2016
CBIZ MHM Business Tax Planning Supplement

CBIZ®

2016 CBIZ MHM Business Tax Planning Supplement

Heading into an election year, many taxpayers were not expecting any significant tax legislation in 2015. Another one- or two-year extension of popular tax breaks that had expired at the end of 2014 was the best result we had expected. Perhaps sensing taxpayer (and voter) frustration, Congress in December surprised us all when it permanently extended several significant tax provisions, even making many of them more taxpayer friendly. Other provisions were extended for at least two years, some as many as four. Businesses can now plan their investments in research and development and property and equipment with much more certainty about the tax implications of those investments.

Congress was not the only group that tried to help taxpayers in 2015; the IRS got in on the act as well. The Affordable Care Act seems here to stay, but the IRS did give businesses a short extension to comply with complex new reporting requirements. As for the tangible property regulations finalized in 2014, it appears that the IRS listened to numerous comments suggesting that the *de minimis* safe harbor for capitalizing personal property was too low for businesses without applicable financial statements. The safe harbor was raised from $500 to $2,500.

As a companion to our book on business tax planning, *Navigating the Business Lifecycle: Tax Strategies for Success*, this supplement recaps some of the key federal tax developments in 2015, discusses important changes for 2016 and provides some important rates, figures and thresholds to help you in your tax planning.

We hope that you will find this information useful as you plan for the coming year. Remember to refer back to *Navigating the Business Lifecycle: Tax Strategies for Success* for tax planning ideas that may be implemented throughout the year. To order a complimentary copy of our book, please contact your local CBIZ MHM tax professional or order it directly from our website.

Table of Contents

3 ..... Congress Provides Certainty for Many of the Extenders

4 ..... Enhanced Section 179 Expensing Election – *Permanent*

4 ..... 15-year Straight Line Cost Recovery – *Permanent*

5 ..... Bonus Depreciation – *Through 2019*

6 ..... Research and Development Credit – *Permanent*

6 ..... 100 Percent Exclusion of Gain from the Sale of Qualified Small Business Stock – Permanent

7 ..... Work Opportunity Tax Credit (WOTC) – *Through 2019*

7 ..... Five-year Recognition Period for Built-in Gains of S Corporations – *Permanent*

8 ..... Tangible Property Regulations *De Minimis* Safe Harbor Increased

10 ..... Revisit Partnership Agreements in Light of New Partnership IRS Exam Rules

11 ..... Summary of Key Changes

12 ..... Observations

13 ..... Affordable Care Act – It's the Law

13 ..... Overview of ACA Reporting Requirements

14 ..... "Cadillac Plan" Tax Delayed

14 ..... Medical Device Tax Suspended for Two Years

15 ..... Tax Tables

Congress Provides Certainty for Many of the Extenders

Finally, there is certainty around several business tax provisions, commonly referred to as "extenders" because of the numerous times they have been extended on a very short-term basis. With the enactment of the *Protecting Americans from Tax Hikes Act of 2015* (PATHA) on December 18, 2015, many popular business (and individual) tax provisions were permanently or significantly extended past December 31, 2015. Some of the provisions were even enhanced to be more taxpayer friendly. This certainty, along with the enhancements, allows for better business planning and, ideally, more strategic implementation to minimize taxes.

Following is a brief explanation of the most popular business provisions extended – some permanently, some for five years and some for just two years - by PATHA:

Enhanced Section 179 Expensing Election – *Permanent*

The Section 179 expensing election, which allows businesses with taxable income to immediately deduct a specified amount of their investments in equipment, has been increased in recent years to encourage investment. Since 2010, qualifying businesses could immediately deduct up to $500,000 of qualified tangible property (including off-the-shelf computer software). The Section 179 deduction begins to phase out when total qualified purchases for the year exceed $2 million. Without PATHA, the Section 179 deduction would have reverted to only $25,000 in 2015. PATHA not only permanently extends the $500,000 deduction limit, but also makes several enhancements to the Section 179 deduction, which take effect in the 2016 tax year:

- The $250,000 cap on qualified real property (consisting of qualified leasehold improvement, qualified restaurant property and qualified retail improvements) no longer applies;
- Air conditioning and heating units will be eligible property; and
- The $500,000 and $2 million limits both are indexed for inflation, projected to be $500,000 and $2,010,000, respectively, for 2016.

