Parker's Guide to TCJA – Provisions Affecting Businesses

Quick Reference

Note: Unless otherwise noted, Tax Cuts and Jobs Act of 2017 (TCJA) provisions discussed in this quick reference guide are effective for tax years beginning after December 31, 2017.

Bonus Depreciation

Item	TCJA Provision
Increased Bonus Percentages	• Allows taxpayers to fully and immediately expense 100 percent of the cost of qualified property placed in service after September 27, 2017, in taxable years ending after such date (and the cost of specified plants planted or grafted after such date) and before January 1, 2023 (with an additional year for certain qualified property with a longer production period). • For property placed in service after December 31, 2022, the Senate Bill phases out bonus depreciation by applying annually declining bonus percentages of 80 percent, 60 percent, 40 percent, and 20 percent (all percentages are available for one additional year for longer production period property with a longer production period).
Qualifying Property	• Expands the definition of qualified property by removing the requirement that the original use of qualified property must commence with the taxpayer (i.e., allows the additional first-year depreciation deduction for new and used qualified property). • Expands the definition of qualified property to include qualified film, television, and live theatric al productions for which a deduction otherwise would have been allowable under Code Sec. 181 without regard to the dollar limitation or termination of such section. • Excludes from the definition of qualified property any property which is: (1) primarily used in the trade or business of certain regulated public utilities and electric cooperatives; or (2) used in a trade or business that has had floor plan financing indebtedness and that elects under the business interest limitation to deduct the interest on such debt.
Increase in Section 280F Limitation	• Maintains the increase in the limitation on the depreciation deduction allowed under Code Sec. 280F of \$8,000 for passenger automobiles placed in service after September 27, 2017 and before January 1, 2027. • Also maintains the Code Sec. 280F increase in the depreciation deduction limitation of \$8,000 for passenger automobiles placed in service before September 28, 2017, effectively repealing the phasing down of the increase under current law.
Acceleration of AMT Credits in Lieu of Bonus Depreciation	Repeals the election to accelerate AMT credits in lieu of bonus depreciation as a conforming amendment to the repeal of AMT.
Decoupling from Percentage-of-Completion Method	Extends the special rule under the percentage-of-completion method for the allocation of bonus depreciation to a long-term contract for property placed in service before January 1, 2027 (January 1, 2028, in the case of longer production period property).
Transition Rule	For a taxpayer's first taxable year ending after September 27, 2017, the taxpayer may elect to apply a 50-percent allowance instead of the 100-percent allowance.

Section 179 Expensing

Item	TCJA Provision
Dollar Limitations	• Increases the maximum amount a taxpayer may expense under section 179 to \$1,000,000, and the phase-out threshold amount to \$2,500,000, for taxable years beginning after 2017.

Item	TCJA Provision
	• Indexes such amounts, as well as the $25,000 sport utility vehicle limitation, for inflation for taxable years beginning after 2018.
Qualified Property	Expands the definition of: • Section 179 property to include certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging; and • qualified real property to include any of the following improvements to nonresidential real property placed in service after the date such property was first placed in service: roofs; heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems.
Effective Date	Applies to property placed in service in taxable years beginning after December 31, 2017.

Other Provisions Relating to Cost Recovery

Item	TCJA Provision
MACRS Recovery Period for Real Property	Retains the MACRS recovery periods for nonresidential real and residential rental property of 39 and 27.5 years, respectively (i.e., omits a provision from the Senate Bill that would have shortened the recovery period to 25 years for both types of property).
ADS Recovery Period for Residential Rental Property	Shortens the alternative depreciation system (ADS) recovery period for residential rental property from 40 to 30 years. It also allows an electing real property trade or business to use the ADS recovery period in depreciating real and qualified improvement property.
Definitions Relating to Qualified Leasehold Improvements, Qualified Restaurant, and Qualified Retail Improvement Property	Eliminates the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property, and provides a general 15-year MACRS recovery period for qualified improvement property, and a 20-year ADS recovery period for such property.
Treatment of Certain Farm Property	• Shortens the MACRS recovery period from 7 to 5 years for any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) used in a farming business, the original use of which begins with the taxpayer and is placed in service after December 31, 2017. • Also repeals the required use of the 150-percent declining balance method for property used in a farming business (i.e., for 3-, 5-, 7-, and 10-year property). The 150-percent declining balance method will continue to apply to any 15-year or 20-year property used in the farming business to which the straight line method does not apply, or to property for which the taxpayer elects the use of the 150-percent declining balance method.
Use of Alternative Depreciation System for Electing Farming Businesses	Requires that the alternative depreciation system must be used for calculating depreciation on any property with a recovery period of 10 years or more which is held by an electing farming business.
Citrus Plants Lost by Reason of Casualty	Allows expensing of certain costs of replanting citrus plants lost by reason of casualty.
Amortization of Research and Experimental Expenditures	• Certain research or experimental expenditures would be required to be capitalized and amortized over a 5-year period (15 years in the case of expenditures attributable to research conducted outside the United States). • Applies on a cutoff basis to research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2021 (hence there is no adjustment under Code Sec. 481(a) for research or experimental expenditures paid or incurred in taxable years beginning before January 1, 2022).

