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2017 Tax Cuts and Jobs Act: Impact on U.S. Real Estate Businesses

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The new tax act signed into law on December 22, 2017, popularly known as the Tax Cuts and Jobs Act ("TCJA"), affects U.S. real estate businesses in significant ways. For example, under the TCJA:

- **Changes in Tax Rates:** Tax rates are permanently reduced on businesses conducted by taxable corporations ("C Corporations") and are temporarily reduced (at varying rates) on individuals who own businesses through flow-through entities (including partnerships, REITs, S corporations, limited liability companies that are taxed as partnerships or disregarded entities, and sole proprietorships) ("Pass-Through Businesses");
- **New Deduction for Pass-Through Businesses:** A new temporary 20% deduction is provided for qualified income of qualified Pass-Through Businesses;
- **New Limits on Interest Deductions (Elective for Real Estate Businesses):** New limitations on interest deductions are imposed (both on C Corporations and Pass-Through Businesses), with an exemption for electing real estate businesses (with consequential effects on depreciation deductions);
- **Depreciation Expensing Rules for Qualifying New or Used Property—with Drafting Glitch:** 100% expensing deductions are provided for taxpayers that acquire and place in service qualifying property—whether the property is new or used—between September 28, 2017 and December 31, 2022, with annual 20% step-downs generally from 2023-2026, but an apparent oversight in the legislative drafting creates uncertainty as to the appropriate depreciation period for qualified interior improvements to nonresidential real property

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