December 12, 2024

7 Year-End Business Tax Planning Areas to Be Strategic About This Year

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Current (& Future) Tax Landscape

- Impact of the Recent Election – More Uncertainty?
- Tax Cuts & Jobs Act 2017 (TCJA) – Potential Sunset of Key Provisions?
- More Aggressive Tax Enforcement Environment?
- Focus on Current Planning Goals – Short and Long-Term

Federal Tax Planning Considerations

- Bonus Depreciation
- Section 179 Expenses
- Accounting Method Changes
- Deduction and Credit Opportunities
- Section 163(j)

Bonus Depreciation

- Provides additional incentive to invest in and expand operations
- Tax benefits of accelerated depreciation can reduce cost of capital
- Prior to 2023: immediately expense capital expenditures through 100% bonus depreciation
- 2023: sunsetting cut benefit to 80% and 20% less each year after
- Scheduled expiration in 2027: current law limits bonus depreciation for 2024 to 60%

Bonus Depreciation Phaseout

- The TCJA phases out bonus depreciation, under the following schedule based on the placed in-service date:

Tax Year	Bonus %
After September 27, 2017 & before January 1, 2023	100%
2023 Calendar Year	80%
2024 Calendar Year	60%
2025 Calendar Year	40%
2026 Calendar Year	20%
2027 and Subsequent	0%

Section 179 Expense

- Section 179 expense still available for significant capital expenditures
- 2024 limited to $1.22 million; limit decreases dollar for dollar and no longer available at $4.27 million
- Any portion of capital expenditures not covered by bonus depreciation or Section 179 can be depreciated over the asset's normal recovery period

Polling Question #1

Does your business generally look to maximize depreciation deductions through the use of bonus depreciation and Section 179?

1. Yes
2. No
3. Depends
4. Unsure

Accounting Method Changes

- 250+ potential changes to accounting methods to consider
- Inventory Methods
  - Inventory biggest cost = largest potential tax deduction
  - Variety of methods: Lower-of-cost-or market (LCM), writing down worthless/obsolete inventory, etc.
- Prepaid Expenses
  - Potential to deduct *when paid* certain prepaid expenses that span 12 months or less (even if otherwise on accrual basis)
- Consider Accounting Method Due Dates
  - Automatic change procedures available for some, non-automatic change procedures for others

Deduction & Credit Opportunities

- Section 199A Qualified Business Income Deduction (QBID)
  - Deduction generally equal to 20% of qualified business income
  - Sole proprietorships, LLC members and S Corporation shareholders, and trusts and estates
  - Many adjustments and limitations
  - Set to expire for taxable years beginning after December 31, 2025 — plan early

- Research & Development (R&D)
  - Companies developing new or improved business components
  - Amortize 5+ years for U.S. activities; 15+ years if performed outside U.S.
  - Opportunities to mitigate the impact
    - R&D Credit – Typically around 4-7% of qualified R&D costs

174 Expense Example: Comparison

- Facts: Taxpayer has $750,000 of revenue and spends $1 million on U.S. based R&D. No other revenue and expenses. Book Loss of $250,000.

Old Law (2021 tax years and before)	New Law (2022 tax years and later)
▪ Taxpayer takes $1 million deduction for R&D costs ▪ Taxable loss of $250,000	▪ Taxpayer must capitalize U.S. based R&D and amortize over five years ▪ First year deduction is $100,000 (10% year 1; 20% years 2-5; 10% year 6) ▪ Taxable income of $650,000

Section 163(j) Planning

- Section 163(j) further increases cost of carrying/acquiring new debt by limiting deduction for net business interest expense
- More impactful now: high-rate environment and changes to limitation in 2022 that have made certain planning opportunities less beneficial
- Good news? Several exemptions to explore
  - Small taxpayers
  - Real property trade or business exemption for certain real estate businesses
  - Entities that do not meet either exemption can still plan around this potential limitation

Polling Question #2

Has your business had interest expense limited under section 163(j)?

