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Steve Leimberg's Estate Planning
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Subject: Steve Leimberg, Bob Keebler, Michael Geeraerts & Jim Magner on the Tax Cuts and Jobs Act of 2017 - What Advisors Need to Know to Better Inform Their Clients

The House-Senate Conference Committee met on Wednesday, December 13 to hammer out the differences between the House and Senate tax reform bills, and the Conference Committee released its report and legislative text on Friday December 15, 2017. The Tax Cuts and Jobs Act of 2017 is expected to be signed into law by President Trump before Christmas, and even though Congress failed to address a number of tough issues, the provisions contained in the conference bill are significant, and will impact investor and consumer behavior for years to come.

Now that the House-Senate debate is over and we have a very good idea of what is to be signed into law, clients and their advisors should turn their attention to learning more about what's inside the Tax Cuts and Jobs Act of 2017 and how it impacts them. This newsletter reviews a number of the important details in the tax bill and addresses some of the planning implications raised.

Steve Leimberg, **Bob Keebler**, **Michael Geeraerts** and **Jim Magner** provide **LISI** members with a first look analysis of the bill based on the House-Senate Conference Committee. Broader and more detailed commentary will be authored by a number of **LISI** Commentators including **Jonathan Blattmachr, Howard Zaritsky, Marty Shenkman, Ron Aucutt**, **Larry Brody** and others.

Before we get to their commentary, members should note **Bob Keebler**'s upcoming **LISI** webinar on Thursday, December 21st at 3pm ET titled: **"Tax Reform - The Final Edition: What You Really Need to Know to Help Your Clients in a Labyrinth Filled with Opportunity, Statutory**

Review & Short-Term/Urgent And Longer-Term Planning." For more information and to register, simply click this link: Bob Keebler

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Jim Magner is an advanced planning attorney at **The Guardian Life Insurance Company of America.** Prior to joining Guardian, Jim was General Counsel for a broker dealer/brokerage general agency. Jim previously worked as an Attorney-Advisor in the IRS's Office of Chief Counsel, in Washington, DC. While with the Office of Chief Counsel, Jim wrote private and public rulings on estate, gift, GST and charitable remainder trust issues. Jim's articles have appeared in a variety of national publications and he has coauthored a number of books on estate and insurance planning topics.

Here is Steve, Bob, Michael, and Jim's first impression commentary.

NOTE: Because of its importance to the public as well as professionals, LISI specifically authorizes members to send this commentary to clients, the press, to other professionals, and to members of the U.S. House and Senate.

EXECUTIVE SUMMARY:

The Tax Cuts and Jobs Act of 2017 is expected to be voted on by Congress the week of December 18 and signed into law by President Trump before Christmas. Even though Congress failed to address a number of tough issues, the provisions contained in the conference bill are significant, and will impact investor and consumer behavior for years to come. Now that the House-Senate debate is over, clients and their advisors should turn their attention to learning more about what's inside the Tax Cuts and Jobs Act of 2017 and how it impacts them. This newsletter reviews a number of the important details in the tax bill and addresses some of the planning implications raised.

As the Senate passed its version of the bill through the "reconciliation process," many of the changes will sunset after 2025.

Note that this is a "first impression" of a highly complex and voluminous law and the authors caution that our knowledge and understanding of this information will continue to evolve. **LISI**'s incredible team of nationally prominent authorities will be filling in the details in the days and weeks ahead.

COMMENT:

Personal Income Tax Changes

Income Tax Rates and Brackets

The current seven individual tax rate brackets are modified under TCJA to be 10%, 12%, 22%, 24%, 32%, 35%, and 37%% effective January 1, 2018.

NOTE: This provision is set to "sunset" after 2025.

The top 37% rate applies to single filers with over $500,000 of taxable income and married joint filers with over $600,000 of taxable income.

Planning Implications:

- From a pure tax bracket management perspective, clients and their CPAs should review what marginal tax bracket they think they will fall into for 2017 compared to the new 2018 tax rates. This may impact the advisability of deferring income or accelerating deductions depending on which year will provide the most tax savings.

