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CBIZ Commercial Real Estate

QUARTERLY HOT TOPICS

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4 Considerations For Your 2020 Real Estate Tax Strategy

By **KENNETH TINDAL**,
Tax Director, CBIZ MHM

Real estate companies need to continually evolve their tax strategies to stay on top of changing tax laws and position themselves strategically for the future. With many of the beneficial tax laws for partnerships set to expire after 2025, time is of the essence to take advantage of these opportunities. The following are four important considerations for your tax strategy for 2020 and beyond.

Qualified Business Income Deduction under Section 199A

Internal Revenue Code (IRC) Section 199A is one of the most significant provisions of the tax reform law commonly known as the Tax Cuts and Jobs Act (TCJA). Section 199A introduced the qualified business income (QBI) deduction, which allows pass-through entity and individual owners to deduct up to 20% of their share of QBI, effectively reducing their effective tax rate by up to 7.4%. The IRS published final QBI regulations in January 2019 that clarified some of the more important application questions. The QBI deduction is among the provisions set to expire after 2025, so now is the time to maximize its benefits.

Besides the 199A deduction, the current bonus depreciation rules are very taxpayer friendly but begin to phase-out after 2022. A cost segregation study is a great way to maximize the current benefit of the bonus depreciation rules. Taxpayers may also utilize previous tangible personal business property *de minimis* rules to expense certain expenditures instead of capitalizing them.

Qualified Opportunity Zones

The IRS has issued final regulations on the Qualified Opportunity Zone (QOZ) program. Real estate groups may want to consider investing in this tax-advantaged investment vehicle. Although

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one of the benefits of the QOZ program for investors — an additional 5% basis adjustment for investments held at least seven years — is not available for QOZ investments after 2019, there are still major incentives for investors to contribute to the qualified opportunity fund (QOF) that supports a QOZ business. While the final regulations did not make huge changes to the rules, they did provide clarification and new favorable provisions. Gross IRC Section 1231 gains can now be invested immediately into a QOZ fund instead of netting them first with 1231 losses at the end of the year. The regulations also clarify how to invest installment sale gains.

Pending Updates

Taxpayers can expect more IRS guidance in 2020. Final regulations for the Section 163(j) business interest limitations are imminent, which could significantly affect real estate owners. The Section 163(j) limitation, which caps the deduction for business interest expense at the amount of business interest income plus 30% of adjusted taxable income for a given year (essentially EBITDA until 2023), will clarify how the limitation applies to certain types of partnerships. Also expected are proposed regulations for the carried interest limitation, which will clarify the length of time certain partnership interests must be held before becoming subject to the more favorable long-term capital gains tax rate.

The TCJA contained several drafting errors that negatively impacted certain real estate owners. The "retail glitch" error mistakenly repealed the 15-year depreciable class life for qualified improvement, retail and restaurant property. A fix to this error was initially part of the December 2019 appropriation spending bill but was not included in the final bill signed into law. There is continued support in Congress to fix this error, as well as extending the favorable bonus depreciation rules. However, a divided Congress hasn't been able to come together on how to address the reduction in tax revenues these measures would cause.

Schedule K-1s

Preparing 2019 tax returns will be slightly less difficult than initially feared. The IRS recently delayed requirements for Schedule K-1 disclosures about certain capital account information. For 2019, partnerships should report partner capital accounts consistent with the reporting requirements for the 2018 Forms 1065 and Schedule K-1. It follows that partnerships may continue to report partner capital accounts using any method available in 2018 (e.g., tax basis, Section 704(b), GAAP, or any other method) unless there is a negative balance of tax basis in capital, in which case the tax basis capital data must be reported for 2019. Even with this delay, however, Schedule K-1 reporting will still be arduous, so real estate companies should start to analyze the effects the disclosures will have on their reporting processes.

Your Team

Kenneth Tindall is a Tax Director in our Los Angeles office. Don't hesitate to reach him directly with your questions (301.268.2045 or ktindall@cbiz.com) or contact your local CBIZ tax advisor.

