



Tax Cuts and Jobs Act of 2017

*Update on TCJA provisions impacting
business aviation*

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2017 Tax Cuts and Jobs Act Update

Overview

- ▶ Bonus Depreciation
- ▶ Section 179 expensing
- ▶ Restrictions on deductibility of entertainment and commuting expenses
- ▶ Applicability of federal excise taxes to managed aircraft
- ▶ Applicability of Section 1031 like-kind exchanges
- ▶ Disallowance of miscellaneous itemized deductions for individual taxpayers
- ▶ Limits on deductibility of business interest
- ▶ Changes to net operating loss provisions
- ▶ Excess business losses for non-corporate taxpayers

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Bonus Depreciation

► The Tax Cuts and Jobs Act of 2017 (“TCJA”)

- Expanded the scope of “Qualified Property” that is eligible for bonus depreciation to include used property;
- Increased the portion of the basis of Qualified Property that may be immediately expensed to 100% for Qualified Property placed in service after September 27, 2017 (provided that a written binding contract was not in place on or before September 27, 2017), and before January 1, 2023;
- Authorizes expensing of 80% of the basis of qualified Property placed in service after December 31, 2022, and before January 1, 2014;
- Authorizes expensing of 60% of the basis of Qualified Property placed in service after December 31, 2023, and before January 1, 2025;

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Bonus Depreciation



- Authorizes expensing of 40% of the basis of Qualified Property placed in service after December 31, 2024, and before January 1, 2026;
- Authorizes expensing of 20% of the basis of Qualified Property placed in service after December 31, 2025, and before January 1, 2027; and
- Extends all of the above placed in service deadlines by an additional year (for Certain Aircraft and Property having Long Production Times).

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Bonus Depreciation



► For a more detailed discussion of the bonus depreciation rules, please use the link below to review Keith's Swirsky's November 6, 2018 **Bonus Depreciation Update Webinar**.

- <https://www.gkglaw.com/publications/525-bonus-depreciation-update>

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Section 179 Expensing

- ▶ TCJA increased the amount of the cost of **Section 179** property that may be expensed instead of capitalized from \$500,000 to \$1,000,000.
- ▶ TCJA also increased the limit of the amount of **Section 179** property that may be placed in service before triggering a reduction if the amount that may be expensed from \$2,000,000 to \$2,500,000.
- ▶ **Section 179** property includes depreciable tangible property, certain computer software, and certain improvements to non-residential real property.

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Restriction on Deductibility of Commuting Expenses

- ▶ TCJA provides that “no deduction that be allowed . . . for any expense incurred for providing any transportation, or any payment or reimbursement, to an employee of a taxpayer in connection with travel between the employee’s residence and place of employment, except as necessary to ensure the safety of the employee.”
- ▶ Previously, such expenses were deductible to the company if income was imputed to the employee (i.e., SIFL).

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Applicability of Federal Excise Taxes to Managed Aircraft

- ▶ TCJA provides that amounts paid by aircraft owners for management services, maintenance and support of the owner's aircraft, and flights on the owner's aircraft, are not subject to the federal excise taxes (FET) imposed by IRC Sections 4261 and 4271.
- ▶ Management services include:
 - Administrative and support services (e.g., scheduling, flight planning, weather forecasting)
 - Obtaining insurance
 - Maintenance, storage and fueling of aircraft
 - Hiring, training and provision of pilots and crew
 - Other services as are necessary to support flights operating by an aircraft owner
- ▶ TCJA further provides that for purposes of the exemption from FET taxes, the term "aircraft owner" includes a lessee of an aircraft other than a disqualified lease.
 - A disqualified lease is a lease from a person (or a related person) who provides management services with respect to the leased aircraft.

2017 Tax Cuts and Jobs Act Update

Applicability of Section 1031 Like-Kind Exchanges

- ▶ **IRC Section 1031** permits taxpayers to defer recognition of all or part of the gain on the sale of certain assets if the sale is structured as an exchange of the asset for another asset of like-kind.
- ▶ Prior to TCJA, aircraft owners frequently avoided recognition of recapture gain on the sale of an aircraft by structuring the transaction as an “exchange” for another aircraft.
- ▶ TCJA amended **IRC Section 1031** to limit its applicability to real property, thus eliminating the ability of taxpayers to structure transactions involving aircraft (or any other personal property) as exchanges under **Section 1031**.
- ▶ The impact of the loss of the ability to structure aircraft transactions as **Section 1031** like-kind exchanges is largely mitigated by the inclusion of 100% bonus depreciation in TCJA. However, 100% bonus depreciation is temporary, so the impact of the loss of **Section 1031** for aircraft may be felt if bonus depreciation is phased out as currently required under TCJA.

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Disallowance of Miscellaneous Itemized Deductions for Individual Taxpayers

- ▶ TCJA suspended the ability to deduct **miscellaneous itemized expenses**.
 - Affects only individuals who itemize their deductions
 - IRC Section 67 allows individuals to deduct that portion of certain miscellaneous expenses that exceeds 2% of their adjusted gross income
 - Miscellaneous itemized expenses include:
 - Unreimbursed business expenses (e.g., unreimbursed expenses for use by an employee of his/her own aircraft for the employer's business)
 - Expenses for the production of income (e.g., IRS Section 212 expenses)
 - Hobby expenses (i.e., IRS Section 183 expenses)
 - TCJA suspends the Section 67 deduction for tax years 2018 through 2025

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Limits on Deductibility of Business Interest

- ▶ TCJA limits a taxpayer's deduction for business interest paid in a tax year to an amount not to exceed the sum of:
 - the taxpayer's business interest income for such tax year; plus
 - 30% of the taxpayer's adjusted taxable income for such tax year; plus
 - Any floor plan financing interest paid by the taxpayer for such tax year.
- ▶ Business interest in excess of the amount permitted to be deducted, based on the foregoing formula, will be carried forward to the following year.
- ▶ Small businesses which meet the gross receipts test of **IRC 448(c)** are exempt from this TCJA limitation
- ▶ **IRC 448(c)** provides that a taxpayer meets the gross receipts test if "the average annual gross receipts of such entity for the 3-taxable-year period ending with the taxable year which precedes such taxable year does not exceed \$25,000,000."

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Changes to Net Operating Loss Provisions

- ▶ TCJA eliminates the ability to carry net operating losses (NOL) back two years
- ▶ TCJA extends the ability to carry NOLs forward indefinitely
 - Formerly NOLs could only be carried forward 20 years

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Excess Business Losses for Non-Corporate Taxpayers

- ▶ Prior to the TCJA, individuals could use NOLs from one business to offset income from other sources (subject to limitations imposed by the “at risk” rules of IRC Section 465 and the “passive loss” rules of IRC Section 469)
- ▶ TCJA temporarily prohibits such taxpayers from deducting their Excess Business Losses (EBL)
- ▶ EBL is the excess of the aggregate deductions of the taxpayer for the taxable year which are attributable to trades or businesses of such taxpayer over the sum of the aggregate gross income or gain from such businesses, plus \$250,000 for a taxpayer filing a single or separate return, or \$500,000 for a taxpayer filing a joint return
- ▶ This limitation applies for tax years 2018 through 2025



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