



## Tax Update- Residents and Non-residents of the U.S

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# U.S. Tax – Residents of the U.S.

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- Who is a U.S. resident
  - U.S. citizens
  - U.S. legal residents – green card holders
  - Individuals citizens of other countries with substantial presence in the U.S.
- Both citizens and residents of the U.S. are taxed on World Wide Income
- Americans residing in the U.S. and abroad are taxed on citizenship basis – tax reform will impact all



# U.S. Tax – Residents of the U.S - continued

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- Tax Reform - what changed:
  - Tax rates
  - Deductions
  - Credits
  - Estate & Gift
  - Small Business rules
  - Many other provisions



# U.S. Tax – Residents of the U.S. - continued

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- What has not changed:
  - The basic foreign earned income and housing exclusion
  - FATCA
  - The 3.8% net investment income tax



# U.S. Tax – Non-residents of the U.S.

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- Who is a U.S. Non-resident
  - Citizens or residents of countries other than U.S. with no income effectively connected with the U.S.
  - Individuals that do not meet the substantial presence test
- U.S. Non-residents are taxed
  - FDAP income - through withholding
  - ECI (effectively connected income) same as U.S. residents



# U.S. Tax – Non-residents of the U.S. -continued

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- Tax Reform - what changed
  - \$10,000 cap on state tax deduction
  - Structure of U.S investments
    - Reduction in federal corporate tax rates
  - Increase in lifetime exemption amount – benefit to individuals from treaty jurisdictions



# Tax Cuts and Job Act - TCJA - Sunset Provisions

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- Many of the provisions are temporary – Individual / calendar year taxpayers in effect after December 31, 2017 and before January 1, 2026
  - Tax rates- 7 tax brackets 10% to 37%
  - Standard Deduction increased
  - Personal Exemption – eliminated
  - Limitation on business loss utilization
  - Casualty and loss deduction – eliminated
  - Child credit increased to \$2,000 per child
  - \$10,000 maximum itemized deduction for state tax including: property; income tax and sales tax (foreign real property taxes not connected with a business may not be deducted)
  - Mortgage and home equity indebtedness  
mortgage interest on 1MM grandfather provisions





# Tax Cuts and Job Act - TCJA - Sunset Provisions continued

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- Medical deduction floor – reduced for years 2016 – 2019 from 10% to 7.5% of adjusted gross income
- Charitable contributions limitation increased – contributions to public charities and certain private foundations
- Miscellaneous itemized deductions – eliminated
- Moving expense deduction – eliminated (including the exclusion for qualified moving expense reimbursement)
- Alternative Minimum Tax – higher exemption amount





# Tax Cuts and Job Act - TCJA - Sunset Provisions continued

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- New deduction for pass through income – Sec 199A“ Qualified Business Income” (QBI) applies to noncorporate taxpayers
  - Partnership
  - S Corporation
  - Sole Proprietorship
- Generally the deduction will be the lesser of:  
20% of QBI or 50% of wages paid by the entity



# Tax Cuts and Job Act - TCJA - Depreciation Provisions

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- Temporary 100% Cost Recovery of Qualifying Business Assets
  - A 100% first-year deduction for the adjusted basis is allowed for qualified property acquired and placed in service after Sept. 27, 2017, and before Jan. 1, 2023 – Sunset date after 2026
  - The additional first-year depreciation deduction is allowed for new and used property
  - In later years, the first-year bonus depreciation deduction phases down, as follows:
    - 80% for property placed in service after Dec. 31, 2022 and before Jan. 1, 2024.
    - 60% for property placed in service after Dec. 31, 2023 and before Jan. 1, 2025.
    - 40% for property placed in service after Dec. 31, 2024 and before Jan. 1, 2026.
    - 20% for property placed in service after Dec. 31, 2025 and before Jan. 1, 2027.



# Tax Cuts and Job Act - TCJA - Depreciation - continued

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- Increased Code 179 Expensing
  - For property placed in service in tax years beginning after Dec. 31, 2017, the maximum amount a taxpayer may expense under [Code Sec. 179](#) is increased to \$1 million, and the phase-out threshold amount is increased to \$2.5 million. For tax years beginning after 2018, these amounts (as well as the \$25,000 sport utility vehicle limitation) are indexed for inflation.
- Luxury Automobile Depreciation Limits Increased
  - For passenger automobiles placed in service after Dec. 31, 2017,, the maximum amount of allowable depreciation is increased to:
    - \$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 in the recovery period.
  - For passenger automobiles placed in service after 2018, these dollar limits are indexed for inflation. For passengers autos eligible for bonus first-year depreciation, the maximum first-year depreciation allowance remains at \$8,000



# Reporting of Foreign-Owned U.S. Disregarded Entities

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- The U.S. limited liability company (“LLC”) has been, for a long time, the entity of choice for multinational business planning.
- Beginning in 2017, U.S. disregarded entities that are wholly-owned, directly or “indirectly,” by one foreign person are now treated as domestic corporations for the purpose of reporting, record maintenance and other compliance requirements under IRC Sec. 6038A (“Information With Respect to Certain Foreign-Owned Corporations”).
- Entities affected by IRC Sec. 6038A are also required to file IRS Form 5472, to disclose monetary and non-monetary “reportable transactions” with foreign related parties which include the direct or indirect foreign owner. The transaction disclosure rules and coverage are very broad and include sales, assignments, leases, licenses and loans, advances, contribution of tangible or intangible property, and transactions in connection with the formation, dissolution, acquisition and disposition of the entity.



# Reporting of Foreign-Owned U.S. Disregarded Entities

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- Observation: *To satisfy the disregarded entity requirement, both the entity and the foreign owner will need to include U.S. identification numbers. It is also worth mentioning that these regulations do not affect the disregarded entity's classification for other purposes.*
- Penalties –Failure to timely file Form 5472 (and failure to maintain required records) will result in penalties as follows:
  - Filings for the year 2017 - \$10,000 penalty assessed on the reporting corporation, with additional penalties imposed if the failure continues for more than 90 days after notification by the IRS. In addition, criminal penalties may also apply for failure to submit information or for filing false or fraudulent information
  - For years beginning after December 31, 2017, the penalty increases to \$25,000 for each return required to be filed.



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