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Polish American Business Club

Business tax opportunities under Tax Cuts and Jobs Act
Presented by Phil Drudy, CPA, JD

American and Polish tax consequences for business investors Presented by Henry Rinder, CPA, CFE, ABV, CFF, CGMA

Corporate - TCJA Changes

- Flat Tax Rate for C-Corporation
- Business Deduction is Denied for Entertainment Expense

Accounting Method Changes

- For all entities with gross receipts under 25 million on average for the last 3 years.
  - Cash Method allowed, Including entities with inventory
  - Inventory does not need to on the completed contract method
  - UNICAP

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Bonus Depreciation

- Increases the bonus depreciation allowed to 100% of qualified property placed in service after September 27, 2017
- Phases down after 2022
- Qualified property now includes used property
  - Must be taxpayers original use

Non-Corporate Excessive Loss Limitation

- Excess business losses are not allowed for the tax year but are instead carried forward and treated as part of the taxpayer's net operating loss (NOL) carryforward in subsequent tax years.
- After the application of the passive loss rules.
- Excess Business loss is the amount over the aggregate gross income that exceeds the threshold amount.
  - Threshold amount is $500,000 for MFJ and 250,000 for other individuals
  - The aggregate gross income is at the partner or shareholder level.

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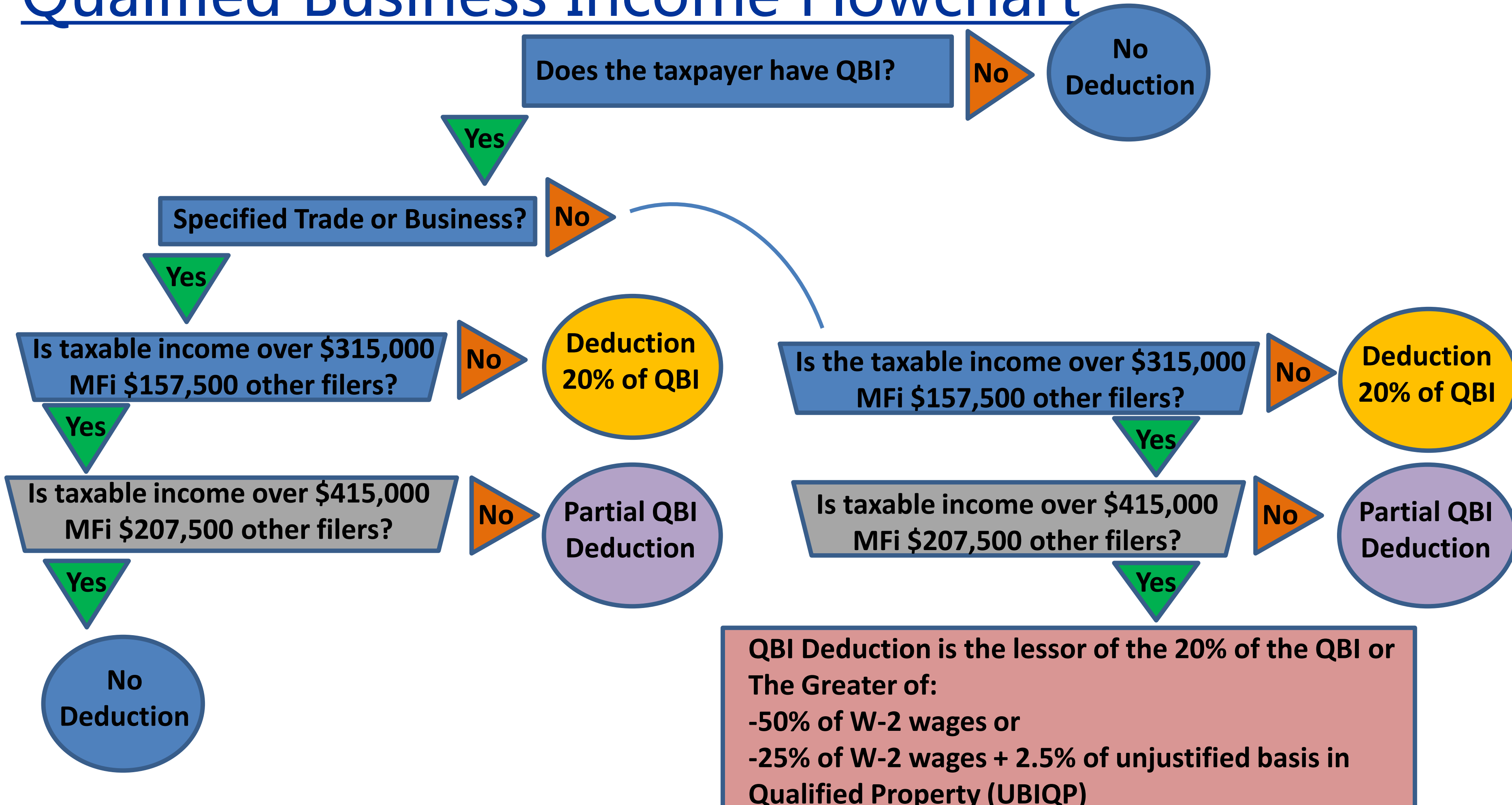
Qualified Business Income Flowchart



