TAX ACCOUNTING GROUP OF DUANE MORRIS LLP

YEAR-END TAX PLANNING GUIDE FOR 2017

Tax reform is here! On December 20, 2017, Congress passed the much-anticipated tax reform bill and with President Trump's signature on December 22, 2017, the bill has become law. With minor exceptions, the bill is largely effective January 1, 2018. This legislation achieves the largest changes to the tax code in a generation, and greatly modifies the income, estate, gift and generation-skipping taxes for individuals, businesses, estates and trusts.

As an annual physical exam is important for maintaining good physical health, an annual tax examination is important for maintaining good financial health, especially when changes are occurring. A little time invested in year-end tax planning can result in significant tax savings later.

In this **2017 Year-End Tax Planning Guide** prepared by The Tax Accounting Group (TAG) of Duane Morris, we walk you through the steps needed to assess your personal and business tax situation in light of the new law and identify actions needed before year-end to reduce your 2017 tax liability.

We recognize it is very late in the year but Congress did not exactly give us much time to plan (nor execute such plan). Nevertheless, there still may be time for you to take advantage of tax-savings strategies. However, if you are interested you will need to act quickly.

We hope you find this guide valuable, and invite you to consult with us regarding any of the topics covered or your own unique situation. For additional information, please contact Michael A. Gillen at 215.979.1635 or magillen@duanemorris.com, or the practitioner with whom you are in regular contact.

About the Tax Accounting Group (TAG)

TAG maintains one of the largest tax, accounting and litigation consulting groups within any law firm in the United Sates and has an active and diverse practice with over 60 services lines in more than 45 industries. To learn more about our service lines and industries served, please refer to our **Quick Reference Service Guide**.

TAG's certified public accountants, certified fraud examiners, financial consultants and advisors provide a broad range of cost-effective tax preparation, planning and consulting services as well as accounting, financial and management advisory services to individuals, corporations, partnerships, estates, trusts and nonprofit organizations. TAG also provides an array of litigation consulting services to lawyers and law firms representing clients in regulatory and transactional matters and throughout various stages of litigation.

As the entrusted advisor to our clients in nearly every state and 25 foreign countries, TAG continues to enjoy impressive growth, in large part because of our clients' continued expressions of confidence and referrals. Our one-of-a-kind platform allows us to deliver the flexibility, customization and specialization that assures our clients have the resources required to meet each of their unique needs, all with the convenience of a single-source provider.

Our service mission is to enthusiastically provide effective solutions that exceed client expectations. What allows us to fulfill our mission and maintain long-term client relationships is the passion, objectivity and deep experience of our talented professionals. Our senior staff has an average of over 19 years working together as a team within our group (with a few having more than 30 years on our platform). These professionals, who are intimately familiar with and take a personal interest in our clients' needs, work very hard to justify the trust placed in us.

About Duane Morris LLP

Duane Morris LLP, a law firm with more than 750 attorneys in offices across the United States and internationally, is asked by a broad array of clients to provide innovative solutions to today's legal and business challenges. Evolving from a partnership of prominent lawyers in Philadelphia a century ago, Duane Morris' modern organization stretches from the U.S. to Europe and the Middle East, and now across Asia. Throughout this global expansion, Duane Morris has remained committed to preserving its collegial, collaborative culture that has attracted many talented attorneys. The firm's leadership, and outside observers like the Harvard Business School, believe this culture is truly unique among large law firms, and helps account for the firm continuing to prosper throughout changing economic and industry conditions.

In addition to legal services, Duane Morris is a pioneer in establishing in-depth, non-legal services to complement and enhance the representation of our clients. The firm has independent affiliates employing approximately 100 professionals engaged in other disciplines, such as the tax, accounting and litigation consulting services offered by and through the Tax Accounting Group.

Introduction

Every year poses tax planning opportunities and challenges, whether due to actual or anticipated legislative changes or to changes or uncertainties in an individual's personal, financial and tax situations.

This year, at the top of everyone's mind is how tax reform will affect their current tax situation, both current and prospective. With provisions changing the income tax for individuals, businesses, tax-exempt organizations, estates and trusts, nearly all taxpayers will be affected. Some favorably. Some unfavorably. As this legislation represents the most sweeping changes to the tax code since 1986, you will find "86" year-end planning tips for your consideration. While many of the corporate changes are permanent, most of the individual provisions included in the new law are currently set to expire after 2025. As these tips are geared toward planning for 2017 and 2018, we have not addressed the "sunsetting" of these provisions in this guide, as determining what congressional action or inaction may be taken in the interim eight years seems imprudent.

For individuals, wholesale changes to the tax rate tables look to lower the tax rates for nearly everyone. To offset this reduction, many deductions are being repealed or reduced, including the new $10,000 limitation on state and local income, sales and use, and property taxes (which will have the greatest impact on taxpayers living in high tax states such as New York, New Jersey, California, Oregon, Vermont, Iowa, Minnesota and the District of Columbia), the lower indebtedness limitation on the mortgage interest deduction, and the elimination of other miscellaneous itemized deductions, including investment advisor fees and tax preparation fees. In addition, the impact of the Alternative Minimum Tax will be reduced due to larger exemptions and higher income phase-outs of these exemptions.

For businesses, the corporate tax rate will be lowered significantly from 35 percent to 21 percent. In a corresponding move, tax rates for certain pass-through income (*e.g.*, partnerships, S corporations, and sole proprietorships) will be reduced from the highest individual income tax levels by virtue of a deduction based on pass-through income. The new Act allows for a deduction of up to 20 percent of certain pass-through income, provided the income and ownership interest meet certain other criteria (discussed in depth at item 52). Additionally, the thresholds for accelerated and bonus depreciation will increase in 2018, allowing more businesses to immediately deduct a greater percentage of their purchases. Finally, the move to a territorial tax system will have large implications for businesses with international operations.

Certain tax provisions that first become effective in 2018 should be considered now, in 2017, in order to ensure that you take advantage of any tax savings opportunities available.

This guide provides tax planning strategies for corporate executives, businesses, individuals, nonprofit entities and trusts. We hope that this guide will help you leverage the tax benefits available to you or reinforce the tax savings strategies you may already have in place.

Since there will be a large reduction in the income tax rates coming in 2018, the traditional tried and true tax planning strategies of accelerating deductions and deferring income, in general, will continue to be an effective method of minimizing your tax obligation.

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Year-End Tax Planning Quick Reference Guide

For your convenience and easy reference, below is a quick reference guide of action steps that can help you reach your tax-minimization goals, as long as you act before the clock strikes midnight on January 1, 2018. Not all of the action steps will apply in your particular situation, but you will likely benefit from many of them. Consultation with tax advisors to develop and tailor a customized plan, and to focus on the specific actions that should be taken is paramount.

- With the tax reform legislation, new tax rate schedules will be in effect for 2018. In general, most individuals and businesses should expect to see a decrease in their effective tax rate from 2017 to 2018. Therefore, taxpayers would generally benefit from the tried and true year-end strategy of deferring income to 2018 and accelerating deductions into 2017. (See items 1 and 53 in the detailed planning section starting on page 14.)
- The deduction for business entertainment expenses will be eliminated in 2018. Consider prepaying entertainment expenses in December 2017 to utilize this deduction while it is still available. (See item 54.)
- Tax reform will change the amount of medical expenses, which are deductible as itemized deductions, back to pre-Affordable Care Act levels, to those expenses in excess of 7.5 percent of adjusted gross income (AGI) for 2017 and 2018. If your medical expenses are close to qualifying you for this deduction in 2017, prepay as many medical expenses (either via cash, checks dated before December 31, or credit card) in 2017 as possible. (See item 4.)
- Under the new law, the deduction of state and local taxes (income, sales, and property) is limited to the first $10,000 of taxes paid in 2018. Consider paying any state and local income or property taxes owed prior to December 31, 2017, assuming you do not expect to be subject to the alternative minimum tax (AMT) in 2017. (Subject to other limitations as well; see item 5.)
- The new law eliminates all miscellaneous itemized deductions, including tax preparation fees, investment advisory fees, and unreimbursed employee expenses. To the extent possible, be sure to pay any of the fees, which are coming due in the beginning of 2018, in late 2017. (See item 8.)
- Ensure that you are maximizing your retirement savings contributions in 2017 to reduce income in the current year, and to achieve tax-free growth. If you are self-employed, consider setting up a self-employed retirement plan before year-end. (See item 26.)
- Consider making 529 plan contributions for the education expenses of children and grandchildren prior to year-end. Many states offer deductions for such contributions, but certain rules apply. (See item 22.)
- If you have any capital gains or losses from sales of stock or other capital assets or you have stock or other capital assets that are ripe for sale, coordinate timing your gains and losses to minimize tax on your gains and maximize the tax benefit from your losses. (See item 11.)
- If you own an interest in a pass-through entity (e.g., partnership, S corporation) you may need to increase your tax basis in the entity so that you can deduct current year losses. (See item 41.)
- Consider using a credit card to prepay expenses that can generate deductions for this year while holding onto the cash until the bill is due next year. (See item 37.)
- If you are considering buying a plug-in electric vehicle eligible for a tax credit, purchase it before year-end after confirming that the particular model still qualifies for the credit. The credit phases out after the manufacturer has sold a certain number of qualified vehicles. (See item 47.)
- Arrange with your employer to defer a 2017 bonus until 2018. Such a deferral may be advantageous, depending on your regular and AMT tax situations (See discussion in "Strategies to Implement Throughout the Year.")