- Clients who will be selling small businesses or other appreciated assets and are looking to defer income into 2018 and beyond should consider installment sales.

- Like-kind tax deferred exchanges can also help clients defer the recognition of income to future lower tax rate years. Note that TCJA limits 1031 like-kind exchanges to real property starting in 2018.

- If considering loss harvesting to deduct capital losses in 2017, beware of the wash sale rules that generally provide that losses are not deductible if one repurchases a "substantially similar" security within 30 days of the sale.

Personal Exemptions & Standard Deductions

TCJA repeals the deduction for personal exemptions. It increases the standard deductions for single filers to $12,000 and for married joint filers to $24,000.

Note: These changes sunset after 2025.

Planning Implications:

- While individual tax rates are generally being reduced, clients need to factor in the impact of the loss of personal exemptions on their taxable income.

- Clients who may have previously itemized deductions may be "pushed" to take the standard deduction.

Itemized Deductions

TCJA eliminates and modifies many itemized deductions.

- The deductions for state and local income, sales and property taxes (SALT) is capped at $10,000 in total.
  - NOTE: According to **LISI** Commentator **Andy DeMaio**, "The statutory text makes clear in new Code section 164(b)(6) that

the new limits on the property tax/SALT caps deduction apply *only* to certain years: tax years 2018 through 2025. Thus, even though section 11042 of the Bill applies to tax years beginning after December 31, 2016, the new limitations apply only to tax years 2018 through 2025. So why make Bill section 11042 effective at the *beginning* of 2017? The answer is, drafters needed to implement an anti-abuse provision. That provision treats payments made in one tax year (including 2017) with respect to a later tax year as made at the end of the *later* tax year. To make that stick, legislators had to make the effective date January 1, 2017 for the entire Bill section." Fortunately, this does not, in Andy's view, make the limitation retroactive. For more on this issue, listen to Bob Keebler's 60 Second Planner on this topic which can be found at this link: Bob Keebler

- The deduction for mortgage interest is reduced. It is limited to be allowable only on up to $750,000 of acquisition indebtedness.
  - Note: Mortgages incurred on or before December 15, 2017 are grandfathered under the $1 million limit of acquisition indebtedness.
- The home equity interest deduction is repealed.

NOTE: These changes sunset after 2025.

- There is also a temporary change to the medical expense deduction, allowing clients to deduct medical expenses that exceed 7.5% of adjusted gross income (instead of 10%) in 2017 and 2018.

Planning Implications:

- Clients who will lose the ability to deduct sizeable state and local income taxes should work with their CPAs and other financial advisors to determine if accelerating the payment of 2017 state and local tax liabilities into 2017 makes sense instead of paying them in 2018, keeping in mind that these payments are not deductible for

AMT purposes. Warning: As noted above, the prepayment of 2018 state and local taxes by 12/31/2017 will *not* be deductible in 2017.

- Clients who are no longer allowed to deduct state income taxes should investigate incomplete non-grantor trusts (e.g., DINGs and NINGs) as a means of avoiding state income taxes.

- Clients may wish to accelerate medical expenses into 2017 and 2018 while the lower 7.5% of AGI limitation applies.

Charitable Income Tax Deductions

- TCJA increases the charitable contribution limit to 60% of adjusted gross income for cash contributions.

  NOTE: This change sunsets after 2025.

  NOTE: Contributions of appreciated property are still subject to a 30% of adjusted gross income limitation.

- The five-year carryover for unused charitable deductions remains.

Planning Implications:

Clients that will no longer itemize may wish to consider the use of a donor advised fund in December 2017.

Individual Alternative Minimum Tax (AMT)

- The AMT was not repealed but the AMT exemption was increased to $70,300 and $109,400 for single filers and married joint filers, respectively.

- The thresholds for the phase-out of the AMT exemption were also increased to $500,000 for single filers and $1 million for married joint filers.

- NOTE: This provision sunsets after 2025.