Business Interest Limitation

- Business Interest limited to 30% of adjusted taxable income
- Small Business excluded
- Adjusted taxable income is
  - EBITDA for next 4 years
  - Then EBIT
- Real Property Business can be excluded if they use the ADS system for depreciation

Choice of Entity Under the TCJA

- Business Expects to Incur Losses
- Business Distributes Profits to Owners
- Business Retains Profits to Finance Growth
- Business Pays Profits as Compensation and Benefits
- Business Holds Assets That Are Likely to Appreciate
- Exit Strategy

Individual- TCJA changes

- Income Tax Rates & Brackets
- Standard Deduction Increased
- AMT retained but phased out
- Mortgage Interest Deduction
- State and Local Tax Deduction
- Alimony

Nexus and Wayfair Case

- Nexus
  - Sales and Use tax
  - Income Tax
- Wayfair
  - Economic Nexus
    - $100,000 of sales or
    - 200 Transactions
    - NJ rule as of 11/1/ 2018

Modified Territorial System

In short, a territorial system only taxes income earned within a country's borders. This is in direct contrast to a worldwide system of taxation, which taxes all income regardless of where it's earned.

Territorial Taxation for C Corporations

- Domestic C corporation is allowed to deduct 100% of the foreign-source portion of any dividend received from its foreign subsidiary [IRC Sec. 245A(a)].
- Foreign subsidiary must meet the definition of a Specified 10% Owned Foreign Corporation (SFC), which is generally any foreign corporation
- The U.S. corporation must hold the SFC's stock for more than 365 days during a specified 731-day period [IRC Sec. 246(c)(5)].

One-time Deemed Repatriation Tax.

- Increasing the Subpart F income of (1) any CFC and (2) any foreign corporation that's owned by one or more U.S. corporate shareholders in the last tax year which begins before 1/1/18.
- The foreign corporation's Subpart F income must be increased by the greater of
  - the accumulated post-1986 earnings and profits of the corporation determined as of 11/2/17 or
  - the accumulated post-1986 earnings and profits determined as of 12/31/17 [IRC Sec. 965(a)].

Payment Over 8 Years

- Taxed at
  - 15.5% Cash Equivalents
  - 8% noncash assets
- Paid over 8 years
  - Years 1 thru 5- 8% of the net tax liability
  - Sixth year 15% of the net tax liability
  - Seventh year 20% of the net tax liability
  - Eight year 25% of the net tax liability

Individual Taxpayers Are Still Taxed on Their Worldwide Income

- US Citizens and residents continue to be taxed on worldwide income.
- Foreign tax credit rules still applies

Personal Income Tax in Poland

- Individuals residing in Poland pay Polish tax on their worldwide income.
- An individual is deemed a tax resident of Poland if his “vital interests” are located in Poland, or if he stays in Poland for more than 183 days in any calendar year; certain exclusions apply.
- Limited taxation on Polish source income applies to those individuals who are not domiciled in Poland.
- Income tax is payable on most sources of income, including cash and in-kind benefits. One exception is employer-provided housing costs, subject to limits.

Personal Income Tax in Poland

- Interest income from personal bank accounts and dividends are subject to a 19% tax.
- There are two income tax brackets: 18% up to PLN 85K, and 32% on the excess.
- Director Fees for nonresidents can be taxed at a reduced rate of 20%.
- In addition employees are responsible for up to 13.71% contribution to the national Social Security program that includes Pension, Disability, etc. subject to certain limitations
  - Employers are responsible for a match of up to 19.86%.
  - A US citizen and is a resident of Poland, and pays into Polish Social Security is exempt from US Social Security.

- A company is taxed as Polish if it has a registered business office or management in Poland.
- Resident companies pay corporate income tax on their worldwide income, including capital gains.
- Non-resident companies are taxed only on income and capital gains earned in Poland, subject to an applicable tax treaty, if any.
- A foreign partnership is subject to corporate income tax in Poland only if it is treated in its home country as an entity subject to corporate income tax. Otherwise, the income of its partners may be subject to taxation in Poland, as partnerships are deemed flow through entities.

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Corporate Income Tax

- Corporate Income Tax Rates
  - The corporate income tax rate is 19%.
  - A reduced rate of 15% is available to small business earning revenues under EUR 1.2MM
  - A reduced rate of 15% is also available for new startups in the first tax year in operation.
- Dividend income is generally taxed at 19%, unless otherwise provided in a treaty
  - Dividends received from US companies are taxed and withheld at 15%, if ownership is under 10% (Treaty)
  - Dividends received from US companies are taxed and withheld at 5%, if ownership is 10% or over (Treaty)
- US Royalties are taxed and withheld at 10% (Treaty), nontreaty countries are withheld at 20%

Questions ?!?!

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