Year-End Tax Extenders Bill Affects Commercial RE – Here's How

By the **CBIZ MHM NATIONAL TAX OFFICE**

Changes in December's Further Consolidated Appropriations Act, 2020 (FCAA) revived nearly 30 temporary tax provisions, but taking advantage of the tax extenders will take some planning. The challenge for commercial real estate owners and developers lies in the timing of the FCAA's tax provisions. Not all of the tax extenders included in the FCCA have the same effective periods, and not all of the expiring tax provisions that are typically renewed made the final cut. The following breaks down which provisions made it into law and when those provisions can be put into play.

Not Appearing in This Bill

Commercial real estate groups that have been making green energy or other similar types of improvements to their properties may want to take note. For construction that began prior to Jan. 1, 2020, businesses had the opportunity to take up to a 30% tax credit for investments in solar energy property. Congress did not extend the 30% credit percentage level for purposes of this business Investment Credit, which means the credit will begin to phase down. Businesses can take the credit in the year that construction begins for business solar energy

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property. For 2020, the business Investment Credit is 26%, 22% in 2021 and 10% thereafter (with possible reductions if not placed in service by a target date). Also not modified was the Residential Energy-Efficient Property Credit, which is used for non-business investments in solar energy property. The residential credit is also currently winding down. For the year non-business solar property is placed in service, the Residential Energy-Efficient Property Credit is 26% in 2020, 22% in 2021 and completely phased out by 2022.

One-Year Renewal

The tax reform law commonly known as the Tax Cuts and Jobs Act (TCJA) created a temporary tax credit for employers that provide paid family medical leave. Employers could take credits equal to between 12.5 and 25% of certain wages paid to qualifying employees while the employee was on family and medical leave. Originally, the paid family medical leave credit was only available for the 2018 and 2019 tax years, but the FCAA gave it a one-year extension so that it can be used in 2020.

Work Opportunity Tax Credit

The Work Opportunity Tax Credit also received a one-year extension through 2020 under the FCAA. The credit is available to employers that hire individuals from certain targeted groups who have consistently faced significant barriers to employment, including veterans and individuals with criminal convictions. Credits range from $1,200 to $9,600 for the hiring of qualified employees.

New Markets Tax Credit

If you operate in a designated low-income area, you may be interested in taking advantage of the New Markets Tax Credit, which the FCAA extended through 2020. The credit offers an incentive for investment in community development entities (CDEs) that undertake development projects in certain low-income communities. For the program, the Treasury Department competitively allocates tax credit authority to CDEs that select investment projects, and investors receive a tax credit worth up to 39% of their investment amount. Investors take that credit over a seven-year period.

'Look-Through' Rules

If your organization has related controlled foreign corporations (CFCs), it may want to make a note that Congress renewed the 'Look-Through' Rule through 2020. The look-through rule creates an exception to the Subpart F requirement for qualifying payments for dividends, rents or royalties between related CFCs. CFCs can exclude this intercompany income to the extent it is not effectively connected with the U.S. trade or business or attributable or properly allocable to non-Subpart F income.

Provisions Extended Retroactively to 2018

Several tax provisions expired in 2018 as a casualty of previous extenders negotiations. Two notable provisions received new life and may be claimed for the 2018 and 2019 tax years. These provisions will also be available through 2020:

Empowerment Zones

Real estate groups operating in certain geographic areas designated as empowerment zones under Section 1391 may want to review their tax filings. The FCAA retroactively extended the Empowerment Zone Employment Credit to 2018. If you operate within an empowerment zone – generally characterized by high poverty or rates of unemployment – you may be eligible for a tax credit up to $3,000 for each employee who lives in the empowerment zone, which is calculated on the first $15,000 of wages per year for each eligible employee.

Energy-Efficient Building Incentives

Also retroactively extended was the energy-efficient commercial building deduction under Section 179D. The energy-efficient commercial building deduction permits building owners to take tax deductions that range from $0.60 to $1.80 per square foot for qualifying systems that meet certain efficiency standards.

