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Tax Cuts & Jobs Act brings important choices for businesses

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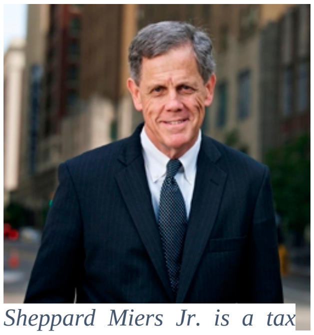

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Q: What are key business status changes in the Tax Cuts and Jobs Act?

A: The Tax Cuts & Jobs Act, enacted Dec. 22 (the "Act"), made extremely important changes in federal tax law. The changes can result in substantial tax savings for many businesses and their owners. Two primary changes made by the Act are: The federal income tax rate on taxable income of C corporations changed from a maximum rate of 35 percent in 2017 to a flat rate of 21 percent in 2018 and later years; and owners of a "pass-through entity," such as partnerships, LLCs, S corporations and sole proprietors, are now allowed a deduction of up to 20 percent of the qualified business income from the entity.

Q: What businesses should be interested in these changes?

A: The potentially huge year-after-year financial impact of these changes means almost every new and existing business should be interested. They should get advice on interpretation of the act and the effect on the business entity and its owners. The Internal Revenue Service has recently published proposed regulations on Section 199A and the 20 percent qualified business income deduction. The regulations give initial guidance on claiming the deduction. Some questions are not answered by the proposed regulations, and IRS changes and additions are anticipated. Applying Section 199A to specific facts and circumstances of a business requires careful analysis, and should include studying and applying court cases previously decided interpreting federal tax law, especially meaning of the term "trade or business." That term is a basic element of the 20 percent qualified business income deduction but is not specifically defined in the Act provisions allowing the deduction. So a first step may often be to determine under case law if a pass-through entity's activities are a "trade or business" and not just an investment generating income in another way.

Q: What questions should be addressed?

A: New Business; Pass-Through Entity. Can the owner(s) qualify for the 20 percent qualified business income deduction by being organized and classified as a pass-through entity?

New Business; Corporation. Would being formed and classified as a C corporation for federal tax purposes to take full advantage of the flat 21 percent tax rate on corporate income be the most advantageous choice?

Existing Business; Pass-Through Entity. Will the owner(s) qualify for the 20 percent qualified business income deduction? And if not, what steps, if any, can be taken to qualify for the deduction? Should the business change to be organized and classified as a C corporation to be taxed at the low 21 percent rate?

Existing Business; Corporation. Should the business tax classification be changed to a pass-through entity, and would owner(s) then qualify for the 20 percent qualified business income deduction? Would there be any disadvantages or adverse tax consequences from making the change?

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