15-year Straight Line Cost Recovery – *Permanent*

Building improvements typically are depreciable over 39 years. For the past several years, however, taxpayers have been able to depreciate qualified leasehold improvements, qualified restaurant property and qualified retail improvement property (defined below) over a 15-year period. Originally expiring for property placed in service after December 31, 2014, PATHA retroactively extends and makes permanent the 15-year straight-line depreciation treatment for this qualified property.

Property Type	Definition
Qualified Leasehold Improvements	■ Improvement to interior portion of non-residential real property made pursuant to a lease ■ Improvement is a structural component (*i.e.*, Section 1250 property) ■ Improvement is placed in service more than 3 years after building first placed in service ■ Lease is not between related persons ■ Certain types of expenditures are not eligible (*e.g.*, elevators)
Qualified Restaurant Property	A building or improvement to a building if more than 50% of the building's square footage is devoted to preparation of, and seating for consumption, prepared meals
Qualified Retail Improvement Property	Similar to definition of qualified leasehold improvements, except: • Interior of building must be open to general public and used in retail trade or business of selling tangible personal property • Not pursuant to lease requirements

Bonus Depreciation – *Through 2019*

The first-year bonus depreciation provision, which allowed businesses to immediately deduct 50 percent of the cost basis of qualified property, had expired at the end of 2014. PATHA extends this opportunity for bonus depreciation through 2019, but with reduced percentages allowed for the later years.

Placed in Service During	Bonus Depreciation Percentage
2015	50%
2016	50%
2017	50%
2018	40%
2019	30%

Qualified property generally includes new tangible personal property, off-the-shelf computer software and qualified leasehold improvements. PATHA enhances the provision beginning in 2016, however, by allowing bonus depreciation to be claimed on an addition or improvement to the interior of any nonresidential real property.

An additional welcome extension reinstates the election to accelerate AMT credits in lieu of claiming bonus depreciation and modifies the AMT rules beginning in 2016 by increasing the amount of unused AMT credits that may be claimed with this election.

For new passenger autos and light trucks subject to the luxury auto depreciation limitations, the bonus depreciation increases the maximum first-year depreciation deduction by $8,000 for vehicles placed in service through 2017, $6,400 for vehicles placed in service in 2018 and $4,800 for vehicles placed in service in 2019.

Research and Development Credit – *Permanent*

Originally enacted in 1981, the research and development (R&D) tax credit has been extended by Congress more than a dozen times. Designed to encourage domestic research and experimentation, the credit provides a tax credit for amounts incurred for business-related qualified research expenses. Now with the R&D credit extended permanently, businesses can more confidently commit to long-term research activities.

Not only has the R&D credit been permanently extended, it has also been enhanced. Beginning in 2016 tax years, eligible small businesses (those with $50 million or less in average annual gross receipts) may claim the R&D credit against alternative minimum tax (AMT) liabilities. This is especially important to individuals who are owners in pass-through entities that qualify as eligible small businesses, as their benefit from the R&D credit was often limited due to the AMT.

Also beginning with 2016 tax years, PATHA allows start-up businesses with gross receipts of less than $5 million to elect to apply the R&D credit against certain payroll taxes. A start-up business is defined as one that did not have gross receipts in any tax year preceding the five-year period ending with the year of the election. For example, a taxpayer wanting to make an election for 2016 could not have had any gross receipts in 2011 or earlier. The election only applies to the 6.2 percent FICA tax paid on wages and cannot exceed $250,000 in a given year. This election, which may be made up to six times, can be very beneficial for startups that have little or no taxable income, but are paying payroll taxes.

100 Percent Exclusion of Gain from the Sale of Qualified Small Business Stock – *Permanent*

Intended as another avenue to encourage investments, specifically in small businesses, this now permanently extended provision allows non-corporate investors to exclude 100 percent of the gain from the sale of qualified small business stock held for more than five years and acquired after September 27, 2010. To qualify as a small business, when the stock is issued, the aggregate gross assets (*i.e.*, cash plus aggregate adjusted basis of other property) held by the corporation may not exceed $50 million. The corporation also must meet certain active trade or business requirements. This taxpayer-friendly provision has been helpful in funding certain startups.

