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EIGHT KEY TAX PLANNING OPPORTUNITIES FOR 2019

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More than a year after sweeping federal and state tax reform were enacted, businesses of all sizes are still wrapping their arms around the changes. Additional guidance and regulations have been issued nearly every month—indeed, change is the new normal. Strategic tax planning now is key to lowering businesses' total tax liability. Read on for eight top planning opportunities and considerations businesses should review as part of their 2019 strategy.

1. **The GILTI, the FDII, and the BEAT** - The 2017 tax reform package introduced several international tax packages that will either create tax liabilities or opportunities. Very generally, the anti-deferral regime is expanded under GILTI, which taxes U.S. shareholders of CFCs on certain types of income earned by the CFCs, similar subpart F income. The BEAT imposes an additional tax on certain corporations that erode the U.S. tax base through certain types of payments made to related foreign persons that meet certain thresholds. And the FDII deduction provides a deduction for certain domestic corporations that service foreign customers or markets when the requirements are satisfied. For 2019, estimating the impact of GILTI, FDII, and the BEAT on their tax liabilities and deductions is a key international tax planning consideration.

2. **Section 199A Deduction** – The new Section 199A deduction may reduce a pass-through owner's maximum individual effective tax rate from 37 percent to 29.6 percent. Taxpayers should determine whether they qualify for the 199A deduction when estimating their future taxable income and while evaluating choice of entity considerations post-tax reform. With proper tax planning under the recently-issued final regulations, a number of opportunities exist to possibly separate non-qualifying Specified Service Trade or Businesses (also known as "SSTBs") from qualifying trades or businesses in order to take advantage of the reduced rate of tax on eligible activities that would otherwise have been recast as a SSTB given the relationship to the underlying activity.

3. **Interest Deduction Limitation** - Taxpayers now face significant new limitations on their ability to deduct business interest paid or accrued on debt allocable to a trade or business pursuant to Section 163(j). Section 163(j) may limit the deductibility of business interest expense to the sum of (1) business interest income; (2) 30 percent of the adjusted taxable income (ATI) of the taxpayer; and (3) the floor plan financing interest of the taxpayer for the taxable year (applicable to dealers of vehicles, boats, farm machinery or construction machinery).

   ATI is defined as the taxable income of the taxpayer computed without regard to items not attributable to a trade or business, business interest income or expense, net operating loss and capital loss carryovers and carrybacks, depreciation, amortization and depletion, certain gains from the sale of property and certain items from partnerships and S corporations. For taxable years beginning *before* 2022, deductions for depreciation, amortization and depletion for taxable will be taken into account in calculating adjusted taxable income.

Certain exceptions exist for small business taxpayers whose average annual gross receipts over the past three years do not exceed $25 million, certain electing real property trades or businesses, electing farming businesses, and certain utilities.

4. **Economic Nexus/*Wayfair*** - The *South Dakota v. Wayfair* decision means that states are now free to subject companies to state taxes based on an "economic" presence within their state. Taxpayers must now determine their nexus and filing obligations in states and localities, where compliance was not required before. This landmark decision presents an opportunity for taxpayers to enhance their technology solutions and update their reporting tools as they comply with state law changes.

5. **Bonus Depreciation** - Expanded bonus depreciation rules allow taxpayers full expensing of both new and used qualifying property placed in service before 2023, creating significant incentives for making new investments in depreciable tangible property and computer software. Bonus depreciation allowances increased from 50 to 100 percent for qualified property acquired and placed in service after September 27, 2017, and before 2023 (January 1, 2024, for longer production period property and certain aircraft). Plan purchases of eligible property to assure maximum use of this annual asset expense election and bonus depreciation, as the 100-percent bonus depreciation deduction ends after 2023. Since bonus depreciation is not allowed on certain long-term property of an electing real property trade or business for Section 163(j) purposes, an analysis should be performed to measure the cost of the forgone depreciation relative to the marginal benefit for the additional interest expense that would otherwise be allowed.

6. **Corporate Alternative Minimum Tax (AMT) Rescinded** - This change presents a tax planning opportunity, as AMT credits can offset the regular tax liability for years after 2017. Going forward, any prior AMT liabilities may offset the regular tax liability for any taxable year after 2017. In addition, the AMT credit is refundable for any taxable year beginning after 2017 and before 2022 in an amount equal to 50 percent (100 percent for taxable years beginning in 2021) of the excess credit for the taxable year subject to a 6.2 percent sequestration rate.

   A recent IRS announcement reversed the 6.2 percent holdback by stating that "for tax years beginning after December 31, 2017, refund payments and credit elect and refund offset transactions due to refundable minimum tax credits under Section 53(e) will not be subject to sequestration."

7. **Federal Research Credit** – The credit is now even more valuable to businesses after tax reform due in part to the repeal of the corporate AMT and new rules related to net operating loss (NOL) limitations. Now that AMT has been repealed, companies that paid AMT may now be paying regular income tax, which can be offset by the R&D credit, and income tax that can no longer be offset by NOLs, the R&D credit may help offset. Taxpayers seeking to maximize the benefit of immediately deducting R&E expenditures should consider the effective date of the required amortization rule and, if possible, accelerate their R&D activities prior to December 31, 2021.

8. **Opportunity Zones (O-Zones)** – New O-Zone tax incentives allow investors to defer tax on capital gains by investing in Qualified Opportunity Funds. Taxpayers can defer taxes by reinvesting capital gains from an asset sale into a qualified opportunity fund during the 180-day period beginning on the date of the sale or exchange giving rise to the capital gain. Once rolled over, the capital gain will be tax-free until the fund is divested or the end of 2026, whichever occurs first. The investment in the fund will have a zero-tax basis. If the investment is held for five years, there is a 10-percent step-up in basis and a 15-percent step-up if held for seven years. If the

investment is held in the opportunity fund for at least 10 years, those capital gains in excess of the rollover amount (*i.e.*, not the original gain but the post-acquisition appreciation) would be permanently exempt from taxes. To maximize the potential benefits, taxpayers must invest in a Qualified Opportunity Fund before December 31, 2019.

Rather than looking at each credit and new tax provision in a vacuum, we advise clients to look at all the changes holistically to assess their impact and develop their tax planning strategies. It's important to determine your company's total tax liability and structure your planning to address the full picture of your organization. Check out our 2018 Year End Planning letters for businesses and individuals for more details.

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2018 Year-End Tax Planning for Businesses

Businesses of all sizes, across all industries, have been impacted by the monumental changes to the federal tax code.

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