- You may be able to save taxes this year and next year by applying a bunching strategy to "miscellaneous" itemized deductions, medical expenses and other itemized deductions. (See item 38.)
- Gift and estate taxes may be reduced by postponing gifts until 2018. (See item 80.)
- Depending on your particular situation, you may also wish to consider disposing of a passive activity to allow you to deduct suspended losses. (See item 40.)
- If you are age 70½ or older, own IRAs, and are thinking of making a charitable gift before year-end, arrange for the gift to be made directly by the IRA trustee to the charitable organization. Such a transfer can achieve important tax savings. (See item 34.)
- Consider extending your subscriptions to professional journals, paying union or professional dues, enrolling in (and paying tuition for) job-related courses, etc., to bunch into 2017 miscellaneous itemized deductions subject to the 2 percent-of-AGI floor (again, making sure that doing so will not increase your exposure to the AMT). (See items 8 and 38.)
- For businesses, consider making expenditures that qualify for the $510,000 business property expensing option. (See item 55.)

Tax Planning Strategies Based on Tax Reform

On December 20, 2017, Congress passed what was previously known as the "Tax Cuts and Jobs Act," which will undoubtedly be the hallmark of the first year of Donald Trump's presidency. Due to an arcane Senate regulation known as the "Byrd Rule," the short title of "Tax Cuts and Jobs Act" had to be stricken from the final version of the bill, as it did not have any budgetary impact and thus could not be included in legislation adopted under the reconciliation process. Thus, the tax reform package for 2017 will now and forever be known as "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018" ("the new Act"). Below we have summarized the most significant provisions included in the new legislation, as it affects individuals, businesses, nonprofits, estates and trusts. Many of these provisions will take effect on January 1, 2018, so as we wrap up 2017, we have also included tax planning strategies to conclude 2017, and start 2018 on the right foot.

Projected Winners and Losers Under the New Act

Where you live, how you derive your income and the level of income and deductions will be the primary drivers of a "winner" or "loser" status.

Projected Winners

Corporations and their shareholders. The drop in the corporate tax rate from 35 percent to 21 percent is significant and perhaps makes corporations the biggest winners. This lower rate allows domestic corporations to be more competitive internationally, less influenced by tax incentives, and is designed to free up capital for hiring and distribution to shareholders. In addition, the corporate alternative minimum tax has been repealed.

Owners of pass-through businesses. Under the new Act, owners of pass-through businesses, such as partnerships, S corporations, limited liability companies, and sole proprietorships, would be entitled to a deduction of up to 20% of qualified business income from most activities. Certain service professionals, such as doctors, lawyers, accountants, engineers, consultants, financial service advisors and performing artists, would not receive a benefit of the deduction unless their taxable income is below $415,000 if married filing jointly, $207,500 for all other taxpayers.

Small businesses: Increased Section 179 limits will allow businesses to expense up to $1 million in assets, with a phase-out of $2.5 million, placed in service in 2018 or later, up from $500,000. Certain businesses with up to $25 million in gross receipts may now use the simpler method of cash accounting, rather than accrual, even pertaining to inventories.

High-income taxpayers. While almost all taxpayers get a reduction in their marginal rate, those most excited about the changes will be those earning more than $500,000 if single or $600,000 if married filing jointly. In 2017, these taxpayers are paying 39.6 percent on their income over $444,550 and $470,700, respectively, but these taxpayers will have a maximum rate of 37 percent in 2018.

Certain Retirees. Under the new Act, the "floor" for the medical expense deduction is reduced for 2017 and 2018. This lower floor means that more retirees will be able to claim a larger proportion of their medical expenses than in prior years. In earlier versions of the law, this deduction was being considered for repeal, which could have adversely impacted many retirees who are entering or residing in nursing homes, where a large part of their substantial entrance and monthly fees consist of deductible medical expenses.

Low-income taxpayers. By doubling the standard deduction, the new Act creates a larger "zero percent" bracket, effectively removing many from the tax rolls. In addition, this is a move that undeniably adds simplicity to the law. By doubling the standard deduction, nearly 27 million more taxpayers will claim the standard rather than itemize in 2018, negating the need to keep records (and required IRS documentation to substantiate the deduction) of activity such as charitable contributions or medical expenses.

Also, the increase in the refundable portion of the child tax credit was a victory for those taxpayers with income so low, they do not generate a tax liability. Under the new Act, up to $1,400 of the child tax credit will now be refundable to taxpayers who do not owe taxes.

Projected Losers

Accountants, lawyers, doctors, and other providers of professional services. Owners, partners, or shareholders of personal service businesses (including doctors, lawyers, and accountants) are not eligible for the full pass-through deduction of 20 percent unless their taxable income is less than $157,500 if single or $315,000 if married. The low-income exception phases out over the span of $50,000 of income for singles or $100,000 if married. This means that any lawyer, doctor, or accountant earning more than $415,000 if married or $207,500 if single, loses out on the 20 percent deduction entirely.

People who are high earners and live in high-tax states like New York, New Jersey and California. These taxpayers will feel the loss of the federal deduction for all state and local taxes, and the new $750,000 cap on the home mortgage interest deduction (down from $1 million) more than anyone. A compromise on the state and local tax deduction will allow taxpayers to deduct property taxes and either income or sales taxes, with a combined limit of only $10,000. For many of these taxpayers, that is a small portion of the state and local taxes actually paid. While many taxpayers currently do not realize the full benefit of these deductions due to the alternate minimum tax or other limitations, certain taxpayers in high brackets will undoubtedly be affected by the loss of the state and local income tax deduction.

The upper-middle class. Because of where the brackets fall, some middle-class taxpayers will experience an increase in marginal rate relative to current law. For example, single filers earning between $157,000 and $195,000 will pay a top rate of 32 percent, as opposed to 28 percent under current law. Those taxpayers should be aided, however, by the lower rates and expanded brackets further down the income scale. As discussed more thoroughly below, these taxpayers may feel the sting of limitation on state and local tax deductions, while not benefiting greatly from lower tax rates on high income levels.

Businesses (including employees) Claiming the Entertainment Deduction. The new Act eliminates the deduction for entertainment expenses, which is used for many business development activities and employee morale building, such as golf outings, tickets to sporting events, company retreats and holiday parties. Additionally, the deduction for transportation fringe benefits is eliminated.

Look Before You Leap: Words of Caution

Whether you should accelerate taxable income or defer deductions between 2017 and 2018 largely depend on your projected highest (also known as "marginal") tax rate for each year. While the highest official marginal tax rate for 2017 is currently 39.6 percent (37 percent in 2018 under the new law), your actual highest rate may be greater, as a result of the phase-out of itemized deductions and personal exemptions. The chart below summarizes the 2017 tax rates together with corresponding taxable income levels. A change in taxable income of $1 can catapult you into the next higher or lower bracket. Effective management of your tax bracket can provide meaningful tax savings.