Work Opportunity Tax Credit (WOTC) – *Through 2019*

The WOTC gives employers incentive to hire workers in certain targeted groups that have a high rate of unemployment. While it can vary by targeted group and number of hours worked, the credit generally is equal to 40 percent of the eligible employee's first-year, and in some circumstances, second-year wages up to $6,000 (a $2,400 credit per eligible employee). In addition to extending the WOTC through 2019, PATHA also expands the targeted groups by adding qualified individuals who have been unemployed for 27 weeks or more.

Five-year Recognition Period for Built-in Gains of S Corporations – *Permanent*

The built-in gains (BIG) tax imposes a corporate level tax on the amount of gains inherent in assets that were held by a C corporation at the time it converted to an S corporation. If any BIG assets are sold within the recognition window, the S corporation pays tax on the net recognized BIG at the highest corporate tax rate, and the total gain recognized (net of the tax on the recognized BIG) is taxed at the shareholder level. Originally a 10-year recognition window, recent extender provisions have reduced the window to as little as five years. PATHA permanently sets the recognition window at five years.

Select additional provisions either permanently or temporarily extended by PATHA include:

Select Additional Business and Energy Provisions Extended or Made Permanent by PATHA

Tax Provision	*Extension*	*Modified*
Basis adjustment to stock of S corporations making charitable contributions of appreciated property	Permanent	No
Employer wage credit for employees who are active duty members of the uniformed services	Permanent	Yes
Subpart F exception for active financing income	Permanent	No
New Markets Tax Credit	Through 2019	No
Look-through treatment for certain payments between related corporate foreign-controlled entities (CFCs)	Through 2019	No
Energy-Efficient Commercial Buildings Deduction	Through 2016	No
$500 Credit for Nonbusiness Energy Property	Through 2016	Yes
Credit for Energy-Efficient New Homes	Through 2016	No

Tangible Property Regulations *De Minimis* Safe Harbor Increased

Having the choice to deduct the cost of tangible personal property purchases instead of capitalizing them offers businesses the opportunity to reduce current year taxes and simplify recordkeeping. The final tangible property regulations issued in 2013 did just that by establishing the *de minimis* safe harbor election, applicable to taxable years beginning on or after January 1, 2014. The *de minimis* safe harbor election allows qualifying businesses to immediately deduct purchases of tangible property below certain dollar thresholds. The *de minimis* safe harbor is an annual tax return election, made by attaching a statement to the timely filed original federal tax return (including extensions).

In order to qualify for the election, the taxpayer must:

- Have an accounting policy as of the beginning of the tax year to expense (for non-tax purposes) amounts paid for property costing less than a specified dollar amount, or amounts paid for property with an economic useful life of 12 months or less, and
- Follow that policy in its books and records.

For taxpayers with an applicable financial statement (AFS), usually an audited financial statement, the specified dollar threshold for the *de minimis* safe harbor is $5,000 per invoice or item. Additionally, the taxpayer's accounting policy must be in writing.

As originally issued, for taxpayers without an AFS, the specified dollar threshold was only $500 per invoice or item. The IRS received many comments suggesting that the $500 threshold was too low to effectively reduce the administrative burden of complying with the capitalization requirements for small businesses. After consideration of these comments, the IRS issued Notice 2015-82, which increased the *de minimis* threshold to $2,500 beginning with 2016 tax years. The $5,000 threshold for taxpayers with AFS was not changed.

The IRS also announced that for tax years prior to 2016, it would not raise upon examination the issue of whether a taxpayer without an AFS can use the $2,500 *de minimis* safe harbor threshold if it otherwise satisfies the *de minimis* safe harbor requirements. Because one of the *de minimis* safe harbor requirements is that the accounting policy to expense amounts below a certain threshold must be in place as of the beginning of the tax year, taxpayers without an AFS generally will still be limited to $500 threshold for 2015 unless their pre-existing capitalization policies already exceeded $500.