Planning Implications

- Clients who have Incentive Stock Options (ISOs) may want to exercise them in years where they are not subject to AMT due to the higher exemptions. When an ISO is exercised, the difference between the stock's fair market value and the option price is included in AMT for the year in which the exercise occurs. Thus, clients should review their ISOs and time their sales accordingly.

"Obamacare" Medicare Surtaxes

The additional 0.9% tax on earned income and the 3.8% surtax on net investment income as a result of the Patient Protection and Affordable Care Act of 2010 remains unchanged. These taxes apply to single filers making more than $200,000 and married joint filers making more than $250,000.

Business Income Tax Changes

Corporate Income Taxes

- TCJA reduces the corporate income tax rate to 21% starting January 1, 2018.

  NOTE: This change is permanent under TCJA.

- The corporate AMT is repealed.

Planning Opportunities

Premiums on Corporate Owned Life Insurance are now less expensive because of the lower corporate bracket. Likewise, death benefits received by a corporation on a life insurance policy it owns may be even more effective because of the repeal of the corporate AMT. This may impact on the strategy considered when deciding whether or not the corporation is to be the owner in an insured buy-sell. All arrangements involving corporate payment of life insurance premiums should be reviewed because of the lower corporate bracket and the repeal of the corporate AMT.

Pass-Through Businesses

- TCJA creates new Code Section 199A that provides for a 20% deduction for the *non-wage* portion of pass-through income.

  NOTE: The deduction is limited to 50% of an entity's W-2 wages for married joint filers with income over $315,000 and single filers with income over $157,500.

  NOTE: This deduction sunsets after 2025.

The theory behind using a reduced threshold amount is that it would deter high-income taxpayers from attempting to convert wages or other compensation for personal services to income eligible for the 20% deduction under the provision.

The bill provides that the range over which the W-2 wage test phases-in when income exceeds the $157,500/$315,000 level is $50,000 for single filers and $100,000 in the case of a joint return.

Under Section 199A, the deductible amount for each trade or business is the lesser of:

A) 20% of the taxpayer's qualified business income with respect to the qualified trade or business, or

B) the greater of: i) 50% of the W–2 wages with respect to the qualified trade or business, or ii) the sum of 25% of the W–2 wages with respect to the qualified trade or business, plus 2.5% of the unadjusted basis immediately after acquisition of all qualified property.

The deduction under the bill is:

1) the lesser of A) the taxpayer's combined qualified business income, or B) an amount equal to 20% of the excess of i) the taxpayer's taxable income for the taxable year, over ii) the sum of the taxpayer's net capital gain plus the aggregate amount of the qualified cooperative dividends,

plus

2) the lesser of A) 20% of the aggregate amount of the taxpayer’s qualified cooperative dividends for the taxable year, or B) the taxpayer’s taxable income reduced by the net capital gain for the taxable year.

NOTE: The deduction cannot exceed taxable income reduced by the taxpayer’s net capital gain for the taxable year.

Limitation Based on W-2 Wages and Capital

The bill modifies the wage limit applicable to taxpayers with taxable income above the threshold amount to provide a limit based either on wages paid or on wages paid plus a capital element.

Under the bill, this limitation is the greater of (a) 50% of the W-2 wages paid with respect to the qualified trade or business, or (b) the sum of 25% of the W-2 wages paid with respect to the qualified trade or business plus 2.5% of the unadjusted basis, immediately after acquisition, of all qualified property.

The bill also states that “The term ‘W-2 wages’ means, with respect to any person for any taxable year of such person, the amounts described in paragraphs (3) and (8) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.” Section 6051(a)(3) is “the total amount of wages as defined in section 3401(a)” and section 6051(a)(8) is “the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457, including the amount of designated Roth contributions (as defined in section 402A).”

Section 3401(a) provides that generally “‘wages’ means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer . . . .” However, there are exceptions to what constitutes “wages” under section 3401(a)(1)–(23).

What is Qualified Property?

For purposes of the provision, qualified property means tangible property of a character subject to depreciation that is held by, and available for use in, the qualified trade or business at the close of the taxable year, and which is used in the production of qualified business income, and for which the depreciable period has not ended before the close of the taxable year.