2017 Federal Income Tax Rate Schedule

Tax Rate	Single	Head of Household	Joint/Surviving Spouse	Married Filing Separate	Estates and Trusts
10%	$0 - $9,325	$0 - $13,350	$0 - $18,650	$0 - $9,325	N/A
15%	$9,326 - $37,950	$13,351 - $50,800	$18,651 - $75,900	$9,326 - $37,950	$0 - $2,550
25%	$37,951 - $91,900	$50,801 - $131,200	$75,901 - $153,100	$37,951 - $76,550	$2,551 - $6,000
28%	$91,901 - $191,650	$131,201 - $212,500	$153,101 - $233,350	$76,551 - $116,675	$6,001 - $9,150
33%	$191,651 - $416,700	$212,501 - $416,700	$233,351 - $416,700	$116,676 - $208,350	$9,151 - $12,500
35%	$416,701 – $418,400	$416,701 - $444,550	$416,701 - $470,700	$208,351 - $235,350	N/A
39.6%	$418,401 - over	$444,551 - over	$470,701 - over	$235,351 - over	$12,501 - over

While reviewing this guide, please keep the following in mind:

- This guide is intended to help you achieve your personal and business financial objectives in a "tax efficient" manner. It is important to note that proposed transactions should make economic sense in addition to saving taxes. Therefore, you should review your entire financial position prior to implementing changes. Various non-tax factors can influence your year end planning, including a change in employment, your spouse re entering the work force, the adoption or birth of a child, a death in the family or a change in your marital status.
- It is best to look at your tax situation for at least two years at a time, with the objective of reducing your tax liability for both years combined, not just for 2017.
- While the traditional strategies of deferring taxable income and accelerating deductible expenses are the focus of this guide, with exceptions, you can often achieve overall tax efficiency by reversing this technique. For example, you should consider deferring deductions and accelerating

income if you expect to be in a higher tax bracket next year; you expect to be subject to the AMT this year and not next year; you have net operating loss or charitable contribution carryovers to absorb; your marital status will change next year; or your head of household or surviving spouse filing status ends this year. This analysis can be complex, and you should seek professional guidance before implementation.

- Any decision to save taxes by accelerating income must consider the possibility that this means paying taxes on the accelerated income earlier, which would require you to forego the use of money used to satisfy tax liabilities that could have been otherwise invested. Accordingly, the time value of money can make a bad decision worse or, hopefully, a good decision better.
- While there are always uncertainties in the stock market, economy and tax environments (especially in light of the new enacted individual provisions scheduled to sunset in 2018 or 2026), we recommend the prudent approach of planning now, based on the new Act, and revising those plans as the need arises.
- We recommend that you examine your tax situation as soon as possible and to consult with your tax advisor.

With these words of caution in mind, following are observations and specific strategies that can be employed in the waning days of 2017 regarding income and deductions for 2017, where the tried and true principles of deferring taxable income and accelerating deductible expenses will result in maximum tax savings.

Comparison of Key Provisions Modified by the New Act

Individual Provisions

Tax Rates and Brackets	2017 (Current Law)	2018 (New Act)
Single/Joint Filers	Top rate 39.6%, starting at $426,700/$480,500	Top rate 37%, starting at $500,000/$600,000
Head of Household	$432,200	$439,001
Single	$406,750	$413,201
Married Filing Separately	$228,800	$232,426
Standard Deduction	$6,500 (single); $13,000 (joint) $9,550 (head of household)	$12,000 (single) $24,000 (joint) $18,000 (head of household)
Alternative Minimum Tax	Exemption at $55,400 (single); $86,200 (joint); phaseout above $123,100 (single) $164,100 (joint)	Exemption at $70,300 (single); $109,400 (joint), phaseout above $500,000 (single); $1,000,000 (joint)
Dependent and Personal Exemptions	$4,150	Repealed
Child Tax Credit	$1,000 per child under 17 Phase out at $75,000/$110,000 (single/joint), refundable at 15% of earnings above $3,000	$2,000 per child under 17, $500 for other dependents, phaseout at $400,000 for joint filers, refundable at 15% of earnings over $2,500 up to $1,400 per child
Post-Secondary Education	American Opportunity Tax Credit, Lifetime Learning Credit, Tuition and Fees Deduction (expired 2016), Student Loan Interest Deduction (up to $2,500)	Unchanged
State and Local Tax Deductions	Income or sales tax, and real estate taxes deductible	Income or sales tax, and real estate taxes deductible up to $10,000

Classroom Expenses	$250 deduction	Unchanged
Medical Expenses	Deductible to the extent expenses exceed adjusted gross income by 10 percent	Deductible to the extent expenses exceed adjusted gross income by 7.5 percent (for tax years 2017 and 2018)
Mortgage Interest	Interest paid on up to $1.1 million of debt, including $100,000 of home equity debt, are deductible	Interest paid on up to $750,000 of new acquisition debt, applicable to primary and one other residence, are deductible, no deduction for home equity debt.
Total Itemized Deductions	Phaseout starts at $266,700 for single filers and $320,000 for joint filers	Repealed
Top Capital Gains Rate	23.8% (includes 3.8% Net Investment Income Tax)	Unchanged
Cost of securities	Investors can choose various methods to identify which tax lot of a security is sold, including specific identification	Unchanged
Exclusion of gain on sale of primary residence	Individuals may exclude gain of up to $500,000 (for joint filers) from the sale of a primary residence Taxpayer must own and use the house as primary residence for 2 out of the previous 5 years	Unchanged
Moving Expenses	Deductible with select provisions	Repealed (except for military service members)
Estate tax	Top rate of 40% on estates $5.49 million ($10.98 million for couples)	Top rate of 40% on estates above $11.2 million ($22.4 million for couples)

"Obamacare" Individual Mandate Penalty	Individual tax penalty for lack of health insurance or coverage exemption	Repealed

Business Provisions

Corporate Income Tax Rate	35%	21%
Pass-Through Income Tax Rate	Taxed at individual rates up to 39.6%	20% deduction, limited above incomes of $157,500 (single) and $315,000 (joint)
Corporate Alternative Minimum Tax	Effective	Repealed
Section 179 Expensing	Up to $500,000 of asset purchases	Up to $1 million of asset purchases
Bonus Depreciation	50% of qualified property	100% for qualified property, phases down at 20% per year commencing 2023
Business Interest	Fully deductible	Disallowed to the extent of interest in excess of 30% of business income; businesses with less than $25 million in gross receipts exempt from limitation
Research and Developments Costs	Fully deductible	Gradual write-offs
Taxation of International Companies	Foreign Tax Credits and deferrals	Tax (one time) on unrepatriated non-U.S. earnings at 8%, territorial system with anti-abuse tax on certain payments to foreign corporations

Tax Planning Strategies for Individuals

1. Assess the new tax brackets & tax rate break points. The new Act will feature tax rates, which will be lower for nearly all taxpayers starting in 2018. As you can see from the charts below, while both 2017 and 2018 will have seven tax brackets, the rates are generally lower for most taxpayers at similar income levels.

2017 Tax Rates				
	Single	**Head of Household**	**Married Filing Jointly**	**Married Filing Separately**
10%	$0 - $9,325	$0 - $13,350	$0 - $18,650	$0 - $9,325
15%	$9,326 - $37,950	$13,351 - $50,800	$18,651 - $75,900	$9,326 - $37,950
25%	$37,951 - $91,900	$50,801 - $131,200	$75,901 - $153,100	$37,951 - $76,550
28%	$91,901 - $191,650	$131,201 - $212,500	$153,101 - $233,350	$76,551 - $116,675
33%	$191,651 - $416,700	$212,501 - $416,700	$233,351 - $416,700	$116,676 - $208,350
35%	$416,701 - $418,400	$416,701 - $444,550	$416,701 - $470,700	$208,351 - $235,350
39.6%	$418,401 - over	$444,551 - over	$470,701 - over	$235,351 - over

2018 Tax Rates				
	Single	**Head of Household**	**Married Filing Jointly**	**Married Filing Separately**
10%	$0 - $9,525	$0 - $13,600	$0 - $19,050	$0 - $9,525
12%	$9,526 - $38,700	$13,601 - $51,800	$19,051 - $77,400	$9,526 - $38,700
22%	$38,701 - $82,500	$51,801 - $82,500	$77,401 - $165,000	$38,701 - $82,500
24%	$82,501 - $157,500	$82,501 - $157,500	$165,001 - $315,000	$82,501 - $157,500
32%	$157,501 - $200,000	$157,501 - $200,000	$315,001 - $400,000	$157,501 - $200,000
35%	$200,001 - $500,000	$200,001 - $500,000	$400,001 - $600,000	$200,001 - $300,000
37%	$500,001 - over	$500,001 - over	$600,001 - over	$300,001 - over

Planning Tip

Postponing income until 2018 and accelerating deductions into 2017 to lower your 2017 tax bill has always been a tried and true philosophy. This strategy is especially valuable where taxpayers will face slimmed-down deductions in 2018, and may be forced into the standard deduction for 2018. This strategy could enable you to claim larger deductions, credits, and other tax breaks for 2017 as your lower income, as a result of accelerating deductions, may allow you to claim larger portions of these tax breaks than you could without deferring income, since many of these breaks are phased out as AGI increases.