If a taxpayer's accounting policy is less than the applicable threshold, the amount deductible under the *de minimis* safe harbor is limited to the threshold set by the policy. Conversely, if a taxpayer's accounting policy is more than the applicable threshold, only expenditures up to the threshold are protected under the *de minimis* safe harbor. Note, however, that the *de minimis* safe harbor does not limit a taxpayer's ability to deduct otherwise deductible repair or maintenance costs that exceed the safe harbor threshold. The safe harbor merely establishes a minimum threshold below which all qualifying amounts are considered deductible.

For taxpayers subject to the uniform capitalization rules for the production or acquisition of inventory, amounts paid for tangible property below the *de minimis* safe harbor threshold may still need to be capitalized if those amounts comprise the direct or allocable indirect costs of property produced or acquired for resale.

While this increase to the *de minimis* safe harbor threshold for taxpayers without AFS is taxpayer friendly, keep in mind the following points as you contemplate this change for 2016.

- If you expect to provide financial statements to any third parties, such as banks or investors, consider the impact of any increase to your capitalization policy on your financial statements. You may decide that the $2,500 threshold is too high for your situation.
- To apply the *de minimis* safe harbor, you must follow the accounting policy for non-tax purposes, *i.e.*, for your books and records. If you choose to take full advantage of the increased safe harbor threshold for 2016, make sure you are expensing all tangible property purchases below $2,500.
- The *de minimis* threshold is applied per invoice or per item. If you frequently purchase multiple pieces of the same equipment at one time (*e.g.*, computers, tablets, etc.) and you want to maximize your current deductions, make sure that your accounting staff is applying the *de minimis* threshold on a per item basis.

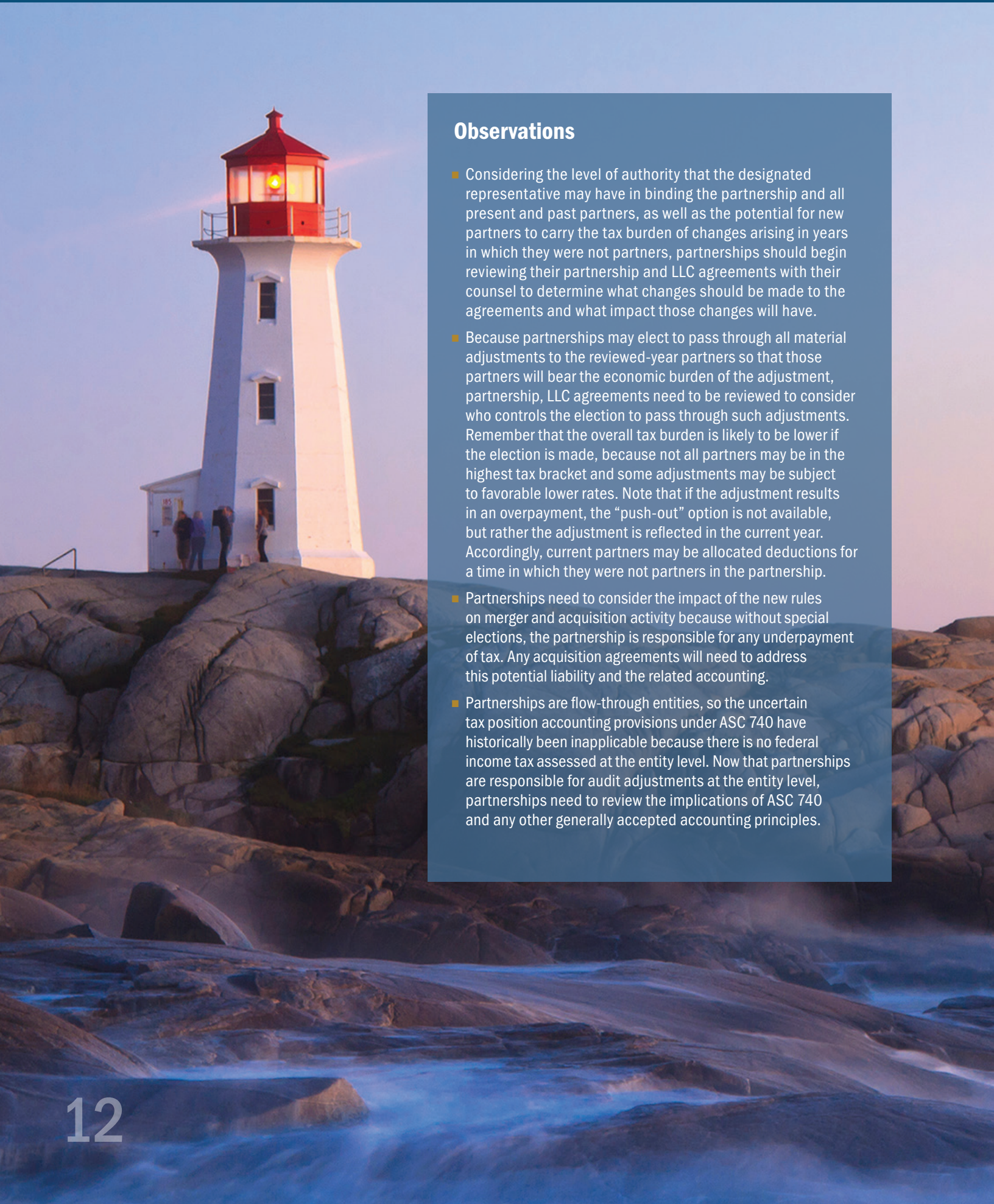
Revisit Partnership Agreements in Light of New Partnership IRS Exam Rules

