THE SUN IS SETTING ON THE T.C.J.A.: TIME TO SET GAZE ON PRE-T.C.J.A. TAX LAW

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INTRODUCTION

In the realm of taxation, keeping abreast of changes can make a significant difference in how companies and individuals manage their finances. The Tax Cuts and Jobs Act ("T.C.J.A."), passed in 2017, brought substantial alterations to the tax landscape. Many of the amendments introduced by the T.C.J.A. are set to expire or change at the end of 2025. Understanding these changes, including their implications and timelines, is crucial for taxpayers. This article will discuss many of the "sunsetting" provisions and the potential impact on taxpayers.

INDIVIDUAL TAX

Individual Tax Rates

The T.C.J.A. reduced marginal rates for most individual tax brackets. Notably, the highest rate was reduced from 39.6% to 37%. However, beginning in 2026, the rates are slated to revert to their pre-T.C.J.A. levels.

Below is a breakdown of the tax rates for single filers in 2024 compared to the projected 2026 rates:

Taxable Income (2024, single filers)	2018-2025 T.C.J.A. Rate	2026 Post-T.C.J.A. Rate
$0 to $11,600	10%	10%
$11,600 to $47,150	12%	15%
$47,151 to $100,525	22%	25%
$100,526 to $191,950	24%	28%
$191,951 to $243,725	32%	33%
$243,726 to $609,350	35%	35%
$609,351 or more	37%	39.6%

Standard Deduction and Personal Exemption

The T.C.J.A. essentially doubled the standard deduction for individuals, while simultaneously eliminating the personal exemption.[1] The standard deduction for 2024 amounts to $14,600 for single filers and $29,200 for a married couple filing jointly.

In 2026, the standard deduction will return to its pre-T.C.J.A. level of $6,500 adjusted for inflation. Meanwhile, the personal exemption will also return to its pre-T.C.J.A. level of $4,150 adjusted for inflation.

Itemized Deductions

The T.C.J.A. introduced significant changes to itemized deductions prompting many taxpayers to reassess their tax strategies. The sunset of the T.C.J.A. provisions in 2026 will both undo and reintroduce certain limitations, requiring a more detailed analysis to determine whether to accelerate or delay the timing of deductions before the legislative changes take effect.

Overall Limitation on Itemized Deductions

The T.C.J.A. removed the overall limitation on itemized deductions.[2] However, in 2026, the limitation is poised to be reinstated. For taxpayers whose adjusted gross income ("A.G.I.") exceeds certain thresholds, the amount of itemized deductions will be reduced by the lessor of 3% of the amount by which their A.G.I. exceeds the threshold or 80% of the total amount of itemized deductions otherwise allowable.[3] Itemized deductions exempt from this limitation include those for medical and dental expenses, investment interest, charitable contributions, casualty and theft losses, and wagering losses.[4]

S.A.L.T. Deduction

A limitation introduced by the T.C.J.A. that has attracted considerable attention in recent years is the State and Local Tax ("S.A.L.T.") deduction. The T.C.J.A. placed a $10,000 limit on the deduction for state and local income tax, sales tax paid in lieu of income tax, and property tax for taxpayers claiming itemized deductions.[5] The $10,000 cap is set to expire in 2026. Individuals should remember that an unlimited S.A.L.T. deduction could trigger an alternative minimum tax ("A.M.T.") for certain taxpayers. The minimum tax is designed to prevent taxpayers claiming many itemized deductions from escaping tax altogether. In principle, the A.M.T. imposes a lower rate of tax on a broader base of income.

Most states have enacted legislation aimed at assisting taxpayers with interests in pass-through entities to navigate the S.A.L.T. limit. However, in many of these states, these beneficial provisions are set to expire once the S.A.L.T. cap sunsets. Taxpayers residing in states that continue to offer pass-through entity benefits may find it prudent to consider utilizing such provisions, particularly concerning net investment and alternative minimum taxes, federal limitations on itemized deductions,

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1 Code §§63(c)(7) and 151(d)(5).

2 Code §68(f).

3 Code §68(a).

4 Code §68(d).

5 Code §164(b)(6).

nonresident individual filing obligations, and the availability of nonrefundable pass-through entity credits.

Miscellaneous Itemized Deductions

The T.C.J.A. eliminated the deduction for miscellaneous itemized deductions.[6] Miscellaneous expenses generally include fees for accounting and legal services, investment expenses, hobby-related costs, and unreimbursed employee expenses.[7] This provision is set to expire at the end of 2025. As a result, taxpayers who itemize deductions will regain the ability to deduct miscellaneous expenses, provided that these expenses collectively exceed 2% of A.G.I.

Mortgage Interest Deduction

The T.C.J.A. implemented two reductions in the amount of deductible mortgage interest expense:

- For new loans incurred after December 15, 2017, deductible interest is allowed on the first $750,000 of mortgage debt, which was reduced from $1 million.
- The deduction for interest payments made on new or existing home equity debt is disallowed if the debt is used for purposes unrelated to the property securing the loan.[8]

Beginning in 2026, taxpayers who itemize their deductions may deduct interest on the first $1 million of mortgage debt, along with home equity loan interest up to $100,000, regardless of how the loan proceeds are utilized.

Charitable Contribution Deduction

The T.C.J.A. raised the A.G.I. limit for cash donations made to public charities from 50% to 60%.[9] However, this adjustment will revert back to 50% in 2026.

BUSINESS TAX

Corporate Tax Rate

The T.C.J.A. reduced the corporate tax rate from 35% to 21%. Unlike other changes, this adjustment to 21% lacked a sunset provision and remains in effect unless modified by new legislation. There has been ongoing discourse regarding a potential rate hike. President Biden's 2025 Budget Plan, known as the "Green Book," recently suggested raising the corporate tax rate to 28%. However, the likelihood of this proposal being enacted in the near term is particularly low due to the current political climate and a divided government.