The Nonbusiness Energy Property Credit (not to be confused with the Residential Energy-Efficient Property Credit) was also extended retroactively to 2018 and through 2019 to allow homeowners a credit of up to $300 for certain energy-efficiency improvements (windows, HVAC, etc.).

Do You Need to Adjust 2018 Reporting?

With the retroactive extensions of some of the provisions, you may face the choice of whether to amend your 2018 tax return (and/or the 2019 return if you have already filed it). The answer to that question will depend on your situation. You should really only amend a return if the credit will offset the cost involved in the adjustment.

For more information about how the extenders affect your business, please contact us.

Related Reading

- Congress Reaches Deal to Renew Expired Tax Incentives and Provide New Tax Relief Measures

The Hardening Insurance Market – What to Expect and How to Prepare

By **CBIZ INSURANCE SERVICES**

There is quite a lot going in in the insurance industry as a whole right now and not much of it is positive. Different industries and types of coverage are being impacted more than others, but overall we are headed deeper into what is considered a "hard market," where we see a consistent increase in renewal premiums and the tightening of underwriting guidelines and coverage offerings.

Commercial property policyholders will see ongoing price increases and cuts in capacity through 2020. Rates and terms are being determined by each account's specific profile – geographic location, catastrophe exposure and loss history. Double-digit rate hikes are common, while triple-digit increases are possible. Terms, deductibles, sub-limits, exclusions and coverage structure changes are all considered in the mix.

A significant factor contributing to the current state of the industry is the sharp uptick of social inflation. The median average of the top 50 liability verdicts in the U.S. has doubled from $27M to $54M in only 4 years (2014-2018). With more money going out to cover claims, insurance companies have had to raise rates to remain in business.

Another factor impacting the insurance market – recession concerns. Premium dollars are used almost exclusively to pay claims and administrative expenses (payroll, taxes, office expenses, advertising, etc.). Many insurers actually pay out *more* than they take in from premiums. Profits from investment activities support their financial viability. The investment piece allows them to make a profit and thus stay in business. Since there is worry the investment income may be reduced by recession, insurance companies are taking steps to remain profitable.

For these reasons mainly, carriers are focusing now, much more than before, on controlling their loss ratio (losses ÷ premium) and reducing their loss combined ratio (losses ÷ (premium + expenses)). This results in increased premium, greater scrutiny on renewing bad risks, lower interest in writing new coverage for clients in high-risk business types or those with prior losses, and less interest in extending high casualty limits, to name a few.

The commercial auto segment should also be mentioned. With all the technology being put into new vehicles

these days, seemingly minor damage from an accident can prove to be quite costly and distracted driving has increased the frequency of accidents dramatically. With a shortage of licensed commercial drivers, new drivers may be rushed through certification and put behind the wheel of large, dangerous vehicles before having the appropriate experience and training. Renewal pricing is expected to continue to trend upward even more so than other coverage lines.

How can you prepare?

While the impact of the hardening insurance market on a particular company will depend on industry, class of business, risk profile and loss history, these suggestions are practical, indeed prudent, across the board.

- If you have active risk management programs in place, continue to focus on them and ensure all levels of your business have "bought in," from the President/Owner down to the new hire. Safety needs to be a *culture* in the workplace, not just an afterthought or pushed to the "we'll worry about it later" list. If no programs are in place, work with your risk adviser or broker to create and implement risk management and loss control programs (safety manuals, fleet safety programs, employee handbooks, hiring guidelines, etc.).