The depreciable period with respect to qualified property of a taxpayer means the period beginning on the date the property is first placed in service by the taxpayer and ending on the later of (a) the date 10 years after that date, or (b) the last day of the last full year in the applicable recovery period that would apply to the property under section 168 (without regard to section 168(g)).

The Conference Committee Explanation gives the following example:

> A taxpayer (who is subject to the limit) does business as a sole proprietorship conducting a widget-making business. The business buys a widget-making machine for $100,000 and places it in service in 2020. The business has no employees in 2020. The limitation in 2020 is the greater of (a) 50% of W-2 wages, or $0, or (b) the sum of 25% of W-2 wages ($0) plus 2.5% of the unadjusted basis of the machine immediately after its acquisition: $100,000 x .025 = $2,500. The amount of the limitation on the taxpayer's deduction is $2,500.

Application at the Partner/Shareholder Level

In terms of application, it's important to note that these rules are applied at the partner/shareholder level, and each partner/shareholder takes into account their allocable share of each qualified item of income, gain, deduction, and loss. In addition, each partner/shareholder is treated as having W–2 wages and unadjusted basis immediately after acquisition of "qualified property" for the taxable year in an amount equal to such person's allocable share of the W–2 wages, and the unadjusted basis immediately after acquisition of qualified property of the partnership or S corporation for the taxable year. A partner's/shareholder's "allocable share of W–2 wages" is determined in the same way that a partner's/shareholder's allocable share of wage expenses is calculated, and a partner's/shareholder's allocable share of the unadjusted basis immediately after acquisition of "qualified property" is determined in the same manner as a partner's/shareholder's allocable share of depreciation.

Trusts & Estates

- While the Senate's pass-through provision would not have allowed pass-through entities owned by trusts or estates to take the deduction, the final bill agreed to in Conference does *not* contain such a prohibition.

- In addition, the bill states that W-2 income from entities owned by trusts and estates is apportioned between the beneficiaries and the fiduciary under Section 199(d)(1)(B)(i).

Example #1 Nonservice Business with Over $415,000 of Taxable Income

Assume a married filing joint pass-through business owner (not a specified service business) has the following items:

• Qualified Business Income	$1,000,000
• W-2 Wages	$250,000
• Net Capital Gains	$50,000
• Qualified Property Basis	$100,000
• Taxable Income	$1,150,000

The "combined qualified business income" amount here is the lesser of (1) 20% of qualified business income, or (2) the greater of 50% of W-2 wages or 25% of W-2 Wages plus 2.5% of qualified property unadjusted basis.

- 20% of qualified business income is $200,000.
- The greater of the wage / qualified property basis tests is $125,000.
  - 50% of W-2 wages is $125,000.
  - 25% of W-2 wages is $62,500 plus 2.5% of qualified property basis is $2,500, for $65,000.
- Therefore, the combined qualified business income is $125,000 (i.e., 50% of W-2 wages).
- Now we take the lesser of the $125,000 and 20% of taxable income over net capital gain. The taxable income over the net capital gain is $1,100,000 and 20% of that is $220,000.
- The deduction here is $125,000.

Example #2 Nonservice Business with Less Than $315,000 of Taxable Income

If this same business owner has taxable income of not more than $315,000, then the W-2 wages / qualified property basis tests don't apply. For example, assume now the following items:

Qualified Business Income	$200,000
W-2 Wages	$100,000
Net Capital Gains	$25,000
Qualified Property Basis	$100,000
Taxable Income	$300,000

Since the W-2 wage and qualified property basis tests don't apply because the business owner's taxable income is below $315,000, the calculation is now the lesser of:

1. 20% of qualified business income ($40,000), or
2. 20% of taxable income in excess of net capital gains ($55,000)

The result here is a $40,000 deduction (i.e., 20% of qualified business income).

Note that there are phase-outs and other modifications to the calculations depending on the circumstances, so advisors will need to carefully read the law and apply it to their clients' situations.

It is also important to note that if a business owner has a net loss from a qualified business in one taxable year, that loss carries over to future years when calculating those future years' qualified business income and deduction.