Entertainment, Meals, and Fringe Benefit Deductions

Item	TCJA Provision
Entertainment Expenses	• Disallows deduction for expenses associated with entertainment activities, membership dues, and facilities associated with any of these. • Disallows a deduction for expenses associated with providing any qualified transportation fringe to employees of the taxpayer, and except as necessary for ensuring the safety of an employee, any expense incurred for providing transportation (or any payment or reimbursement) for commuting between the employee's residence and place of employment. • Taxpayers may still generally deduct 50 percent of the food and beverage expenses associated with operating their trade or business (e.g., meals consumed by employees on work travel).
Meal Expenses	• Disallows deduction for expenses associated with entertainment meals. • Applies 50-percent deduction limitation to expenses associated with providing meals for the convenience of the employer on the employer's business premises, or on or near the employer's business premises through certain employer-operated eating facilities; further expands deduction disallowance to 100 percent after December 31, 2025.
Transportation and Parking Expenses	• Repeals deduction for expenses associated with providing employees with qualified transportation and parking benefits. • Disallows deduction for expenses of employer-paid or employer-provided commuting except as necessary for ensuring the employee's safety.
Other Benefit Expenses	No deduction is allowed with respect to: • an activity generally considered to be entertainment, amusement or recreation, • membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, or • a facility or portion thereof used in connection with any of the above items.

Interest Deduction Rules

Item	TCJA Provision
General Rules	• Limits interest deduction to the sum of (i) the business interest income of the taxpayer for the taxable year, (ii) 30 percent of the adjusted taxable income of the taxpayer for the taxable year, and (iii) the floor plan financing interest of the taxpayer for the taxable year. • Defines adjusted taxable income by starting with taxable income without regard to non-business items, interest, NOLs, the Code Sec. 199A deduction for qualified business income, depreciation, amortization, or depletion (or taxable years beginning after December 31, 2017 and before January 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization, or depletion).
Application to Pass-Through Entities	• For partnerships, the limitation is applied at the partnership level. • Requires a partner in a partnership to ignore the partner's distributive share of all items of income, gain, deduction, or loss of the partnership when calculating adjusted taxable income. • Increases a partner's interest limitation to reflect the partner's distributive share of the amount by which the partnership's limitation amount exceeds the partnership's business interest. • Similar rules also apply to a shareholder in an S corporation.
Carryforward of Disallowed Business Interest	Permits disallowed interest deductions to be carried forward indefinitely, subject to certain restrictions applicable to partnerships, described in above discussion of "Application to Pass-Through Entities."

Item	TCJA Provision
Exceptions	• Exempts the following categories of taxpayers from the interest limitation: (1) any taxpayer that meets the $25 million gross receipts test of Code Sec. 448(c); and (2) certain regulated public utilities and electric cooperatives. • Permits a real property trade or business (as defined in Code Sec. 469(c)(7)(C)) to elect to be exempt from the interest limitation (but requires businesses so electing to use ADS to depreciate any of its nonresidential real property, residential rental property, and qualified improvement property). • Permits a farming business (as defined in Code Sec. 263A(e)(4)), as well as any business engaged in the trade or business of a specified agricultural or horticultural cooperative (as defined in new Code Sec. 199A(g)(2)), to elect to be exempt from the interest limitation.