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- If you haven't reviewed open losses and loss control practices we strongly recommend doing so sooner rather than later. With the litigious environment that we currently live in today, insurance carriers are heavily targeting risk management practices, policies and procedures that are in place to help mitigate and minimize risk the property owners are utilizing when determining rate.
- Many companies are looking to grow in the current strong economy, but low unemployment levels mean the "right" employees can be hard to find. You may be tempted to hire someone who is not a proper fit for the position you are looking to fill. A bad hire can cost you more than you stand to gain. Perform additional due diligence before extending offers. Perform background checks and drug tests, and call references. If you are hiring a driver, be sure to receive a copy of their driving record as part of due diligence. Simply put, make sure you are hiring the right people.
- When entering into contracts with other parties be sure you understand how much of their risk you are assuming and what your responsibilities are. Your risk adviser can provide experienced guidance and advice with respect to contractual risk transfer.
- Consider purchasing or increasing the limits of an umbrella liability policy to ensure sufficient protection should you find yourself in a catastrophic suit. High limit umbrella coverage may require multiple layers of coverage with different carriers – your broker should be able to manage that process for you.
- Make two lists – one with the top five or 10 business losses you could suffer that have the greatest chance of happening, and another with the losses that could cause the greatest damage to your business. Review these lists with your risk manager or insurance broker to ensure you have the coverage in place to respond to all.

Additional Resources

- "Steps to Conducting a Successful Insurance Risk Analysis" (Webinar) – register online.
- What to Expect from a Comprehensive Insurance Audit (info sheet)

Your Team

CBIZ's mission is to provide high-level advisory and consultative brokerage services to our clients. We help clients manage their risk profile and expertly finance risk mitigation through insurance and other methods like captives. If you have questions about your risk profile or your current coverage, don't hesitate to connect with the CBIZ Insurance Services Team or your CBIZ adviser.

Additional Industry Insights

In the News

Items of interest from industry publications.

Can Coronavirus Travel Through Building Pipes?

NMHC Coronavirus Resources for Apartment Firms

Bisnow national news, Feb 12, 2020
Opportunity Zone Projects Seem to Be Finally Breaking Ground

National Real Estate Investor, Feb 18, 2020
Property Managers Have a Responsibility to Protect Their Tenants' Data

Featured Tax Content

Dynamic Duo! Cost Segregation & the Tangible Property Regulations – it's never too late to perform a cost seg study – they've become even more valuable after the tax reform. (short video)

The Rental Real Estate Safe Harbor for QBI Deductions and Its Questionable Benefits (article)

Featured Risk Content

Protecting Your Business from an Active Shooter Incident
Recorded Jan 29 – (webinar) available on demand
Any business with employees, or customers that come on-site, needs to have a plan in place for an active shooter situation.

Downloadable Guides

Maximizing the Benefits of Qualified Opportunity Zones in 2020
An informative guide for fund managers, developers and business operators participating in or considering QOZ activity.

Ensuring Your Business Is Prepared for a Disaster – for organizations of all sizes

Property Tax – Are You Overpaying? This guide offers straight talk about the property tax assessment process and opportunities to potentially lower your property tax bill.

The SECURE Act – 9 Key Takeaways for Employers

By **CBIZ RETIREMENT PLAN SERVICES**

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, signed into law on Dec. 20, 2019 by President Trump, is the most expansive piece of retirement legislation since the Pension Protection Act of 2006. Effective Jan. 1, 2020, the law will have some impact on nearly every retirement plan and participants with numerous provisions intended to increase retirement security, expand plan coverage, encourage retirement savings and decrease plan costs. It offers small businesses tax incentives to set up automatic enrollment in retirement plans for its workers or allows them to join multiple employer plans, where they can band together with other companies to offer retirement accounts to their employees in the first place.

Here are nine key provisions of the act along with recommendations and action items for employer consideration.

1. **Through Pooled Employer Plans (PEPs), completely unrelated small- to- mid-sized employers can pool together to offer defined contribution retirement plans.**
   Action: *For certain employers, a MEP / PEP could reduce administrative burdens associated with sponsoring your own plan and provide a lower cost option by leveraging the buying power of the "pool." New rules do not go into effect until 2021, and IRS regulations will be crucial in determining whether a PEP is a sensible option for your business.*

2. **Employers with 401(k) plans relying on the Safe Harbor Non-Elective Contribution option will no longer be required to provide the safe-harbor notice before the beginning of each plan year. If your plan is not a Safe Harbor plan, you can amend it to include the Safe Harbor Non-Elective option any time prior to 30 days before plan year end. If you're willing to increase your Safe Harbor Non-Elective**

