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Real Estate Insights

Special Supplement

Year-end 2018 Tax Planning— a Top 10 Checklist

By Jackie Matsumura

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The 2017 Tax Cuts and Jobs Act delivered the most significant tax legislation affecting real estate in 30 years. Additionally, the new IRS partnership audit rules, effective in 2018, also require thoughtful attention. Here is a recommended list of Top 10 discussion topics with your tax advisor:

- ❑ If you are a partner in a partnership or a shareholder in an S corporation, you may be entitled to a 20% qualified business income deduction on your personal tax return. There may be planning opportunities to maximize this new deduction.
- ❑ Qualified improvements to non-residential property such as roofs, heating, ventilation, air conditioning, fire protection and alarm systems can now be expensed up to $1 million under IRC Section 179. Certain limitations apply.
- ❑ Bonus depreciation is increased to 100%. However, qualified improvement property "inadvertently" reverted back to a 39 year asset and thus not eligible for bonus depreciation. Action has begun in an attempt to correct this and have qualified improvement property be eligible for 15 year and bonus depreciation, but for the time being, it does not qualify.
- ❑ Interest expense on home mortgage acquisition debt is now limited to $750,000 of principal, and generally there is no deduction for home equity interest expense. There are transition rules and rules that apply on refinanced debt that need to be considered.
- ❑ There is now a 3 year holding period required to claim long term capital gain treatment on carried interests (partnership interests granted for services). However, the holding period for rental real estate remains at 1 year.

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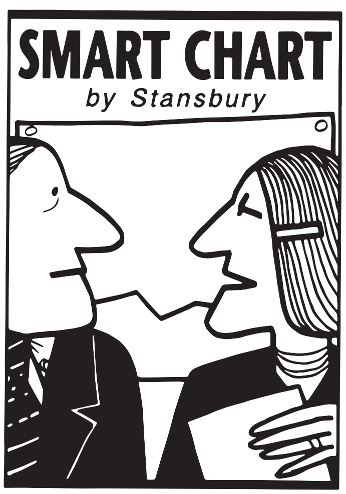
- Like kind exchanges now only apply to real estate. Analysis is needed where, for example, you do a like kind exchange of an apartment building that has personal property (e.g., appliances, window coverings, etc.). The personal property can no longer be exchanged in a tax deferred manner.
- Business interest expense is now limited to 30% of adjusted taxable income. The provision does not apply if the taxpayer's 3 year average annual gross receipts does not exceed $25 million. Further, a real estate company can elect to not have the provision apply if it adopts longer depreciable lives.
- A taxpayer may elect to defer gain from the sale of a property if it reinvests the gain in a Qualified Opportunity Zone investment within 180 days. The appreciation of that investment could be permanently excluded from taxable income.
- New IRS partnership audit procedures have the partnership paying the individual partner's tax liability if the IRS makes an adjustment at the partnership level. How will the partnership handle such an expense particularly with partners coming into or leaving the partnership? Careful thought and communication to the partners is advisable. Amendments to partnership agreements may be necessary.
- State conformity to the 2017 Tax Cuts and Jobs Act varies all over. California, for example, does not currently conform to the 20% qualified business income deduction, the home mortgage interest changes, the new bonus depreciation and expensing rules, the new like kind exchange provisions, the business interest expense limitations, etc. Careful planning is required.

Tax year 2018 year-end tax planning will require more thought and consideration than usual. It will pay to get an early start on the process. We are here to help if you need assistance evaluating how these rules will affect you and your business. ■



I wonder how the IRS will respond to your plea of temporary insanity.

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