Other Deductions

Item	TCJA Provision
Domestic Activities Production Deduction	Generally repeals the deduction for income attributable to domestic production activities, effective for tax years beginning after December 31, 2017.
Deductibility of Penalties and Fines	Denies deductibility for any otherwise deductible amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or specified nongovernmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. The proposal would generally be effective for amounts paid or incurred after the December 22, 2017.
Settlements Paid in Connection with Sexual Harassment or Sexual Abuse	Provides that no deduction is allowed for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement. The proposal is effective for amounts paid or incurred after December 22, 2017.
Local Lobbying Expenses	Repeals deduction for local lobbying expenses. Effective for amounts paid or incurred after December 22, 2017.
FDIC Premiums	Limits deduction for FDIC premiums.

Property Transactions

Item	TCJA Provision
Limits on Like-Kind Exchanges	Limits like-kind exchanges to real property not held primarily for sale.
Certain Self-Created Property Not Treated as a Capital Asset	Gain or loss from the disposition of a self-created patent, invention, model or design (whether or not patented), or secret formula or process would be ordinary in character, making such treatment consistent with the treatment of copyrights under current law. The provision would be effective for dispositions of such property after 2017.
Rollover of Publicly Traded Securities Gain into an SSBIC	Repeals a special rule in Code Sec. 1202 that permits an individual or corporation to roll over without recognition of income any capital gain realized on the sale of publicly traded securities when the proceeds are used to purchase common stock or a partnership interest in a specialized small business investment corporation (SSBIC) within 60 days of the sale of the securities.
Gains in Connection with Performance of Investment Services (Carried Interest Rules)	Provides for the recharacterization of certain gains in the case of partnership profits interests held in connection with the performance of investment services. Partnership profits interest must be held for three years or more for long-term capital gains rates to apply.

Accounting Methods

Item	TCJA Provision
Expanded Use of the Cash Method of Accounting	The $5 million gross receipts threshold that limits which corporations and partnerships with a corporate partner can use the cash method of accounting would be increased to $25 million and the requirement that such businesses satisfy the requirement for all prior years would be repealed. The $25 million amount is indexed for inflation beginning after 2018.
Use of Cash Method by Family Farming Corporations	Expands the universe of farming C corporations (and farming partnerships with a C corporation partner) that may use the cash method to include any farming C corporation (or farming partnership with a C corporation partner) that meets the $25 million gross receipts test.
Accounting for Inventories	Exempts businesses with average gross receipts of $25 million or less from having to account for inventories. Thus, such businesses would be permitted to use the cash method of accounting even if the business has inventories. Under the cash method of accounting, a business may account for inventories as non-incidental materials and supplies. Under the Bill, a business with inventories that qualifies for and uses the cash method of accounting would be able to account for its inventories using its method of accounting reflected on its financial statements or its books and records.
UNICAP Exemption Expanded	Expands the exception for small taxpayers who are exempt from the uniform capitalization rules. Under the provision, any producer or reseller that meets the $25 million gross receipts test is exempted from the application of the uniform capitalization rules.
Accounting for Long-Term Contracts	Increases the $10 million average gross receipts exception to using the percentage-of-completion method to $25 million. Businesses that meet the increased average gross receipts test would be permitted to use the completed-contract method (or any other permissible exempt contract method).
Rules Relating to Taxable Year for Income Inclusion	• Revises the rules associated with the recognition of income. Specifically, the proposal requires a taxpayer subject to the all events test for an item of gross income to recognize such income no later than the taxable year in which such income is taken into account as income on an applicable financial statement or another financial statement under rules specified by the Secretary, but provides an exception for long-term contract income to which Code Sec. 460 applies. • The proposal also codifies the current deferral method of accounting for advance payments for goods and services provided by the IRS under Rev. Proc. 2004-34. That is, the proposal allows taxpayers to defer the inclusion of income associated with certain advance payments to the end of the tax year following the tax year of receipt if such income also is deferred for financial statement purposes. • In addition, the proposal directs taxpayers to apply the revenue recognition rules under Code Sec. 451 before applying the OID rules under Code Sec. 1272. • In the case of any taxpayer required by this proposal to change its method of accounting for its first taxable year beginning after December 31, 2017, such change is treated as initiated by the taxpayer and made with the consent of the Secretary. • The proposal would apply to taxable years beginning after December 31, 2017, and application of these rules would be a change in the taxpayer's method of accounting for purposes of Code Sec. 481.