Generally effective starting in 2018, the Bipartisan Budget Act of 2015 repeals the current TEFRA unified partnership audit procedures (TEFRA) and special rules relating to electing large partnerships (ELPs). The purpose of the new partnership rules is to streamline partnership audits into a single set of rules for both the partners and the partnership. The new regime generally provides for assessment and collection of underpaid taxes, penalties and interest at the partnership level. The partnership may elect, however, to assign the assessment of underpaid amounts in the current year to those who were partners in the year to which the adjustment relates. Further, partnerships with 100 or fewer qualifying partners annually may opt out of the new rules, electing instead to be subject to audit at the level of each individual partner.

Summary of Key Changes

The following summarizes the key provisions of the new audit regime.

- The new audit and adjustment regime applies to all partnerships, except for certain qualifying partnerships that affirmatively elect out of the new rules for that particular tax year.
- The imputed underpayment is generally determined by multiplying the net adjustment by the highest rate of tax in effect for the reviewed year. There are provisions whereby the amount of tax can be modified to better reflect the amount properly owed based upon the character of the adjustment and the taxable nature of the partners.
- Generally, audit adjustments of income, gain, loss, deduction, or credit of the partnership will be applied at the partnership level. Accordingly, the assessment and collection of any taxes, interest, and penalties relating to an adjustment also will be applied at the partnership level.
- Generally, the new law requires each partnership that does not elect out of the new regime to designate a partner or other person as the partnership's representative. The partnership's representative will have the sole authority to act on behalf of the partnership for purposes of the new audit procedures. Under the new procedures, the partnership and all of its partners will be bound by actions taken by the partnership and by any final decision in a proceeding brought under the new rules with respect to the partnership.
- A partnership can elect out of the new rules for a tax year if it issues 100 or fewer Schedule K-1s for the tax year and meets certain other requirements.
- Notwithstanding the above, the IRS is directed to provide a mechanism whereby partners (instead of the partnership) who were partners in the year to which the changes relate (the reviewed year) can pay their share of the tax deficiencies by amending past returns. This is likely to be beneficial if the partner's tax liability is less than his or her share of the partnership's deficiency.
- The imputed underpayment paid by the partnership puts the economic burden of a prior year tax adjustment on the current partners of the partnership, regardless of whether the current partners are the same as the partners in the reviewed year. In order to help alleviate this disparity, the new rules provide an alternative procedure whereby the partnership can elect to furnish to each partner in the reviewed year a statement of the partner's share of the adjustment.