Specified Service Trade or Business

TCJA defines a "specified service trade or business" as "any trade or business

> (A) which is described in section 1202(e)(3)(A) (applied without regard to the words ‘engineering, architecture,’) or which would be so described if the term ‘employees or owners’ were substituted for ‘employees’ there in, or (B) which involves the performance of services that consist of investing and investment management, trading, or dealing in securities (as defined in section 475(c)(2)), partnership interests, or commodities (as defined in section 475(e)(2)).

A section 1202(e)(3)(A) trade or business is one “involving the performance of services in the fields of health, law, engineering, architecture, 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 1 or more of its employees.”

Also note that “the trade or business of performing services as an employee” is not a qualified trade or business.

The general rule is that the deduction is not available for pass-through income from a specified service trade or business. However, the deduction is available if the client’s taxable income is not more than $157,500 for single filers and $315,000 for married joint filers. A reduced deduction is available when a single client’s taxable income is between $157,500 and $207,500 and when a married joint client’s taxable income is between $315,000 and $415,000; phase-out calculations will be required in this situation. No deduction is available when taxable income equals the $207,500/$415,000 level.

Example #3 Specified Service Trade or Business with Income of $315,000 or Less

Assume a sole proprietorship accountant who has no employees has the following items of income:

• Specified Service Qualified Business Income	$300,000
• Net Capital Gain	$25,000
• Taxable Income	$300,000

The deduction calculation is the lesser of:

1. 20% of qualified business income ($60,000), or
2. 20% of taxable income in excess of net capital gains ($55,000)

The result is a $55,000 deduction.

Example #4 Specified Service Trade or Business with Income Over $415,000

Let’s take the same sole proprietorship accountant, who now has the following items of income:

• Specified Service Qualified Business Income	$400,000
• Net Capital Gain	$25,000
• Taxable Income	$420,000

Recall that no deduction is available for specified service business income when a client who files jointly has taxable income of $415,000 or more. In example #3, the accountant had taxable income (before the deduction) of $300,000, and after the deduction had net taxable income of $245,000. In example #4, the accountant had taxable income of $420,000 and there is no deduction. Therefore, the additional $100,000 of service income actually resulted in a $175,000 increase to taxable income because of the lost deduction.

Planning Implications

- Planners and business owners will need to revisit how a client’s business should be legally formed and operated and the pros and cons of pass-through entities should be reconsidered in the light of the bill dropping the C Corporation rate to 21% and changing the long-standing approach of taxing pass-through business income at individual tax rates.

  NOTE: Numerical comparisons are essential.

- Clients and advisors often try to find the lowest tax bracket party to pay for needed life insurance. Split dollar life insurance can remove equity out of a business while minimizing the current income tax consequences to the client. The bill's significant reduction of the corporate tax rate makes split dollar arrangements much more attractive for shareholders of C corporations.

- Many business owners have sold minority interests in pass-through entities to trusts that are defective for income tax purposes. This planning technique has long been used to reduce the size of a client's taxable estate, as well as create a mechanism to help fund the payment of life insurance premiums. These transactions would not jeopardize a trust's ability to use the new 20% pass-through deduction, as trusts are not prohibited from taking the deduction.

  NOTE: Practitioners will need to be very careful with regard to the apportionment of W-2 wages between beneficiaries and fiduciaries.

- For owners of pass-through businesses, managing taxable income and expenses will be very important to avoid a phase-out of the deduction, especially for specified service business owners who may be near the $157,000/$315,000 income thresholds.

Transfer Tax Changes

- During the debate, it was unclear whether the House's approach to estate taxes (eventual full repeal) or the Senate's approach (no repeal, but a significant exemption increase) would make it into the final bill. TCJA followed the Senate's direction regarding transfer taxes and does *not* repeal the estate tax as the House bill would have done. Instead, TCJA doubles the estate, gift, and GST tax exemption amounts from $5 million to $10 million, and the exemptions will continue to be indexed for inflation but with a base year of 2016 based on the chained CPI.

  NOTE: The doubling of the exemption sunsets after 2025.

  NOTE: The changes to the inflation indexing do not sunset.