Corporate Taxation

Item	TCJA Provision
Reduction in Corporate Tax Rate	Provides that, instead of the current graduated corporate tax rates, corporations would be subject to a flat 20-percent tax rate for tax years beginning after December 31, 2017. Personal service corporations are taxed at the same rate as other corporations

Item	TCJA Provision
Reduction in Dividends Received Deduction	Provides that the 80-percent dividends received deduction would be reduced to a 65 percent deduction and the 70-percent dividends received deduction would be reduced to a 50 percent deduction.
Corporate Alternative Minimum Tax (AMT)	• Repeals the corporate AMT • Provides that the AMT credit is refundable for any taxable year beginning after 2018 and before 2023 in an amount equal to 50 percent (100 percent in the case of taxable years beginning in 2022) of the excess of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability. Thus, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2023.
Net Operating Loss Limitations	• Limits the NOL deduction with respect to losses arising in taxable years after December 31, 2017, to 80 percent of taxable income. • Allows a two-year carryback in the case of certain disaster losses incurred in the trade or business of farming. • Provides a special rule for the NOLs of property and casualty insurance companies, which may be carried back two years and carried over 20 years to offset 100 percent of taxable income in such years. • Reforms net operating loss rules for life insurance companies (follows House provision).
Treatment of Capital Contributions	Retains Code Sec. 118, a provision the House Bill had sought to repeal, but provides that the term “contributions to capital” does not include: (1) any contribution in aid of construction or any other contribution as a customer or potential customer, and (2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such). Code Sec. 118 continues to apply only to corporations. The provision applies to contributions made after the December 22, 2017.
Limitation on Excessive Employee Remuneration	Repeals the exceptions to the $1 million deduction limitation for commissions and performance-based compensation for a covered employee of a publicly traded corporation. The provision also would revise the definition of “covered employee” to include the CEO, the chief financial officer, and the three other highest paid employees, realigning the definition with current SEC disclosure rules. Under the modified definition, once an employee qualifies as a covered person, the deduction limitation would apply for federal tax purposes to that person so long as the corporation pays remuneration to such person (or to any beneficiaries). A transition rule applies to remuneration which is provided pursuant to a written binding contract which was in effect on November 2, 2017, and which was not modified in any material respect on or after such date.
Treatment of Qualified Equity Grants	Allows a qualified employee to elect to defer, for income tax purposes, the inclusion in income of the amount of income attributable to qualified stock transferred to the employee by the employer. Under the election, the income must be included in the employee’s income for the taxable year that includes the earliest of (1) the first date the qualified stock becomes transferable, including, solely for this purpose, transferable to the employer; (2) the date the employee first becomes an excluded employee (as described below); (3) the first date on which any stock of the employer becomes readily tradable on an established securities market; (4) the date five years after the first date the employee’s right to the stock becomes substantially vested; or (5) the date on which the employee revokes her inclusion deferral election.

Passthrough Entities and ESBTs

Item	TCJA Provision
Modification of Definition of Substantial Built-in Loss on Transfers of a Partnership Interest	Modifies the definition of a substantial built-in loss to provide that such a loss exists upon the transfer of a partnership interest if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the partnership of all the partnership’s assets in a fully taxable transaction for cash equal to the assets’ fair market value, immediately after the transfer of the partnership interest.