Beware of the Secret Tax

As counterintuitive as it may seem, the first step in individual income tax planning for the regular income tax is assessing your exposure to the AMT. As noted previously, a strategy that is effective for regular tax purposes can create an AMT liability because of the differences in the way certain deductions and income exclusions are handled. Consequently, it is crucial that you understand your AMT position in order to properly assess your tax planning options. AMT was a subject of hot debate in Congress as it was eliminated in both the original Senate and House proposals of the new Act, but was featured in the bill that became law.

As we have indicated in the past, individuals actually compute their income tax liability under two systems—the regular tax system and the AMT system—and pay the higher of the two amounts. Although the AMT was originally intended only to apply to taxpayers who claimed certain (or excessive) tax breaks, it has evolved into a system that affects many unsuspecting taxpayers.

Many taxpayers can unwittingly fall into the AMT. Taxpayers especially vulnerable to the AMT are those who exercise incentive stock options during the year, recognize substantial long-term capital gains, deduct significant amounts of miscellaneous itemized deductions (for example, unreimbursed employee business expenses or investment advisory fees), or pay large real estate taxes (such as residents of Illinois, New Jersey and New York) and state and local income taxes (such as residents of California, Montana, New York, Oregon and Vermont).

If you have determined that you will be subject to the AMT, you should try to control the timing of items that give rise to the AMT. Since the AMT rate (up to 28 percent) is generally lower than the effective maximum regular tax rate (39.6 percent in 2017, 37 percent in 2018), it may be to your advantage to take steps to accelerate income into 2017 if you will otherwise be subject to the AMT this year and expect to be in the 32 percent or higher tax bracket next year. At the same time, since many itemized deductions are generally added back to taxable income to arrive at alternative minimum taxable income (AMTI), they produce little or no tax savings in the year you are subject to the AMT. Therefore, you should defer such deductions until 2018 (if 2018 is a non AMT year). However, since many of the AMT “add-backs” are reduced or eliminated under the new Act, you may not be able to defer these deductions into 2018 and realize any benefit. Since investment interest and charitable contributions are deductible for both regular tax and AMT purposes, you should still consider accelerating these deductions into 2017, to the extent possible.

PLANNING TIP

Perform a multiyear analysis to measure the effect of various planning techniques that may be used in 2017 and future years.

2. Beware of Alternative Minimum Tax. AMT is not dead yet. While this tax was eliminated in the House version of the new Act, it has survived the final version of the legislation. The new Act does raise the exemption amount from $86,200 to $109,400 for a joint return ($55,400 to $70,300 single return). Further, the income levels that benefit from these exemptions would increase to $1 million for Married Filing Jointly ($500,000 for all other taxpayers); and from $159,700 for joint taxpayers ($119,700 for Single or Head of Household, $79,850 for Married Filing Separately). This would reduce the amount of taxpayers subject to AMT and decrease the AMT liability for those who are subject to AMT, but it would not eliminate it entirely.

PLANNING TIP

Many of the adjustments or preferential items that have been part of the alternative minimum taxable income calculation are also being eliminated or reduced for the regular tax under the new Act. However, since the AMT exemption will dramatically increase in 2018, you may want to wait until 2018 to exercise any incentive stock options (ISO) since the favorable tax treatment for ISOs has not changed under the new Act and would not be subject to adjustment for AMT. If you would not be subject to the AMT in 2017, the guiding philosophy of postponing income until 2018 and accelerating deductions (especially charitable contributions) into 2017 rings true.

Now that we have addressed the AMT, at least to the extent possible in such an overview, the balance of this guide will focus on specific planning strategies that normally apply to the vast majority of taxpayers—that is, those in a regular tax situation where the time-honored strategies of accelerating deductible expenses and deferring taxable income will result in maximum tax savings.

3. Review the increased standard deduction & the elimination of the personal exemption. Under the new Act, the standard deduction is nearly doubled from current levels to $24,000 for a joint return and $12,000 for a single return. All personal exemptions you receive for yourself, your spouse and any dependents are eliminated in 2018.

Standard Deduction (Based on Filing Status)	2017	2018
Married Filing Jointly	$12,700	$24,000
Head of Household	$9,350	$18,000
Single (including Married Filing Separately)	$6,350	$12,000
Personal Exemption for each Taxpayer, Spouse and Dependent	$4,050	$0**

**Enhanced Child Tax Credits will be available under the new Act, which, instead of reducing taxable income, like an exemption, reduce taxes owed.

OBSERVATION

While the standard deduction is nearly doubled, its inflationary increases are set to chained CPI instead of CPI. In general, chained CPI grows at a slower pace than CPI. Under current law, the inflationary increases in the current standard deduction and personal exemption would have both presumably increased faster than under the new law. While the initial increase in the standard deduction is beneficial and may lead to fewer individuals itemizing over time, this will have to be evaluated by crunching the numbers due to the slower increase in inflation adjustments. We advise our clients to continue tracking itemized deductions still allowed by law throughout the year.

4. Pay any medical bills in 2017. In a rare provision scheduled to be effective in 2017, the new Act reduces the medical expense deduction floor to 7.5 percent of AGI instead of the current 10 pecent for both 2017 and 2018. In addition, the deduction would no longer be an AMT preference item, meaning that even taxpayers subject to the AMT in 2017 or 2018 would benefit from deductible medical expenses. These are all favorable changes to taxpayers with high medical costs.

> **PLANNING TIP**
> *Pay all medical costs for you, your spouse and any dependents in 2017, if, with payment, your medical expenses are projected to exceed 7.5 percent of your 2017 AGI, as this will lower your tax liability in 2017.*

5. Accelerate your state and local tax deduction into 2017. Possibly the most talked about revision included in earlier versions of the tax reform bill was the repeal of the state and local tax deduction. After intense lobbying from high-tax states (but not terribly effective), the new Act will now allow deductions in 2018 for state and local income or sales, and property taxes, up to a limit of $10,000 per return ($5,000 in the case of a married individual filing separately). While this limitation is much more flexible than previous versions of the bill, many taxpayers will be severely limited in their deductions beginning in 2018.

> **PLANNING TIP**
> *If you live in a state with either high income, sales taxes or real estate taxes and you are not subject to AMT, this could significantly change your tax calculation. If you are not subject to AMT during 2017, it is highly recommended you pay your fourth quarter state or local taxes normally due January 15, 2018, by December 31, 2017. You may also wish to consider prepaying any expected 2017 state and local income taxes due in April 2018, at the end of 2017. To the extent that you can also prepay any real estate taxes in 2017, we recommend doing so. Please note that this deduction will not allow for prepayment of 2018 state and local income taxes in 2017. Only income taxes for 2017 can be deducted in 2017, though property taxes for 2018 can be paid and deducted in 2017.*

6. Prepay your January mortgage payment. The new Act reduces the mortgage interest deduction limitation to interest on up to $750,000 of debt ($375,000 in the case of a married individual filing a separate return), for acquisition indebtedness incurred after December 15, 2017. The mortgage interest from both a taxpayer's primary and secondary residences remain deductible, up to this balance limit on new debt. Home equity indebtedness, not used to substantially improve a qualified home, will not be deductible in 2018.

