ICSC

VRN

IOJ
INTERNATIONAL OUTLET JOURNAL
SPECIAL SECTION

May 2018 VALUE RETAIL NEWS VOL. XXXV, NO 4

Coyote Drive-In, Outlet Shops of Grand River

Vancouver Expansion

BEYOND RETAIL

INSIDE

Flying High in Australia

2018 ICSC RECon Issue

Outlets Thinking Local

TOP 5 WAYS THE TAX CUTS AND JOBS ACT MAY AFFECT THE OUTLET CENTER BUSINESS

BY BENNO ROTHSCHILD, CRISTINE SIVEC AND WHALEN KULLER

BENNO ROTHSCHILD

CRISTINE SIVEC

WHALEN KULLER

Hartman Simons & Wood is an Atlanta-based law firm that specializes in commercial real estate acquisitions, sales, financing and leasing.

The "Tax Cuts and Jobs Act", signed into law on December 22, 2017, is the most significant revision to the tax code since 1986. This legislation includes major changes to the taxation of businesses. The top five ways the Tax Cuts and Jobs Act may affect an outlet center business are listed below.

1 Corporate Tax Rate—The general corporate tax rate is permanently reduced from a graduated rate of up to 35 percent to a 21 percent flat rate, and the corporate AMT has been permanently repealed. Combined with the new carried interest limitations noted below, the reduction in the corporate tax rate may change the way some investors structure their real estate holdings.

2 Qualified Business Income Deduction—Noncorporate taxpayers are allowed a gross income deduction equal to 20 percent of (i) domestic "qualified business income" ("QBI") from a partnership, S-corporation, sole proprietorship, estate or trust, (ii) ordinary dividends from a real estate investment trust ("REIT"), and (iii) qualified income earned through a publicly traded partnership. For income earned from a partnership, S-corporation, sole proprietorship, estate, or trust, the deduction equals 20 percent of the QBI amounts for each qualified trade or business carried on by the taxpayer ("TP"). The deduction is limited to the greater of (i) 50 percent of the TP's share of W-2 wages paid with respect to the qualified trade or business, or (ii) the sum of 25 percent of the W-2 wages and 2.5 percent of the unadjusted basis, immediately after acquisition, of all qualified property. The deduction for the taxable year is the lesser of (i) the sum of the deductible amounts for each qualified trade or business carried on by the TP plus 20 percent of the TP's qualified REIT dividends and qualified publicly traded partnership income, or (ii) 20 percent of the TP's ordinary income less net capital gain. The foregoing limits and the specified services exclusion do not apply to TPs with annual taxable incomes under certain threshold amounts ($315,000 for joint filers and $157,500 for single filers), subject to scale-back as taxable income increases. This deduction is available regardless of whether the taxpayer takes the standard deduction or itemizes. This deduction goes away December 31, 2025.

3 Carried Interests—The new law restricts the potential tax benefit of carried interest by limiting the availability of long-term capital gain ("LTCG") rates. A person must use a three-year holding period to determine whether gains from certain partnership interests qualify for LTCG treatment. Disqualified amounts are instead treated as short-term capital gain. This restriction applies to partnership interests that are received in connection with performing services for a business that consists of raising or returning capital and either (1) investing in (or disposing of) specified assets (or identifying specified assets for investing or disposition) or (2) developing specified assets including real estate held for rental or investment.

4 Business Interest Deductions—No business may deduct interest expense in excess of 30 percent of such business' adjusted taxable income. For the taxable years commencing after December 31, 2017 and before January 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization or depletion. This limitation would not generally apply to TPs that have less than $25 million in gross receipts and real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage.

5 Qualified Improvement Property—Finally, one of the most significant effects of the new tax law is on "qualified improvement property," ("QIP"). QIP is defined as any improvement to an interior portion of a building that is nonresidential real property if such improvement is placed in service after the date such building was first placed in service, not including any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building. The definition of qualified real property is expanded under Section 179 to include any of the following improvements to non-residential real property placed in service after the date such property was first placed in service: roosfs, heating, ventilation, air conditioning property, fire protection and alarm systems, and security systems. Since changes under the new law make QIP eligible for Section 179 expensing, subject to certain limitations and thresholds, the new law encourages remodeling that might have been too expensive to undertake in the past and allows tenant allowances to be immediately deductible in many cases.

The above summary is only meant to serve as a general summary and does not include all provisions included in the law, and should not be relied on as tax advice. Readers are encouraged to consult their tax professional regarding their individual circumstances and the new law's effect on their tax position. ■