- Prior to TCJA, annual inflation adjustments were based on the CPI. TCJA uses the "chained CPI", which accounts for consumers' preferences for cheaper substitute goods during periods of inflation.

NOTE: Using the chained CPI will generally result in *smaller* increases to indexed amounts.

Planning Implications

Despite the fact that the estate tax was not repealed, with the exemption set at $10 million, it's effectively repealed for virtually all but a very small minority of clients. When the Tax Relief Act of 2012 increased the exemption to $5 million (increasing with inflation adjustments), the Congressional Research Service indicated that the estate tax would impact less than 1% of the American population. With the exemption now having effectively doubled, the estate tax will now impact only those who are often described as being in the "ultra-high" net worth category.

- For ultra-high net worth clients, a 40% tax bite can still destroy a closely held business or exceptionally large family farm, or undermine family legacy goals. This means planning is still critical for families with large, closely held businesses or those that have a net worth significantly greater than the exemption amounts. The exemption amounts will also revert back to $5 million in 2026 and will be indexed for inflation from a base year of 2016 instead of 2010 and will use the chained CPI instead of the CPI (resulting in a lower inflation indexed exemption amount compared to the TCJA not becoming law), so planning now while the gift tax exemption is doubled for the next several years may be crucial.

- For ultra-high net worth clients who still have estate tax exposure, all of the traditional wealth transfer strategies should still apply, and re-calculating existing client's federal estate tax exposure under the new rules would seem to be advisable.

- GRATs with an 8-year term may be attractive. With GRATs that expire in eight years (by or before 12/31/2025), if the client dies in the GRAT's term, a basis step-up should be available, and if the client outlives the GRAT's term, the growth above the hurdle rate could be shifted to the next generation.

- The way Congress chose to handle transfer taxes in the tax bill is a result of compromise required by the Senate's reconciliation process, but in the end, this can be soon undone in a different political climate. The doubling of the $5 million exemption sunsets after 2025, so this is not a “permanent” fix. Even with the $5 million exemption which is “permanent,” a permanent fix is never permanent so long as Congress can decide to change it. If the past 20 years are any indication, the estate tax could remain problematic for those who wish to create a sound and lasting estate plan because the exemption could be adjusted by a future Congress. Clients who purchased life insurance to finance the payment of estate and other taxes and expenses should think carefully before cancelling or reducing coverage.

- For clients whose estates do not now or are not likely to ever exceed the inflation-indexed exemption amount(s), using the new-found exemption amounts to “un-wind” life insurance premium financing and note sale transactions may be attractive. Making large gifts to ILITs that have dynastic provisions could also be worth exploring. However, because of the Section 1014 step-up, there are many instances that low basis property should be retained rather than gifted.

- Estate tax planning is still required for those states that have decoupled and instituted their own state estate tax. In many cases, the state exemption may be significantly lower than the federal amount.

Insurance Company Provisions

Deferred Acquisition Cost (DAC)

TCJA increases the capitalization rates for specified insurance contracts. Prior to TCJA, the capitalization rates that applied to net premiums on specified insurance contracts were:

- Annuity contracts (1.75%)
- Group life contracts (2.05%)
- All other specified contracts (7.7%)

The capitalization rates under TCJA are:

- Annuity contracts (2.09%)
- Group life contracts (2.45%)
- All other specified contracts (9.20%)

TCJA also extends the amortization period from 120-months to 180-months beginning with the first month in the second half of the tax year. TCJA does not change a special rule providing for a 60-month amortization of the first $5 million (with phase-out).

The increase in the amount of DAC capitalized as well as the extension of the amortization period will impact deductions for these expenses. A reduction in deductible expenses may result, *ceteris paribus*, in a reduction of life insurance policy dividends.

Life Insurance Company Reserves

TCJA repeals a special 10-year period for adjustments to take into account changes in a life insurance company's basis for computing reserves. The general rule for tax accounting method adjustments now applies to changes in computing reserves by life insurance companies – generally ratably over a four-year period instead of over a 10-year period.