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Contribution from 3 to 4%, your plan can be amended retroactively by the end of the following plan year into a Safe Harbor Non-Elective plan.
Action: *If your organization struggles with meeting testing requirements, consider the Safe Harbor Non-Elective (3% fully vested contribution to each eligible employee) as a method to help with nondiscrimination testing requirements. The ability to retroactively amend your plan into a Safe Harbor Non-Elective plan can also benefit organizations who fail the ADP test after the end of the year.*

3. **Employers now have until the due date of their tax return, including extensions, to adopt a retirement plan and treat it as in effect as of close of the year. This applies to taxable years beginning after Dec. 31, 2020.**
Action: *This change creates a unique opportunity to seize additional tax deductions by retroactively adopting a plan when appropriate. Consult your tax advisor to determine if this option is right for your business.*

4. **The cap for auto-enrollment contributions in retirement plans with Qualified Automatic Contribution Arrangements (QACAs) increased from 10% of pay to 15% of pay to encourage retirement savings. This is effective for plan years beginning after Dec. 31, 2019.**
Action: *Work with your retirement plan advisor to evaluate your existing plan design and determine if any changes should be made to auto-enrollment or auto-escalation values. Employees still have the ability to opt out of the contribution or escalation.*

5. **Employers maintaining a 401(k) plan will be required to offer participation in the salary deferral feature to any non-union employee who worked more than 1,000 hours in one year or 500 hours over three consecutive years. This new requirement only applies to the 401(k) feature of the plan.**
Action: *Evaluate which, if any, of your employees will meet this criteria. Hours worked in periods beginning before Jan. 1, 2021 will not be considered for this feature to allow you time to set up hours-tracking processes. Once you determine eligible employees, prepare and distribute appropriate communications to inform them of how and when they can enroll.*

6. **For the first three years that a small employer (100 employees or less) offers a qualified retirement plan, the employer can receive an annual start-up credit of $250 per non-highly compensated employee eligible to participate, up to $5,000. If the plan includes auto-enrollment, an additional credit of up to $500 is available.**
Action: *If you're a small business owner and do not sponsor a retirement plan, consider establishing one to take advantage of newly increased tax credits. The credit applies to employers with up to 100 employees over a three-year period beginning after Dec. 31, 2019 and applies to SEP, SIMPLE, 401(k) and profit-sharing plan types.*

7. **403(b) custodial accounts may be distributed in-kind to participants or beneficiaries in the event of a plan termination.**
Action: *If you sponsor a 403(b) retirement plan, stay tuned for importance updates. The Treasury Department is expected to issue guidance within six months of the enactment of the SECURE Act. The guidance must be retroactively effective for all plan years beginning after Dec. 31, 2008.*

8. **The Act expands and makes permanent relief from certain coverage and nondiscrimination rules for defined benefit plans that are closed to new participants or frozen. The broader relief offers more options for compliance and covers more areas of the law, including the 401(a)(26) minimum participation rules.**
Action: *If you sponsor a frozen or closed defined benefit plan, it is important to work with your actuary to determine how the Act will impact your plan and its compliance over the coming years. The expanded relief is retroactively effective for plan years beginning after 2013.*

9. **The minimum allowable age for in-service distributions from defined benefit and money-purchase plans is reduced from 62 to 59 ½.**
Action: *The change to the minimum allowable age for in-service distributions may provide greater flexibility for phased retirement, and your actuary can help you determine if this is applicable for your organization.*

Whether the SECURE Act ends up being a game changer is yet to be seen. However, armed with the knowledge of its key components, employers and employees alike can be prepared and make adjustments for what lies ahead.

If you have any questions or would like more information on the SECURE Act and how it may affect your plan, please contact CBIZ Retirement Plan Services.

Additional Resources

- Key Takeaways for Employee Participants (article)
- Retirement Plan Sponsor Guide (downloadable pdf) – This guide provides information that can help you fulfill your duties as a plan sponsor, provide competitive benefits for your employees, lower your plan costs and remain compliant.