> **PLANNING TIP**
> *If you hold a home equity loan, which was used for a purpose other than improving your home, make your monthly payment before December 31, 2017, as such home equity interest will not be deductible in 2018. We also recommend prepaying one month's worth of interest on primary and secondary residences by December 31, 2017. Please make sure that your lender issues you a 2017 Form 1098 reflecting the prepayment of interest for 2017. If you are planning to refinance and your total mortgage balance will exceed $750,000, please contact us to ensure you retain maximum deductibility and do not run afoul of certain rules related to refinancing mortgage indebtedness.*

7. Consider accelerating 2018 charitable pledges whether by cash, marketable securities, credit card or donor advised funds to leverage the higher 2017 tax rates. Also, continue to make charitable contributions. Good news here for charitable giving. The new Act raises the 50 percent of AGI limitation to 60 percent, meaning that more prior year charitable carryovers or current year contributions would be available as a deduction starting in 2018.

PLANNING TIP

The increased limitation makes 2017 and future years a good time to give, as any disallowed amount in 2017 could potentially be freed up in 2018 due to the higher limits. In addition, if you expect to use the standard deduction in 2018 due to the loss or limitation of deductions, consider "bunching" your charitable contributions into 2017 for maximum impact. As always, before making a large contribution, please consult us so that we can determine the impact on your unique situation.

OBSERVATION

However, you should assess whether any increase on charitable contributions for 2017 may be limited by the itemized deduction limitation (known as the "PEASE" limitation), which kicks in when AGI exceeds $305,000 for couples and $254,000 for single taxpayers. The PEASE limitation has been repealed for tax year 2018.

8. Pay all miscellaneous itemized deductions in 2017. In the new Act, all miscellaneous itemized deductions which are subject to the 2 percent floor are repealed. Keep in mind that this 2 percent floor limits this deduction's applicability to only those individuals whose miscellaneous itemized deductions exceed 2 percent of their AGI, so not all individuals will be affected. Individuals not subject to AMT who incur significant tax preparation fees, investment advisory fees, unreimbursed employee expenses, hobby expenses or legal fees for the collection or production of taxable income could be affected by the elimination of this deduction.

PLANNING TIP

If you are not subject to AMT for 2017, it is prudent to pay such expenses before year-end.

9. Take advantage of the enhanced child tax credit. A major change in the new Act is the enhancement of the child tax credit. In 2018, the child tax credit is increased to $2,000 (from $1,000 for 2017), with the phaseouts of the credit drastically increasing. The child tax credit is phased out beginning at $400,000 for joint filers ($200,000 for all other filers), while in 2017, the credit is phased out beginning at income levels of $110,000 for joint filers and $75,000 for single filers. In addition, more of the child tax credit is refundable to lower income taxpayers without an income tax liability, up to $1,400. Also, non-qualifying child dependents (such as dependents over the age of 17, or those that do not meet the relationship test of a qualifying child) will qualify taxpayers for an additional $500 child tax credit per dependent.

	2017	2018
Credit Available Per Child	$1,000	$2,000
Income Levels Where Phase Out Begins		
Married Filing Jointly	$110,000	$400,000
Head of Household	$75,000	$200,000
Single	$75,000	$200,000
Married Filing Separately	$55,000	$200,000

PLANNING TIP
The expansion of the child tax credit and preservation of the earned income credits in its current form expresses congressional wishes to help growing families. If you have not previously benefitted from the child tax credit, the increased phaseouts may reduce your 2018 tax liability depending on your family size.

Tax-Efficient Investment Strategies

For 2017, long-term capital gains and qualifying dividend income enjoy a tax rate of 0 percent for taxpayers in a regular tax bracket of 10 or 15 percent, 15 percent for taxpayers in the 25 through 35 percent brackets and finally a top rate of 20 percent for taxpayers in the 39.6 percent bracket. A 3.8 percent tax on net investment income applies to taxpayers with modified adjusted gross income (MAGI) that exceeds $250,000 for joint returns ($200,000 single). Here are some ways to capitalize on the lower rates as well as other tax planning strategies for investors.

PLANNING TIP
The capital gains rates are largely untouched in the new Act with only small changes to the income thresholds to which the zero percent, 15 percent and 20 percent rates are applied. Additionally, the capital gains rate of zero percent for taxpayers in the 10 or 15 percent tax brackets is preserved. Therefore, taxpayers should consider: (1) accelerating income into 2017 in order to reduce 2018 income, and thus qualify for the zero percent capital gain rate in 2018, and/or (2) delaying the sale of long-term capital assets until 2018 if you will be within the 15 percent tax bracket in 2018, which again will qualify use of the zero percent capital gain rate in 2018.

10. Maximize the benefit of lower tax rates on capital gains. To be eligible for the lower 20, 15 or zero percent capital gain rate, a capital asset must be held for more than one year. That is why it is important, when disposing of your appreciated stocks, bonds, investment real estate, and other capital assets, to pay close attention to the holding period. If it is less than one year, consider deferring the sale so you can meet the longer-than-one-year period (unless you have short-term losses to offset). While it is generally not wise to let tax implications be your only consideration in making investment decisions, you should not ignore them either. Keep in mind that realized capital gains may increase AGI, which in turn may reduce your AMT exemption and therefore increase your AMT exposure.

PLANNING TIP
To take maximum advantage of the spread between capital gain and individual income tax rates, you may wish to consider receiving qualified employer stock options in lieu of salary to convert ordinary compensation income to capital gain income. However, as noted in item 58, ensure that this strategy does not reduce your tax savings from the deduction for production activities, if applicable, more than it reduces your income tax savings attributable to converting salary income to capital gain income.

11. Reduce the recognized gain or increase the recognized loss. When selling stock or mutual fund shares, the general rule is the shares you acquired first are the ones deemed sold first. However, if you choose, you can specifically identify the shares you are selling when you sell less than your entire holding of a stock or mutual fund. By notifying your broker of the shares you want sold at the time of the sale, your gain or loss from the sale is based on the identified shares. This sales strategy gives you better control over the amount of your gain or loss and whether it is long-term or short-term. While the specification identification method looked to be eliminated under the new Act in favor of a simplified first-in, first-out method, investors had their say and the final version of the legislation does not eliminate the ability to specifically identify lots sold. Once the specific identification method is chosen, however, you may not use a different method (e.g., average cost method or first in, first out method) for the particular security you have specifically identified or throughout the life of the fund (unless with permission from the IRS).

PLANNING TIP
In order to use the specific identification method, you must ask the broker or fund manager to sell the shares you identify, and maintain records that include both dated copies of letters ordering your fund or broker to sell specific shares as well as written confirmations that your orders were carried out.

12. Take advantage of your capital losses. It always makes sense to periodically review your investment portfolio to see if there are any "losers" you should sell. This is especially true as year-end approaches, since that is your last chance to offset capital gains recognized during the year or to take advantage of the $3,000 ($1,500 for married separate filers) limit on deductible net capital losses. However, one must be mindful not to run afoul of the wash-sale rule, discussed at item 14.

13. Be mindful of new "kiddie tax" rules. The new Act makes a significant change in the taxation of unearned income for children under 18 (or up to age 23, if a full-time student). Currently, unearned income of dependents in excess of $2,100 is taxed at a rate according to the parent's tax rate. Under the new law, the unearned income of a child would be taxed independently of the parent's rates, but based on the lower thresholds used by trusts and estates, as seen below. This change would be effective until 2025 when it would revert back to 2017 law.

Tax Rate on Unearned Income	Unearned Income
24% or 32% *	$0 - $9,150
35%	$9,151 - $12,500
37%	$12,501 and above

*Tax rate imposed will depend on the earned income of the child.

PLANNING TIP
As the 37 percent rate under the new law is effective for joint taxpayers with taxable incomes in excess of $600,000, this change would largely subject the children of parents whose income does not exceed $600,000 to higher rates on unearned income than the provisions under current law. Because the benefits of recognizing unearned income on the child's return, rather than the parents' return, will further decrease under the legislation, the utility of UGMA and UTMA accounts will be further diminished. Instead, parents may wish to hold investment assets in trust accounts.

PLANNING TIP
There are various measures that can be taken to avoid or minimize the kiddie tax. Among those measures, consider investing a child's funds in one or more of the following.

