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Changes to Certain Business Tax Provisions Under the "One Big Beautiful Bill Act"

On July 4 the President signed the "One Big Beautiful Bill Act" ("OBBBA") into law after a lengthy legislative process in Congress. The OBBBA represents one of the most significant pieces of tax legislation since the Inflation Reduction Act was enacted in 2022 and is expected to have far-reaching impacts on a wide range of businesses and industries. Significantly, the OBBBA makes many taxpayer-favorable provisions of the 2017 Tax Cuts and Jobs Act ("TCJA") permanent and alters some other business tax provisions in taxpayer-favorable manners, as discussed further below.

This client alert provides a general overview of some of the OBBBA's tax-related changes to the Internal Revenue Code (the "Code") impacting businesses and their owners.

Permanent 100% Bonus Depreciation Under Code Section 168(k):

Prior Law: The TCJA added provisions allowing certain taxpayers to electively expense the purchase price of certain qualified property in the year of acquisition. Initially, taxpayers were allowed to expense 100% of the cost of such qualified property in the year of acquisition; however, the "bonus" depreciation under the TCJA was subject to a phase-down and taxpayers were allowed to deduct only 40% of the purchase price of qualified assets placed in service in 2025.

New Law: The OBBBA reinstates permanent 100% bonus depreciation for qualified property acquired on or after January 19, 2025.

Observations: This change should expand taxpayers' ability to more quickly recover costs associated with capital expenditures. Buyers in M&A transactions may be further incentivized to structure acquisitions as asset acquisitions for tax purposes in light of the permanent accelerated depreciation allowance.

Increased Business Interest Expense Deduction:

Prior Law: Section 163(j) of the Code allows taxpayers to deduct business interest expense to the extent of the sum of the taxpayer's business interest income and floor plan financing interest plus 30% of the taxpayer's "adjusted taxable income" ("ATI"). As a taxpayer's ATI increases, its ability to deduct business interest expense increases. As originally provided for in the TCJA, EBITDA was generally the base for determining a taxpayer's ATI, allowing taxpayers to add back depreciation and amortization to calculate their ATI. For taxable years beginning after December 31, 2021, taxpayers had to use a more restrictive EBIT-base to calculate ATI, meaning their ATI (and thus, their ability to deduct business interest expense) would be lower.

New Law: The OBBBA makes permanent the more taxpayer-favorable EBITDA provisions of the TCJA for tax years beginning in 2025. Taxpayers may now add back depreciation and amortization expenses in determining their ATI, thus increasing the taxpayer's ability to deduct business interest expense.

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Observations: The OBBBA's business interest expense deduction calculation should lower the after-tax cost of borrowing and may incentivize purchasers in M&A transactions to fund their acquisitions with more debt.

Permanent Section 199A Deduction for Qualified Business Income ("QBI"):

Prior Law: Section 199A was implemented in connection with the TCJA's corporate rate reduction. Section 199A generally allowed qualifying business owners of certain pass-through entities (e.g., entities taxed as S corporations, partnerships, and sole proprietorships) to deduct up to 20% of certain "qualified business income. This Section 199A deduction was set to expire at the end of 2025.

New Law: The OBBBA makes the 20% Section 199A deduction permanent.

Observation: Taxpayers operating qualified businesses in pass-through form should benefit from the now-permanent Section 199A deduction.

Immediate Expensing of Domestic Research and Experimental ("R&E") Costs:

Prior Law: The TCJA generally required taxpayers to capitalize and amortize domestic R&E costs over five years.

New Law: The OBBBA allows businesses to immediately expense certain domestic R&E expenditures paid or incurred in tax years beginning after December 31, 2024. Certain small businesses with annual gross receipts of $31 million or less may be able to apply this change retroactively for tax years beginning after December 31, 2021 by either filing amended returns or by taking a one-time catch-up deduction. Foreign R&E expenditures continue to be capitalized and amortized over a 15-year period.

Observation: The TCJA provisions relating to the amortization of domestic R&E expenditures were generally viewed as taxpayer-unfriendly. The OBBBA's domestic R&E expensing provisions should result in a positive impact to cash flows, particularly for taxpayers incurring significant R&E expenditures.

This memorandum is to provide a general overview of certain business tax-related changes to the Code enacted by the OBBBA and their potential impact. It is for general information purposes only and should not be considered or relied on as a legal opinion of Kutak Rock LLP.

If you have questions, please contact any member of Kutak Rock's National Tax Practice Group. You may also visit us at www.kutakrock.com.