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6 Code §67(g).

7 Code §67(b).

8 Code §163(h)(F).

9 Code §170(b)(1)(G).

Q.B.I. Deduction

The T.C.J.A. introduced a deduction for qualified business income ("Q.B.I") earned through a pass-through entity.[10] The deduction is equal to 20% of Q.B.I.

The Q.B.I. deduction will expire in 2026.

Limitation on Losses for Noncorporate Taxpayers

For taxpayers other than C-corporations, there is a temporary disallowance of deductions in the current tax year for excess business losses.[11] Originally set through 2026 by the T.C.J.A., this disallowance was subsequently extended to 2028 by the Inflation Reduction Act. These losses are considered as a net operating loss carry-over to the subsequent year.

An excess business loss refers to the amount by which a taxpayer's total deductions related to a trade or and business surpass the combined total of gross income or gain from such activities plus $305,000 for single filers and $610,000 for a married couple filing jointly in 2024.

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Bonus Depreciation on Qualified Property

Bonus depreciation is an added first-year depreciation allowance for qualifying business property.[12]

Initially set at 100% for all qualifying purchases made between September 27, 2017, and December 31, 2022, bonus depreciation decreased to 80% in 2023 and 60% in 2024. It will continue to decrease in ensuing years: 40% in 2025, 20% in 2026, and eventually reaching 0% in 2027. Taxpayers will retain the option to claim accelerated depreciation on certain qualified property under Code §179.

On January 31, 2024, the House of Representatives voted 357 to 70 to approve H.R. 7024, the Tax Relief for American Families and Workers Act of 2024. The bill is now with the Senate for consideration. With the strong bipartisan support demonstrated in the House, taxpayers can remain optimistic that the Senate will also pass the bill.

H.R. 7024 would extend the 100% bonus depreciation for qualified property placed in service after December 31, 2022, and before January 1, 2026. The legislation would retain 20% bonus depreciation for property placed in service after December 31, 2025, and before January 1, 2027.

Business Interest Expense Deduction

The T.C.J.A. imposed a new limitation on the deduction for business interest expense.[13] This cap typically amounts to 30% of adjusted taxable income ("A.T.I."), which is calculated as taxable income before taking into account net interest expenses and various other adjustments. In tax years preceding 2022, the calculation

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[10] Code §199A. See also "Qualified Business Income - Are you Eligible for a 20% Deduction?" (*Insights* Vol. 5 No. 1) for a review of the Q.B.I. deduction.

[11] Code §461(l).

[12] Code §168(k).

[13] Code 163(j). See "Tax Cuts and Jobs Act Adopt Provisions to Prevent Base Erosion" (*Insights* Vol. 5 No. 1) for a review of the expansion of Code §163(j) by the T.C.J.A.

of A.T.I. involved adding back deductions for depreciation, amortization, and depletion, thereby increasing the allowable deduction for business interest expense. However, starting in 2022, these deductions were no longer added back into income, resulting in a reduction in the overall amount of interest expense deductions available to many businesses.

H.R. 7024 would extend the add-back of the deductions to tax years beginning after December 31, 2023, and tax years commencing after December 31, 2021, if elected, and before January 1, 2026.

R&E Expensing

The T.C.J.A. altered the deduction of research and experimental ("R&E") expenses, transitioning from immediate deduction to amortization. This change took effect with a delay, commencing in 2022.

H.R. 7024 would allow taxpayers to maintain immediate deductibility of R&E expenses incurred between 2022 and 2026.

International Corporate Regimes

As the countdown to 2026 draws near, the international trio of the T.C.J.A. – G.I.L.T.I., F.D.I.I., and B.E.A.T. – are all poised for change.

Beginning in 2026, the G.I.L.T.I. deduction that reduces taxable G.I.L.T.I. for corporations will be decreased from 50% to 37.5%, while the F.D.I.I. deduction for corporations will be decreased from 37.5% to 21.875%, leading to heightened effective tax rates for numerous U.S. corporations.[14] Additionally, the B.E.A.T. will rise from its current 10% tax rate to 12.5%.[15]

ESTATE TAX

The T.C.J.A. doubled the federal estate tax exemption from approximately $5.5 million in 2017 to $11.2 million in 2018 for individuals. The 2024 exemption is $13.61 million. However, the exemption is set to revert to pre-T.C.J.A. levels, adjusted for inflation.

Leading up to 2026, taxpayers may explore various strategies to capitalize on the higher exemption, such as gifting to family and friends, charitable giving, utilizing trusts, and planning for family business succession.

CONCLUSION

As the sun begins to set on the T.C.J.A., taxpayers must factor in various considerations when tax planning for the upcoming years. The forthcoming changes to individual, business, and estate taxes demand a clear understanding of the evolving landscape to make the most of opportunities and mitigate risks. What's more is that Congress may alter the changes expected to take effect in 2026, as evidenced by

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14 See "A New Tax Regime for C.F.C.'s: Who is G.I.L.T.I.?" (*Insights* Vol. 5 No. 1) for a review of the G.I.LT.I. and F.D.I.I. regimes.

15 See "B.E.A.T.-ing Base Erosion: U.S. Subjects Large Corporations to Anti-Abuse Tax" (*Insights* Vol. 5 No.) for a review of the B.E.A.T. regime.

H.R. 7024, leading to another layer of complexity to taxpayers' decision-making processes. Clearly, nothing is certain to derail the scheduled tax increases under the T.C.J.A. prior to the November elections. Depending on the results, nothing may happen after the November elections.