

Tax Cuts and Jobs Act: Impact for Real Estate, Vol. 5



ARTICLE 03.12.18 DEAN DORTON

The fifth and final installment is somewhat of a smorgasbord of information that is relevant to the real estate industry, but not as tax law intensive as our previous installments.

Like-kind exchanges

Previously, taxpayers could elect to defer gains on the sale of assets used in a trade or business by making a qualified like-kind exchange (LKE), and following specific guidelines issued by the IRS. After December 31, 2017, LKEs are limited to real property not held primarily for sale, and tangible personal property no longer qualifies. While this seems like great news for those in real estate, it may add levels of complexity related to transactions in which there were previous cost segregations that pulled out tangible personal property from the purchase or construction of a building. Buyers and sellers may consider allocation of purchase price to interior items more closely, as it is possible there may be assets included in the sale that do not qualify for a like-kind exchange.

Rehabilitation credit

Under prior law, there was a 20% credit for qualified expenses to certified historic structures or structures in certified historic district, and a 10% credit for expenses related to a qualified rehabilitated building, subject to specific rules and reporting requirements.

Under the new Tax Cuts and Jobs Act, for amounts paid and incurred after December 31, 2017, the 10% credit is repealed, and the 20% credit is only eligible for certified historic structures. There is a transition rule for buildings that were owned prior to January 1, 2018 that may have qualified under the old law.

Qualified opportunity fund deferral of income

A new gain deferral was created by the new Act. Effective December 22, 2017, there is a temporary deferral from inclusion in income for gains that are reinvested in a "qualified opportunity fund" (QOF), and a **permanent** exclusion of gains on the sale of an investment in a QOF.

A qualified opportunity fund is an investment created for the purpose of investing in qualified opportunity zone property, and at least 90% of the assets in the fund is qualified opportunity zone property.

The Act designates certain low-income community population census tracts as qualified opportunity zones. Once designated, it remains in effect until the end of the tenth calendar year beginning on or after designation. A list of the census tract zones is located at https://www.huduser.gov/portal/sadda/sadda_qct.html.

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