credit against the regular tax liability
- 2021 - 2022: 100% of excess



BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A. 74

Net Operating Loss Deduction (after 2017)

For NOLs arising after 2017

- 2-year carryback and special carryback provisions repealed
- 2-year carryback still available for farming trade/business
- NOL deduction is limited to 80% of taxable income
- NOL can be carried forward indefinitely
 - Except for property and casualty insurance companies - 2 years back and 20 years forward with 100% offset

BLS
BELFENT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfent, Lyons & Shuman, P.A. 75

Limit on Deduction for Business Interest


- For tax years beginning after 2017
- Applies to all forms of business (see exceptions)
- Net interest expense is limited to 30% of the business's adjusted taxable income
- Determined at the tax filer's level, except for pass-through entities, where the determination is made at the entity level.
- "Adjusted taxable income"- 2018 through 2021 - computed without regard to deductions for depreciation, amortization, or depletion.
- Disallowed interest deduction is carried forward as business interest paid in the succeeding year and can be carried forward indefinitely (certain restrictions for partnerships)

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A. 76

Exemption and Exclusions From New Interest Limitation Rules

- Business that meet the \$25 million gross receipts test (other than tax shelters) are exempt from the new interest limitation rules (prior 3-year average)
- Real property trade/business can elect out if they use ADS to depreciate applicable property
- Floor plan financing is exempt from the limitation rules

LIMITATION



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A. 77

Interest Limitation Rules Applicable to Partnerships

- Limitation is first determined at entity level and taken into account and allocated as part of non-separately stated taxable income or loss
- Any excess interest expense is allocated to partners and reduces partner's basis in partnership. Can be carried forward to future years
- To the extent partnership has "excess capacity" (interest income + 30% of business income in excess of interest expense), "excess capacity amount" is allocated to partners who can use as basis to deduct any carried forward excess interest expense (no further basis reduction)
- Upon disposition of partnership interest, basis is increased to the extent of unused excess interest expense previously allocated to the partner and previously reduced his/her basis

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A. 78


Like-kind Exchanges (transfers after 2017)

- For transfers made after 2017, Section 1031 will only apply to real property that is not held primarily for sale (will no longer apply to tangible personal property)
- Transition rule for pre-Act TPP if taxpayer has either disposed of the relinquished property or acquired the replacement property on or before 12/31/2017

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

Section 179 Expensing

- For property placed in service in tax years beginning after 2017
- \$500,000 maximum annual amount increases to \$1 million
- \$2 million phase-out amount increases to \$2.5 million
- The definition of Section 179 property is expanded to include certain depreciable TPP used predominantly to furnish lodging or in connection with furnishing lodging
- Also included - improvements to nonresidential real property after the date the property was first placed in service:
 - Roofs
 - HVAC property
 - Fire protection and alarm systems
 - Security systems



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

Temporary 100% Bonus Depreciation

- For qualified property acquired and placed in service after September 27, 2017 and before January 1, 2023
- Increased bonus depreciation amount goes from 50% to 100% of adjusted basis of property
- Allowed for new OR used property
- Prior phase-down rules repealed, replaced by:
 - 80% for property placed in service in 2023
 - 60% for property placed in service in 2024
 - 40% for property placed in service in 2025
 - 20% for property placed in service in 2026
- Sunsets after 2026
- For first tax year ending after 9/27/2017, taxpayer can elect to claim 50% bonus first-year depreciation instead of 100%

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

Accounting Changes - Cash Method of Accounting

- Generally for C Corps and partnerships with C Corp as partner
- For tax years beginning after 2017
- Cash method of accounting can be used by all taxpayers (except tax shelters) that -
 - Satisfy the \$25 million gross receipts test (indexed for inflation)
 - Regardless of whether the purchase, production or sale of merchandise is an income producing factor
 - Gross receipts test = annual average gross receipt over 3 prior years < \$25 million
 - Use of this provision results in a change of accounting method (Section 481)
- Exceptions for qualified personal service corporations and taxpayers other than C Corporations is retained

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

85

Accounting for Inventory

- Pre-Act: Certain small businesses that meet a gross receipts test with average gross receipts of not more than \$1 million (\$10 million for some industries), can use the cash method of accounting and account for inventories as non-incidental materials and supplies.
- TCJA: For tax years beginning after 2017, taxpayers that meet the \$25 million gross receipts test can account for inventories as
 - Non-incidental materials and supplies or
 - Method that conforms to the taxpayer's financial
 - statement treatment of inventories
 - Use of provision results in a change of
 - accounting method-Section 481



BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

86

Inventory Capitalization - Section 263A


- For tax years beginning after 2017
 - Producers or resellers that meet the \$25 million gross receipts test are exempt from the UNICAP rules
 - Exemption does not apply if not based on gross receipts
 - Use of provision results in a change of accounting method-Section 481

BLS
 BELFENT • LYONS • SHUMAN
 Certified Public Accountants
 Copyright © 2018 Belfent, Lyons & Shuman, P.A.

87

Accounting for Long-Term Contracts

- For contracts entered into after 2017 in tax years ending after 2017
- Exception from use of LTC method is expanded to include:
 - Contracts expected to be completed within two years of commencement of contract AND
 - Taxpayer performing work is expected to meet the \$25 million gross receipts test for the tax year in which the contract is entered into
- The above is in addition to the Pre-Act exception gross receipts do not exceed \$10 million



BLS
BELFINT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfint, Lyons & Shuman, P.A.

To Download a Copy For Your Record

- Please go to : www.MetroDetroitFEPC.org
 - Click: ABOUT
 - Click: DOCUMENTS
 - Click: 2-12-19 MEETING MATERIALS

BLS
BELFINT • LYONS • SHUMAN
Certified Public Accountants
Copyright © 2018 Belfint, Lyons & Shuman, P.A.