Tax Reporting for Sales of Life Insurance Contracts

- TCJA imposes reporting requirements for those who acquire a life insurance contract in a "reportable policy sale," which means the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured.

  NOTE: An indirect acquisition includes the acquisition of an interest in a partnership, trust, or other entity that holds an interest in the life insurance contract.

- Under the reporting requirement, the buyer reports information about the purchase to the IRS, to the issuing insurance company, and to the seller.

- The information required is: (1) the buyer's name, address, and tax identification number (TIN), (2) the name, address, and TIN of anyone receiving payment in the sale, (3) the date of the sale, and (4) the amount of each payment. The statement the buyer provides to the issuing insurance company does not have to include the amount of the payment.

- The issuing insurance company must report the basis when it receives the purchase report from the buyer. The issuer is required to report to the IRS and to the seller: (1) the contract's basis, (2) the seller's name, address, and TIN, and (3) the policy number.

  NOTE: TCJA provides that no adjustment is made for "cost of insurance" charges when determining a contract's basis for transactions entered into after August 25, 2009, which reverses the IRS's position in Revenue Ruling 2009-13 that on the sale of a cash value life insurance contract, the insured's basis is reduced by the cost of insurance.

Transfer for Value for "Reportable Policy Sale"

TCJA provides that the *exceptions* to the transfer for value rules do *not* apply to reportable policy sales. This means that at least a portion of the death benefit is likely be taxable.

Other Tax Provisions

TCJA contains many other provisions. The following is a brief summary of some of the provisions.

- Full expensing of investments in new depreciable assets made after September 27, 2017 and before January 1, 2023. There is a 20% per year phase-down of the full expensing for property placed in service after December 31, 2022 and before January 1, 2027.

- The section 179 deduction limit is increased to $1 million.

- Deductions for certain fringe benefits, such as business entertainment expenses, have been limited.

- Net operating loss (NOL) deductions are limited to 80% of pre-NOL taxable income. There is an indefinite NOL carryforward, but no carryback to prior years for most companies.

- A three-year holding period is required for a carried interest to qualify as a long-term capital asset.

- The property casualty loss deduction was modified. This sunsets after 2025.

- Tax preparation fees are no longer deductible, but this sunsets after 2025, so whether tax preparation firms will be forced to go up market, particularly with simplified 1040 filings, and compete for revenue with traditional CPA firms should be interesting to watch.

- Moving expenses are no longer deductible, except for members of the Armed Forces. This sunsets after 2025.

- The ability to recharacterize IRA conversions is eliminated. Clients who were relying on the recharacterization provision to "undue" Roth IRA conversions need to be aware that this won't be available after December 31, 2017.

- The shared responsibility payment for failing to maintain minimum essential health care coverage is effectively eliminated starting January 1, 2019.

- 529 Plans can be used for K-12 schools and for homeschooling.

- The alimony deduction for the payor ex-spouse and the inclusion of alimony in gross income of the recipient ex-spouse is repealed for any divorce or separation instrument executed after December 31, 2018, or for certain divorce or separation instruments executed on or before December 31, 2018 and modified after that date.

Conclusion

We are one giant step away from the first major tax change since 1986. It may be years before the broader ramifications of TCJA are known but it is almost certain to have significant implications not only to corporations and their investors but to all Americans – as well as to states.

- Will the new law result in meaningful higher wages, new jobs and business growth?
- Will it help the middle or lower classes to any meaningful extent?
- Will it dangerously increase the deficit?
- Will it weaken the social safety nets presently protecting our country's most vulnerable?

These and many other questions remain to be answered.

What is certain is that executives, professionals, business owners, high income and high net worth individuals and families will need planning advice and expertise to understand their options. **LISI** will be providing authoritiative and practical answers to many of these questions in the coming weeks and months.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Steve Leimberg

Bob Keebler

Michael Geeraerts

Jim Magner

CITE AS:

LISI Estate Planning Newsletter #2609 (December 16, 2017).

Because of its importance to the public, LISI specifically authorizes members to send *this* commentary to clients, the press, to other professionals, and to members of the U.S. House and Senate.

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