- *Owners of Series EE and Series I bonds may defer reporting any interest (i.e., the bond's increase in value) until the year of final maturity, redemption or other disposition. (If held in the parent's name and used for qualified higher education expenses, and assuming certain AGI requirements are met, the income is not taxed at all.)*

- *Municipal bonds produce tax-free income (although the interest on some specialized types of bonds may be subject to the AMT).*
- *Growth stocks that pay little dividends and focus more on capital appreciation should be considered. The child could sell them after turning 23 and possibly benefit from being in a low tax bracket. Selling them before then could convert a potential zero percent income tax on the gain into a 20 percent income tax.*
- *Funds can be invested in mutual funds that concentrate on growth stocks and municipal bonds that limit current income and taxes. They may also limit risk through investment diversification.*
- *Unimproved real estate that will appreciate over time and does not produce current income will limit the impact of the kiddie tax.*
- *529 plans offer investors the opportunity to experience tax-free growth, so long as distributions are used to fund qualified education expenses, discussed later at item 22. In addition, contributions to a 529 plan may qualify the donor for a deduction on his or her state income tax return.*

14. Do not run afoul of the wash sale rule. An often overlooked rule, the wash sale rule provides that no deduction is allowed for a loss if you acquire substantially identical securities within a 61-day period beginning 30 days before the sale and ending 30 days after the sale. However, there are ways to avoid this rule. For example, you could sell securities at a loss and use the proceeds to acquire similar, but not substantially identical, investments. If you wish to preserve an investment position and realize a tax loss, consider the following options:

- Sell the loss securities and then purchase the same securities no sooner than 31 days later. The risk inherent in this strategy is that any appreciation in the stock that occurs during the waiting period will not benefit you.
- Sell the loss securities and reinvest the proceeds in shares in a mutual fund that invests in securities similar to the security you sold or reinvest the proceeds in the stock of another company in the same industry. This approach considers an industry as a whole, rather than a particular stock. After 30 days, you may wish to repurchase the original holding. This method may reduce the risk during the waiting period.
- Buy more of the same security (double up), wait 31 days and then sell the original lot, thereby recognizing the loss. This strategy allows you to maintain your position but also increases your down side risk. Keep in mind that the wash sale rule typically will not apply to sales of debt securities (such as bonds) since such securities usually are not considered substantially identical due to different issue dates, rates of interest paid, and other terms.

OBSERVATION

While dividends paid by domestic corporations generally qualify for the lower rate, not all foreign corporation dividends do. Only dividends paid by so-called "qualified foreign corporations," which include foreign corporations traded on an established U.S. securities market (including American Depository Receipts or ADRs), corporations organized in U.S. possessions and other foreign corporations eligible for certain income tax treaty benefits are eligible for the lower rates. And finally, beware of certain investments marketed as preferred stocks that are really debt instruments (e.g., trust preferred securities). Dividends received on these securities are not qualified dividends, and therefore do not qualify for the preferential capital gain tax rates.

15. Consider dividend-paying stocks. The favorable capital gain tax rates (20, 15 or 0 percent) make dividend-paying stocks as attractive as ever since their preferential lower rates are preserved in current tax reform legislation. This may cause you to reconsider the make-up of your investment portfolio. Keep in mind that to qualify for the lower tax rate on dividends the shareholder must own the dividend-paying stock for more than 60 days during the 121-day period beginning 60 days before the stock's ex-dividend date. For certain preferred stock, this period is expanded to 90 days during a 181-day period.

PLANNING TIP

To achieve even greater tax savings, consider holding bonds and other interest-yielding securities inside qualified plans and IRAs, while having stocks that produce capital gains and qualified dividend income in taxable accounts. In addition, when a taxpayer is fast approaching retirement years, it may be more beneficial to invest in equities outside of the retirement accounts so they may take advantage of the more favorable capital gains rates when they decide to cash-in their investments to satisfy retirement-related expenses.

16. Invest in municipal bonds. Tax-exempt interest is not included in adjusted gross income, so deduction items based on AGI are not adversely affected. As long as your investment portfolio is appropriately diversified, greater weight in municipal bonds may be advantageous. However, be mindful of the AMT impact on income from private activity bonds, which is a preference item for AMT purposes. In general, a private activity bond is a municipal bond issued after August 7, 1986, whose proceeds are used for a private (*i.e.*, non-public) purpose. Accordingly, review the prospectus of the municipal bond fund to determine if it invests in private activity bonds. Anyone subject to the AMT should avoid these funds.

17. Avoid mutual fund investment pitfall. Before you invest in a mutual fund prior to February 2018, you should contact the fund manager to determine if year 2017 dividend payouts are expected. If such payouts take place, you may be taxed in 2017 on part of your investment. You need to avoid such payouts, especially if they include large capital gain distributions. In addition, certain dividends from mutual funds are not "qualified" dividend income and therefore are subject to tax at the taxpayer's marginal income tax rate, rather than at the preferential 20, 15 percent (or zero percent) rate.

ILLUSTRATION

If you receive a payout of $5,000, the value of your original shares declines by $5,000—the dividend payment. Furthermore, if you are in the automatic dividend reinvestment plan, so that the $5,000 dividend purchases new shares, the value of your fund should now be about the same as your original investment. However, the $5,000 dividend payout is subject to the preferential tax rates. If it is not a "qualified" dividend, it is subject to tax of up to 39.6 percent. If you had invested after the dividend date, you would own about the same shares, but would have paid no tax!

OBSERVATION

Gain on the sale of a principal residence cannot be excluded if the home was acquired in a like-kind exchange within five years from the date of sale. Therefore, an individual who owns a principal residence, which was originally acquired in a like-kind exchange must wait five years before selling the property in order to exclude gain up to $250,000 ($500,000 for married couples filing jointly).

18. Determine whether you are a trader or investor. Discount brokers and online trading have changed the way many people invest in the stock and securities markets. As a result, many individuals spend a considerable amount of time regularly trading stocks. If this describes you, the tax treatment of your income and expenses from your trading activity can differ dramatically depending on whether the tax law classifies you as a trader or an investor. Your status as a trader or investor may not be clear, so a careful analysis of your situation should be performed before year-end in order to determine your status and the tax planning opportunities that may exist. In general, an investor's activities are limited to occasional transactions for his own account, while a trader's activities must be substantial, frequent, regular and continuous.

19. Determine worthless stock in your portfolio. Your basis in stock that becomes totally worthless is deductible (generally as a capital loss) in the year it becomes worthless, but you may need a professional appraiser's report or other evidence to prove the stock has no value. Instead, consider selling the stock to an unrelated person for at least $1. You have now eliminated the need for an appraiser's report and are almost guaranteed a loss deduction.

20. Maximize home-related exclusion. Federal law (and many, but not all, states) provides that an individual may exclude, every two years, up to $250,000 ($500,000 for married couples filing jointly) of gain realized from the sale of a principal residence. The exclusion ordinarily does not apply to a vacation home. However, with careful planning, you may be able to apply the exclusion to both of your homes.

ILLUSTRATION

After selling your principal residence and claiming the allowable exclusion, convert your former vacation home into your new principal residence for at least two years. Establishing residency and use is critical to the success of this technique. Proper conversions result in an additional $250,000/$500,000 of tax-free gain. However, you may still have taxable gain to the extent of depreciation taken. The same strategy applies when two individuals are going to get married and each owns his or her own principal residence. If they do not sell one of the residences before marrying, it may not qualify as a principal residence on a subsequent sale if the residency and use requirements are not met. The result could be a fully taxable sale. You may also qualify for partial gain exclusion in certain circumstances.

21. Accelerate Like-kind exchanges. As like-kind exchanges for nonreal property will no longer be available beginning in 2018, you should consider initiating a like-kind exchange of personal property (e.g., business automobiles, artwork) by disposing of the property or acquiring the replacement property during 2017.

OBSERVATION

Although a like-kind exchange is a powerful tax-planning tool, it includes certain risks. Simply put, it postpones the tax otherwise due on the property exchanged, but it does not eliminate it. The gain will eventually be recognized when the acquired property is sold. In addition, do not exchange property that is worth less than your tax basis in it, since the loss would also be deferred under the like-kind exchange rules. Instead, sell it and take the loss now.

Planning for Higher Education Costs

Many tax savings opportunities exist for education-related expenses. If you or members of your family are incurring these types of expenses now or will be in the near future, it is worth examining them in some detail. Here, in abbreviated form, are some strategies to consider as year-end approaches.

22. Consider Section 529 qualified tuition plans. We will briefly indicate the most important features of these plans, since a full description of these plans is beyond the scope of this guide.