1. Yes, regularly
2. Yes, but not every year
3. No
4. Unsure

163(j) Example: Comparison

- Facts: Taxpayer has $1 million of taxable income, which includes $500,000 of business interest expense and $400,000 depreciation

Old Law (2021 tax years and before)	New Law (2022 tax years and later)
▪ Taxpayer ATI = $1.9 million ($1 million + $500,000 + $400,000) ▪ Taxpayer interest expense limitation is 30% of ATI or $570,000 ▪ No interest limitation	▪ Taxpayer ATI = $1.5 million ($1 million + $500,000) ▪ Taxpayer interest expense limitation is 30% of ATI or $450,000 ▪ Disallowed/excess business interest expense of $50,000

International Tax Planning

- IC-DISC
- Foreign-Derived Intangible Income Deduction (FDII)

IC-DISC

- Tax-savings structure for those manufacturing or distributing U.S. goods for export, or foreign architectural, engineering or managerial services
- A taxpayer who has established an IC-DISC:
  - Annually calculates, pays and deducts a commission based on qualifying exports and the related net income to the IC-DISC
  - Receives the commission tax-free (IC-DISC is a tax-exempt entity)
  - Qualifiess for preferential capital gain tax rates when commission is distributed to owners via a dividend payment

Foreign-Derived Intangible Income (FDII)

- FDII deduction offers domestic corporations a lower effective tax rate on income derived from providing tangible and intangible products and services to foreign markets
- Corporations can claim a 37.5% deduction, which results in a 13.125% effective tax rate, for years beginning before January 1, 2026.
  - After January 1, 2026, deduction reduced to 21.75%, resulting in an effective tax rate of approximately 16.4%

Polling Question #3

Has your business been able to take advantage of either of these foreign provisions?

1. Yes
2. No
3. Unsure

State & Local Tax Planning

- Pass-Through Entity Tax (PTET)
- Pass-Through Withholding and Composite Filings
- Business Risk Considerations

Pass-Through Entity Tax (PTET)

- Itemized deduction limitation on state and local taxes
- 36 states enacted PTET elections
  - Impact to pass-through entity and individual receiving flow-through income
- If entity has significant income or recognizing large gain on sale of the business or assets, consider PTET election
- PTET planning often must occur before year-end
- Itemized deduction cap set to sunset after 2025; many of the state PTET elections may as well
- Revisit state pass-through elections annually

Pass-Through Entity Withholding & Composite Filings

- Many states require pass-through entities to remit tax on behalf of partners or shareholders using flow-through withholding or composite filings
- Composite tax rates often at state's highest personal tax rate
  - Composite filings in California and New York = very high rates
- May be beneficial to elect state composite filings, if entity has numerous qualifying nonresident owners
- Work with your tax adviser to evaluate whether PTET, nonresident withholding or composite filing is most cost-effective

Business Risk Considerations

- Expanded services, digital footprint, remote work = more complexity
- *Wayfair*
  - Intended for sales tax
  - Has led to states aggressively pursuing taxpayers for all tax types
  - Expanded list of nexus creating activities
- State tax nexus studies increasingly important
  - Understand filing requirements; identify/mitigate tax exposure
  - Sales tax leading area of concern for buyers in a transaction
- Revisit all state and local tax and/or unclaimed property procedures and reporting responsibilities **before** a state tax auditor or potential buyer inquires.

Polling Question #4

Has your business had a nexus study performed previously to determine state and local filing requirements?

1. Yes, recently
2. Yes, a long time ago
3. No
4. Unsure

Don't Forget…

- Corporate AMT
  - High thresholds/only applies to certain taxpayers BUT
  - Potential reporting requirements for partnerships with corporate partners
- Basis Shifting Transactions
  - IRS recent guidance for partnerships and related parties
  - Through the new tax Form 7217, the IRS is requiring additional information regarding these transactions

Beneficial Ownership Information (BOI) Reporting

- **Reporting currently on hold** — *Texas Top Cop Shop, Inc. vs. Garland* (nationwide injunction)
- Companies created or registered:
  - Prior to January 1, 2024, must file by **January 1, 2025**
  - On or after January 1, 2024, must file **within 90 days of notice** of creation or registration
  - On or after January 1, 2025, must file **within 30 days of notice** of creation or registration
- Numerous exemptions
- Penalties for not filing can add up quickly
- Far-reaching business issue - consult with advisory teams
- Resource Center: https://www.cohenco.com/beneficial-ownership-information-reporting-resource-center

Thank You