Benefits Renewal 2020: 6 Questions to Ask

By **ZACK PACE**, Senior Vice President, CBIZ Benefits Consulting

1. Will the return of the Affordable Care Act (ACA) premium tax affect your plan renewal?

This tax of about 4% (the health insurer provider fee) is under Congressional moratorium for 2019 but returns for 2020. Fully insured January 2020 medical, dental and vision renewals will be about 4% higher than they would have been otherwise. This tax does not, however, apply to most self-funded contracts, including so-called level-funded arrangements. Thus, if your plans are presently fully insured, now may be a good time to re-evaluate the pricing of self-funded plans.

2. Does your renewal timeline include all vendor decision deadlines?

As the benefits landscape continues to shift and more companies are carving out certain plan components, including the pharmacy benefit manager (PBM), you may be surprised with how early these vendors need decisions in order to accommodate benefit changes and plan amendments. Of note, it seems that HRIS and benefit administration platforms are asking for earlier decisions – even with technology seemingly improving. Check your contracts and consult with your benefits advisor.

3. Is your group life plan in compliance with the Section 79 nondiscrimination rules?

A myth that floats around is that the first $50,000 in group term life insurance benefits is always non-taxable. However, that's only true if the plan passes the Section 79 nondiscrimination rules. Generally, as long as there isn't discrimination in eligibility terms and the benefit is either a flat benefit or a salary multiple (e.g., $100,000 flat, 1 x salary to $250,000), the plan passes testing. Consult with your attorney, accountant and benefits advisor about this testing. If you have two or more classes for life insurance, the benefit is probably discriminatory. If you fail the testing, it simply means that you'll likely need to tax your Section 79-defined "key employees" on the entire benefit, not just the amount in excess of $50,000.

4. Is your group life maximum benefit higher than the guaranteed issue amount?

Plans where the employer-paid benefit maximum exceeds the guaranteed issue amount are still out there. Thus, certain highly compensated employees must undergo and pass medical underwriting in order to secure the full employer-paid benefit. As benefits managers turnover, this detail often is lost, and new hires are not told they

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need to go through underwriting to secure the promised benefit. As a result, for example, an employee may think he or she has $650,000 in benefit, while he or she only contractually has $450,000. This means the employer is unknowingly self-funding the difference. In this example, that's $200,000!

Review your group life insurance certificate to confirm that the entire employer-paid benefit is guaranteed issue. If it is not, negotiate, change carriers or lower the benefit.

5. Is there any chance you've unintentionally disqualified participant HSAs?

Unintentional disqualification is not difficult. To check, first, ensure that the deductibles are equal to or greater than the 2020 IRS HSA statutory minimums and the out-of-pocket maximums are equal to or less than the 2020 IRS HSA statutory maximums. Remember, the IRS HSA maximum out-of-pocket limits are not the same as the ACA out-of-pocket maximum limits.

Additionally, remember that in order for a family deductible to have a compliantly embedded single deductible, the embedded single deductible must be equal to or greater than the statutory minimum family deductible. Also ensure that no individual in the family plan can be subject to an out-of-pocket maximum greater than the ACA statutory individual out-of-pocket maximum. Finally, did you introduce any new standalone benefits for 2020, like a telemedicine program, that Treasury would consider "other health coverage"? If yes, you may want to reverse course before 2020; discuss this with your tax advisor, attorney and benefits consultant.

6. Have you reviewed your existing Wrap Document and Wrap Summary Plan Description and made any necessary amendments?

It's easy to forget, depending on the preparer, how much detail is often in these documents – and it all should be reviewed. For example, if your vision vendor changes or even if only their address changes, an amendment is likely in order. Your attorney, benefits consultant and third-party administrators should be able to assist.

Your Team

Zack Pace is senior vice president, benefits consulting at CBIZ, Inc. During his over 15 years in employee benefits, he has designed, implemented and managed benefits packages that enable employers to attract and retain the talent they need to outperform their competitors, while ensuring that each overall benefits program and its components are cost-effective. Connect with him through your CBIZ Advisor or directly on LinkedIn or zpace@cbiz.com.