The ownership and control of the plan is with the donor (typically the parent or grandparent of the beneficiary student), not with the beneficiary, so the plan is not considered an asset of the student for financial aid purposes. Consequently, higher financial aid is possible. For federal income tax purposes, plan contributions are on an after-tax basis, although many states allow a deduction. Contributions and earnings on contributions that are subsequently distributed for qualified higher education expenses (including tuition, room and board, and other expenses) at accredited schools anywhere in the United States are free of federal income tax, and may be free of state income tax. With the passage of the new Act, 529 plan owners can now use tax-free distributions for up to $10,000 of eligible expenses at elementary and secondary schools, in addition to colleges and universities. To the extent that distributions are not for qualified higher education expenses, regular income tax plus a 10 percent penalty may apply to the earnings portion of the distribution. As contrasted with the other education strategies discussed below, contributions may be made regardless of the donor's AGI.

An election can be made to treat a contribution to a Section 529 plan as having been made over a five-year period; consequently, for 2017, a married couple can make a $140,000 contribution to a Section 529 plan without incurring any gift tax liability, since the annual gift exclusion for 2017 is $14,000 per donor (unchanged from 2016) and the contribution can be split with the donor's spouse. In 2018, the annual gift exclusion will increase to $15,000, thereby also increasing the amount that is eligible for this election.

OBSERVATION
Currently, more than 30 states and Washington, D.C., allow a deduction for Section 529 plan contributions. Please make sure you have the correct 529 plan as many states are particular about what type of plan can lead to a state deduction. For example, New York only allows deductions for 529 plans set up under New York law. If you have changed residency since setting up a 529 plan, review your options before contributing.

Finally, in general, to the extent that contributions to a Section 529 plan are not distributed for the benefit of the beneficiary, the account may be transferred to a member of the beneficiary's family, penalty-free. As long as the amounts transferred are used for qualified education expenses, they will still be free from federal income tax, as noted above.

23. Be familiar with the education credit options. If you pay college or vocational school tuition and fees for yourself, your spouse or your children, you may be eligible for either the American Opportunity Tax Credit (AOTC) or the Lifetime Learning Credit. These credits reduce taxes dollar-for-dollar, but begin to phase out when 2017 AGI exceeds certain levels. The chart below provides a summary of the phaseouts.

TAX TIDBIT
The credits are allowed for tuition paid during the year for education received that year or during the first three months of the next year. Consequently, consider paying part of 2018 tuition at the end of 2017 if you have not maximized the credit or reached the above income thresholds.

PLANNING TIP
Parents can shift an education credit from their return to the student's return by electing to forgo child tax credit for the student. This strategy is a "no brainer" for high-income parents whose income prevents them from claiming the credit, or from receiving any benefit from the child tax credit. To benefit from this strategy, however, the student must have sufficient income, and therefore tax liability, to take advantage of the credit. It might be necessary to shift income to the student as well, perhaps through gifts of appreciated property (that the student then sells at a gain) or employment in a family business, as discussed in item 67. However, be careful about the impact on a student's financial aid—shifting income to a student can have a detrimental impact on a student receiving or being eligible for financial aid.

24. Remit additional student loan payments. An "above the line" deduction of up to $2,500 is allowed for interest due and paid in 2017. The deduction is phased out when AGI exceeds certain levels. The chart below provides a summary of the phaseouts.

25. Contribute to a Coverdell Education Savings Account. These accounts must be established in a tax-exempt trust or custodial account organized exclusively in the United States, at the time the trust or account is established the designated beneficiary must be under 18 (or a special needs beneficiary), and all contributions must be made in cash and are not deductible. The maximum annual contribution is limited to $2,000 per year, and the contribution is phased out when AGI exceeds certain levels. Distributions from Coverdell Education Savings Accounts are excludable from gross income to the extent that the distributions do not exceed the qualified education expenses incurred by the designated beneficiary, which include kindergarten through grade 12, as well as higher education, expenses. If distributions exceed qualified expenses, a portion of the distributions is taxable income to the designated beneficiary. Furthermore, to the extent that distributions are not used for educational expenses, a 10 percent penalty applies.

2017 Education Expense and Credit Summary			
Tax Benefit	Single filers (not including Married Filing Separately)	Joint filers	Maximum credit/ deduction/contribution
American Opportunity Tax Credit	$80,000 - $90,000	$160,000 - $180,000	$2,500 (credit)
Lifetime Learning credit	$56,000 - $66,000	$112,000 - $132,000	$2,000 (credit)
Student loan interest deduction	$65,000 - $80,000	$135,000 - $165,000	$2,500 (deduction)
Coverdell Education Savings Account	$95,000 - $110,000	$190,000 - $220,000	$2,000 (contribution)

Strategies to Implement Throughout the Year

Virtually any cash-basis taxpayer can benefit from, and can exercise a fair amount of control over, strategies that accelerate deductions or defer income based on the premise that it is generally better to pay taxes later rather than sooner (especially when income tax rates are not scheduled to increase). For example, a check you deliver or mail during 2017 generally qualifies as a payment in 2017, even if the check is not cashed or charged against your account until 2018. Similarly, payments of deductible expenses by credit cards are not deductible when you pay the credit card bill (for instance, in 2018), but when the charge is made (for instance, in 2017).

With respect to income deferral, cash-basis businesses, for example, can delay year-end billings so that they fall in the following year or accelerate business expenditures to the current year. On the investment side, income from short-term (*i.e.*, maturity of one year or less) obligations like Treasury bills and short-term certificates of deposit is not recognized until maturity, so purchases of such investments at this time will push taxability of such income into 2018. For a wage earner (excluding an employee-shareholder of an S corporation with a 50 percent or greater ownership interest) who is fortunate enough to be expecting a bonus, he or she may be able to arrange with his or her employer to defer the bonus (and his or her tax liability for it) until 2018. However, if any of this income becomes available to the wage earner, whether or not cash is actually received, the bonus will be taxable in 2017. This is known as the constructive receipt doctrine.

26. Participate in and maximize payments to 401(k) plans, 403(b) plans, SEP (self-employed) plans, IRAs, etc. These plans enable you to convert a portion of taxable salary or self-employed earnings into tax deductible contributions to the plan. In addition to being deductible themselves, these items increase the value of other deductions, since they reduce AGI. Deductible contributions to IRAs are generally limited to $5,500 in 2017, while substantially higher amounts can be contributed to 401(k) plans, 403(b) plans and simplified employee pensions (SEPs). For example, $18,000 may be contributed to a 401(k) plan in 2017 as part of the regular limit of $54,000 that may be contributed to a defined contribution (*e.g.*, money purchase, profit-sharing) plan in that year. These limits, as well as the limits for "catch-up" contributions (contributions for individuals who have attained age 50 by the end of the year), are reflected in the table below.

In addition, SEPs, can be established and contributed to as late as the due date of your return, including extensions, or as late as October 15, 2018, for tax year 2017.

OBSERVATION
Roth 401(k) accounts can be established to take after-tax contributions, if the traditional 401(k) plan permits such treatment. Some or all of the traditional 401(k) contributions can be designated by the participant as Roth 401(k) contributions, subject to the maximum contributions that already apply to traditional 401(k) plans (including the "catch up" contributions), as reflected in the table below. The Roth 401(k) contributions are not deductible, but distributions from the Roth 401(k) portion of the plan after the participant reaches age 59½ are tax free.

Current Scheduled Annual Retirement Plan Contribution Limits		
Type of Plan	2017	2018
IRAs age 50+	$6,500	$6,500
Traditional and Roth IRAs	$5,500	$5,500
Roth and traditional 401(k) and similar plans age 50+	$24,000	$24,500
Roth and traditional 401(k), 403(b) and 457 plans	$18,000	$18,500
SIMPLEs age 50+	$15,500	$15,500
SIMPLEs	$12,500	$12,500
SEPs and defined contribution plans	$54,000	$55,000

27. Contribute the maximum to a nonworking spouse's IRA. As long as one spouse has $11,000 of earned income in 2017, each spouse can contribute $5,500 to their IRAs. The deductibility of the contributions depends on the AGI reflected on the tax return and on whether the working spouse is a participant in an employer sponsored retirement plan. Keep in mind that an individual is not considered an active participant in an employer sponsored plan merely because his or her spouse is an active participant for any part of the plan year. Thus, it is possible to have contributions to the working spouse's IRA that are nondeductible while having contributions to the nonworking spouse's IRA that are deductible, or to have contributions to both IRAs that are deductible. Any individual making an IRA contribution, whether it is deductible or not, may wish to make it sooner rather than later in order to maximize the tax-deferred income on the contributed amount. In addition, "catch-up" IRA contributions, described above, are also permitted.