Observations

- Considering the level of authority that the designated representative may have in binding the partnership and all present and past partners, as well as the potential for new partners to carry the tax burden of changes arising in years in which they were not partners, partnerships should begin reviewing their partnership and LLC agreements with their counsel to determine what changes should be made to the agreements and what impact those changes will have.
- Because partnerships may elect to pass through all material adjustments to the reviewed-year partners so that those partners will bear the economic burden of the adjustment, partnership, LLC agreements need to be reviewed to consider who controls the election to pass through such adjustments. Remember that the overall tax burden is likely to be lower if the election is made, because not all partners may be in the highest tax bracket and some adjustments may be subject to favorable lower rates. Note that if the adjustment results in an overpayment, the "push-out" option is not available, but rather the adjustment is reflected in the current year. Accordingly, current partners may be allocated deductions for a time in which they were not partners in the partnership.
- Partnerships need to consider the impact of the new rules on merger and acquisition activity because without special elections, the partnership is responsible for any underpayment of tax. Any acquisition agreements will need to address this potential liability and the related accounting.
- Partnerships are flow-through entities, so the uncertain tax position accounting provisions under ASC 740 have historically been inapplicable because there is no federal income tax assessed at the entity level. Now that partnerships are responsible for audit adjustments at the entity level, partnerships need to review the implications of ASC 740 and any other generally accepted accounting principles.

Affordable Care Act – It's the Law

Despite multiple attempts by a Republican-controlled Congress to repeal the Affordable Care Act, it remains the law. As a result, companies need to address its demands. Fortunately, PATHA made some welcomed amendments.

Overview of ACA Reporting Requirements

Although 2015 has come and gone, you may still be in the process of completing the ACA reporting and disclosure requirements. And the good news is that Notice 2016-4 extended the deadlines (see below for more details).

Generally, all employers that employed an average of at least 50 full-time employees (FTE), including full-time employee equivalents (FTEE), on business days during the preceding calendar year are considered "applicable large employers" (ALEs) and are subject to the reporting requirements. Employees of certain affiliated employers, including those that are part of a controlled group or an affiliated service group, are aggregated for purposes of determining whether the employer is an ALE.

An FTE is any employee who works 30 or more hours per week. Solely for purposes of determining whether an employer is an ALE, the hours of employees who work less than 30 hours per week are aggregated to calculate full-time equivalent employees.

ALEs are required to file the following two forms each calendar year:

- Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, and
- Form 1095-C, Employer-Provided Health Insurance Offer and Coverage.

Form 1095-C is provided to each FTE and reports information about the health insurance coverage offered to the employee, if any, and whether any safe harbors or other relief were available to the employer. Form 1094-C serves as a transmittal form to the IRS for the Form 1095-C. These forms are the ACA equivalent of providing W-2s or 1099s, where reporting is done to both the individual and the IRS.

Employers, regardless of size, that offer self-insured health coverage are also subject to reporting requirements. If the employer is also an ALE, it files Forms 1094-C and 1095-C. Otherwise, the employer files on Form 1094-B, Transmittal of Health Coverage Information Returns, and Form 1095-B, Health Coverage. Employers that offer self-insured health coverage must also provide the name and Social Security Number of every individual covered under the self-insured plan, by month, including dependents of the employee.

The filing deadline for the 2015 forms recently received an extension. The 2015 Forms 1095-B and 1095-C, which were originally to be provided to affected individuals by February 1, 2016, now must be provided no later than March 31, 2016. The 2015 Forms 1094-B and 1095-B, and the 2015 Forms 1094-C and 1095-C reports must be submitted to the IRS no later than May 31, 2016 (or electronically, by June 30, 2016).

'Cadillac Plan' Tax Delayed

Another provision of the Affordable Care Act established a 40 percent nondeductible excise tax imposed on health coverage providers to the extent that the aggregate value of the employer-sponsored health coverage for an employee exceeds a threshold amount (Code Sec. 49801). For insured plans, the insurer pays the tax, but for self-insured plans the entity that "administers the plan benefits" will pay the tax.