Item	TCJA Provision
S Corporation to C Corporation Conversions	Modifies treatment of S corporation conversions into C corporations by allowing the corporation to include in income over a six-year period (rather than a four-year period) adjustments necessary under Code Sec. 481 in order to prevent amounts from being duplicated or omitted, effective on December 22, 2017.
Technical Terminations of Partnerships	• Repeals the technical termination rule in Code Sec. 708(b)(1)(B), applicable to partnerships in certain situations. Thus, the partnership would be treated as continuing even if more than 50 percent of the total capital and profits interests of the partnership are sold or exchanged, and new elections would not be required or permitted. • The provision does not change the present-law rule of Code Sec. 708(b)(1)(A) that a partnership is considered as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.
Charitable Contributions and Foreign Taxes Taken into Account in Determining Limitation on Allowance of Partner's Share of Loss	Modifies the basis limitation on partner losses to provide that a partner's distributive share of items that are not deductible in computing the partnership's taxable income, and not properly chargeable to capital account, are allowed only to the extent of the partner's adjusted basis in its partnership interest at the end of the partnership taxable year in which the expenditure occurs. Thus, the basis limitation on partner losses applies to a partner's distributive share of charitable contributions and foreign taxes.
Excise Tax on Excess Tax-Exempt Organization Executive Compensation	Tax-exempt organizations are subject to a 21-percent excise tax on the sum of: (1) the remuneration (other than an excess parachute payment) in excess of $1 million paid to a covered employee; and (2) any excess parachute payment (under a new definition for this purpose that relates solely to separation pay) paid by the applicable tax-exempt organization to a covered employee. Accordingly, the excise tax applies as a result of an excess parachute payment, even if the covered employee's remuneration does not exceed $1 million. Remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration. In addition, the definition of remuneration includes amounts required to be included in gross income under Code Sec. 457(f).
Qualifying ESBT Beneficiaries	Allows a nonresident alien individual to be a potential current beneficiary of an electing small business trust (ESBT).
Charitable Contribution Deduction for ESBTs	Provides that the charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts but rather by the rules applicable to individuals. Thus, the percentage limitations and carryforward provisions applicable to individuals apply to charitable contributions made by the portion of an ESBT holding S corporation stock.

Tax Credits

Item	TCJA Provision
Rehabilitation Tax Credit	Repeals the 10-percent credit for pre-1936 buildings; retains the 20-percent credit for qualified rehabilitation expenditures with respect to a certified historic structure, allowable ratably over a five-year period starting with the year the qualified rehabilitated building is placed in service.
Orphan Drug Credit	Reduces orphan drug credit rate to 25 percent.
Employer Credit for Paid Family and Medical Leave	For tax years beginning in 2018 and 2019, allows eligible employers to claim a general business credit equal to 12.5 percent of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave (FMLA) if the rate of payment under the program is 50 percent of the wages normally paid to an employee. The credit would be increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent.

Miscellaneous Provisions

Item	TCJA Provision
Repeal of Advance Refunding Bonds	Repeals the exclusion from gross income for interest on a bond issued to advance refund another bond.
Qualified Opportunity Zones	Provides for the temporary deferral of inclusion in gross income for capital gains reinvested in a qualified opportunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund, effective December 22, 2017 through December 31, 2026.
UBTI Increased by Certain Fringe Expenses	Unrelated business taxable income includes any expenses paid or incurred by a tax exempt organization for qualified transportation fringe benefits, a parking facility used in connection with qualified parking, or any on-premises athletic facility, provided such amounts are not deductible under Code Sec. 274.
Excise Tax on Excess Tax-Exempt Organization Executive Compensation	Tax-exempt organizations are subject to a 21-percent excise tax on the sum of: (1) the remuneration (other than an excess parachute payment) in excess of $1 million paid to a covered employee; and (2) any excess parachute payment (under a new definition for this purpose that relates solely to separation pay) paid by the applicable tax-exempt organization to a covered employee. Accordingly, the excise tax applies as a result of an excess parachute payment, even if the covered employee's remuneration does not exceed $1 million. Remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration. In addition, the definition of remuneration includes amounts required to be included in gross income under Code Sec. 457(f).

Foreign-Related Changes

Item	TCJA Provision
All	TCJA's foreign-related provisions are beyond the scope of this quick reference guide. For a discussion of these provisions, see the December 26, 2017 issue of Parker's Federal Tax Bulletin.

Related Materials on TCJA

- Parker's in-depth explanation of TCJA – Parker's Federal Tax Bulletin, Issue 160 (December 26, 2017)
- Sample client letter explaining TCJA's provisions affecting individuals – Parker Tax ¶ 320,125.
- Sample client letter explaining TCJA's provisions affecting businesses – Parker Tax ¶ 320,124.
- Quick reference guide – TCJA Provisions Affecting Individuals – Parker Tax ¶ 360,005.
- Quick reference guide – TCJA Deduction for Qualified Business Income – Parker Tax ¶ 360,007.
- Quick reference guide – Comparison of the House, Senate, and Conference Committee Bills – Parker Tax ¶ 360,140.
- Legislative text of the Tax Cuts and Jobs Acts of 2017 (Pub. L. 115-97) – Parker's Federal Tax Legislation database.