The tax is equal to 40 percent of the excess benefit, which is the excess of the coverage cost over $10,200 for self-only coverage and $27,500 for coverage other than self-only coverage, both multiplied by the health care adjustment percentage (meant to adjust for the change in cost of health care coverage between 2010 and the date the tax is implemented). Employer-specific adjustments for age and gender, and adjustments for retirees not subject to Medicare and those in high-risk professions are also considered.

Originally scheduled to take effect in 2018, the year-end omnibus spending package delayed the excise tax until 2020. The excise tax was nondeductible; however, another taxpayer-friendly amendment makes the Cadillac tax deductible.

Medical Device Tax Suspended for Two Years

Designed as a revenue generator to help pay for other provisions of the Affordable Care Act, a 2.3 percent excise tax has been imposed on the sale of certain medical devices by the manufacturer or importer of the device since 2012. PATHA suspends the tax for sales between January 1, 2016, and December 31, 2017.

Tax Tables

2016 Tax Brackets	
If taxable income is:	**Then income tax equals:**
Single (S)	
Not over $9,275	10% of taxable income
Over $9,275 but not over $37,650	$927.50 + 15% of the excess over $9,275
Over $37,650 but not over $91,150	$5,183.75 + 25% of the excess over $37,650
Over $91,150 but not over $190,150	$18,558.75 + 28% of the excess over $91,150
Over $190,150 but not over $413,350	$46,278.75 + 33% of the excess over $190,150
Over $413,350 but not over $415,050	$119,934.75 + 35% of the excess over $413,350
Over $415,050	$120,529.75 + 39.6% of the excess over $415,050
Married Filing Jointly (MFJ)	
Not over $18,550	10% of taxable income
Over $18,550 but not over $75,300	$1,855 + 15% of the excess over $18,550
Over $75,300 but not over $151,900	$10,367.50 + 25% of the excess over $75,300
Over $151,900 but not over $231,450	$29,517.50 + 28% of the excess over $151,900
Over $231,450 but not over $413,350	$51,791.50 + 33% of the excess over $231,450
Over $413,350 but not over $466,950	$111,818.50 + 35% of the excess over $413,350
Over $466,950	$130,578.50 + 39.6% of the excess over $466,950

Tax Tables

Other 2016 Tax Rates / Deduction Limitations	
Long-term Capital Gains / Qualified Dividends Rate	20% for taxpayers in 39.6% bracket 15% for taxpayers in 25%, 28%, 33% or 35% brackets 0% for taxpayers in 10% or 15% brackets
Overall Limitation on Itemized Deductions	Itemized deductions reduced by lesser of: 3% of the amount of AGI in excess of $311,300 MFJ ($259,400 S) or 80% of allowable itemized deductions
Phase-out of Personal Exemptions	Reduced by 2% for each $2,500 or fraction thereof in excess of $311,300 MFJ ($259,400 S)
Maximum Estate/Gift Tax Rate	40%

Other Important Indexed Amounts For 2016	
Section 179 Expensing Limit	$500,000
Section 179 Investment Threshold	$2,010,000
Bonus Depreciation Percentage	50%
Personal Exemption	$4,050
Individual AMT Exemption (MFJ)	$83,800
Individual AMT Exemption (S)	$53,900
Social Security Wage Base Limit	$118,500
Lifetime Gift / Estate Exclusion	$5,450,000
Annual Gift Exclusion	$14,000
Foreign Earned Income Exclusion	$101,300
Standard Business Mileage Rate	$0.54/mile

Qualified Retirement Plan Amounts For 2016	
IRA Contribution Limitation	$5,500
IRA Age 50 "Catch Up" Contribution Limitation	$1,000
Section 401(k) Elective Deferral Limitation	$18,000
401(k) Age 50 "Catch Up" Deferral Limitation	$6,000
Section 408 SIMPLE Elective Deferral Limitation	$12,500
SIMPLE Age 50 "Catch Up" Deferral Limitation	$3,000
Section 415 Limit for Defined Contribution Plans	$53,000
Section 415 Limit for Defined Benefit Plans	$210,000
Section 404 Annual Compensation Limitation	$265,000

CBIZ MHM, LLC

Our business is growing yours

www.cbiz.com/tax