28. Consider purchasing annuities. Once you have maximized the use of qualified retirement plans (*e.g.,* SEPs, Keoghs, 401(k)s) and IRAs, the purchase of annuities offers another opportunity for deferral of income, and thus, tax. Due to the time value of money, it is almost always better to pay tax on income, later, rather than sooner. When contemplating retirement, deferral of income is particularly beneficial in scenarios where income is expected to drop in retirement and will thus be subject to lower effective tax rates than those in effect during the comparatively higher income years of employment.

29. Participate in flexible spending accounts (IRC Section 125 accounts). These plans enable employees to set aside funds on a pre-tax basis for (1) medical expenses that are not covered by insurance, (2) dependent-care costs up to $5,000 per year and (3) adoption assistance of up to $13,570 per year. Funds contributed by employees are free of federal income tax (at a maximum rate of 39.6 percent), Social Security and Medicare taxes (at 7.65 percent), and most state income taxes (at maximum rates as high as 13.3 percent), resulting in a tax savings of as much as 60 percent. Paying for these expenses with after-tax dollars, even if they meet various AGI requirements, is more costly under the current tax rate structure. Since many restrictions apply, such as the "use-it-or-lose-it" rule, review this arrangement before making the election to participate.

ILLUSTRATION

The tax savings resulting from participation in FSAs are often significant. Assume a family contributes $5,000 for uncovered medical costs, and $5,000 for qualified daycare expenses. Assuming a 39.6 percent tax rate, the family creates a tax savings of about $4,720 ($3,960 in income taxes and $760 in Social Security/Medicare taxes, not counting any potential reductions in state income taxes).

PLANNING TIP

Section 125 plans often adopt a two-and-a-half month grace period (to March 15, 2018) during which employees who participate in the Section 125 plan can incur expenses that can be treated as 2017 qualified expenses. Accordingly, this can potentially reduce employee contributions that would otherwise be subject to forfeiture.

PLANNING TIP

Married couples who both have access to a flexible spending accounts (FSAs) will also need to decide whose FSA to use If one spouse's salary is likely to be higher than the FICA wage limit ($127,200 for 2017) and the other spouse's salary will be less, the one with the smaller salary should fund as much of the couple's FSA needs as possible. This is because FSA contributions by the spouse whose income is higher than the FICA wage limit will not reduce the 6.2 percent Social Security tax portion of the FICA tax, but FSA contributions by the other spouse will reduce it. This planning tip also applies to HSAs mentioned below.

For example, if John's salary is $150,000 and Mary's salary is $50,000, FSA contributions of $10,000 by John will not reduce his Social Security tax (since, even reflecting the FSA contributions, his Social Security wages exceed $127,200), while FSA contributions of $10,000 by Mary will save her approximately $600 in Social Security tax.

30. Participate in Health Savings Accounts (IRC Section 223 accounts). Health Savings Accounts (HSAs) are another pre-tax medical savings vehicle that are currently highly favored in the marketplace by Congress. HSAs offer a tax-favorable way to set aside funds to meet future medical needs. The four key elements to an HSA include: (1) contributions you make to an HSA are deductible, within limits, (2) contributions your employer makes are not taxed to you, (3) earnings on the funds within the HSA are not taxed, and (4) distributions from the HSA to cover qualified medical expenses are not taxed.

To be eligible for an HSA, you must be covered by a "high deductible health plan." You must also not be covered by a plan that (1) is not a high deductible health plan and (2) provides coverage for any benefit covered by your high deductible plan. For self-only coverage, the 2017 limit on deductible contributions is $3,400. For family coverage, the 2017 limit on deductible contributions is $6,750.

PLANNING TIP

The HSA is not a use-it-or-lose-it account like FSA, which means wiser choices can be made in long-term healthcare spending. Funds remaining in a HSA at year-end are not forfeited, but remain in the account tax free until distributed for medical purposes. Like IRAs, an individual owns their HSA. It stays with the individual even after a job change making the HSA a very portable savings device.

31. Consider optimal timing for retirement plan distributions. If you are age 70½ or older, you are normally subject to the minimum distribution rules with regard to your retirement plans. Under these rules, you must receive at least a certain amount each year from your retirement accounts. You can always take out more than the required amount, but anything less is subject to a 50 percent penalty on the shortfall amount. Therefore, if you have not taken your required distribution for 2017, do so before year-end to avoid a hefty penalty.

If you have reached age 70½ in 2017, you can delay your 2017 required distribution until April 1, 2018, if you choose. However, waiting until 2018 will result in two required distributions in 2018—the amount required for 2017 plus the amount required for 2018. While deferring income is normally a sound tax strategy, here it may result in bunching income into 2018, which may or may not push you into a higher tax bracket or have a detrimental impact on other tax deductions you normally claim.

OBSERVATION

Certain individuals still employed at the age of 70½ are not required to begin receiving minimum required distributions from qualified retirement plans until after they retire, representing another often overlooked method of deferral of tax on retirement savings.

A careful timing assessment is needed. “Crunching the numbers” for 2017 and 2018 will help you to determine the optimal timing of the distributions.

32. Carefully plan Roth conversions. Taxpayers who decide to rollover or convert from a regular IRA to a Roth IRA, and who also expect their AGI and tax bracket to remain more or less constant, should consider staggering the total amount they plan to shift over a period of years. For example, a taxpayer who plans to convert a total of $85,000 from a regular IRA to a Roth IRA should consider converting $17,000 per year for five years. This strategy may prevent the conversion from pushing a taxpayer into a higher tax bracket, since the conversion is fully taxable on the amount converted.

PLANNING TIP

Before assets are transferred to a Roth IRA, a careful analysis should be performed to project which retirement investment vehicle will be more financially beneficial and the impact of the rollover or conversion on an older taxpayer’s required minimum distribution (RMD) calculations. The goal is to generate more after-tax wealth as a result of the conversion for you and your heirs.

33. Avoid deduction limits for charitable contributions. The charitable deduction for airplanes, boats and vehicles may not exceed the gross proceeds from their re-sale. Form 1098-C must be attached to tax returns claiming these types of noncash charitable contribution. Furthermore, donations of used clothing and household items, including furniture, furnishings, electronics, linens, appliances and similar items must be in “good” or better condition to be deductible. You should maintain a list of such contributions together with photos to establish the item’s condition. To the extent they are not in “good condition,” you will need to secure a written appraisal to deduct individual items valued at more than $500.

PLANNING TIP

Collect substantiation for cash contributions. Charitable contributions of money must be supported by a canceled check, bank record, or receipt from the donee organization showing the name of the organization, the date of the contribution, and the amount of the contribution. Charitable contributions in excess of $250 must have a written acknowledgment from the organization.

OBSERVATION

Substantiation of charitable contributions has grown in importance in the eyes of the courts and the IRS. If you are thinking of making a large non-cash charitable contribution that is not in the form of publically traded stock, make sure you acquire the correct information and forms needed to substantiate your deduction. The chart below is a useful guide for determining what you need to have in order to deduct your non-cash charitable contribution.

Non-Cash Contribution Substantiation Guide				
	Amount Donated			
Type of Donation	Less than $250	$250 to $500	$501 to $5,000	Over $5,000
Publicly traded stock	Receipt Written records	Acknowledgment Written records	Acknowledgment Written records	Acknowledgment Written records
Non-publicly traded stock	Receipt Written records	Acknowledgment Written records	Acknowledgment Written records	Acknowledgment Written records Qualified appraisal Form 8283 Section B
Artwork	Receipt Written records	Acknowledgment Written records	Acknowledgment Written records	Acknowledgment Written Records Qualified Appraisal Form 8283 Section B
Vehicles, boats and airplanes	Receipt Written records	1098-C or Acknowledgment	1098-C and Written records	1098-C Written records Qualified appraisal Form 8283 Section B
All other non-cash donations	Receipt Written records	Acknowledgment Written records	Acknowledgment Written records	Acknowledgment Written records Qualified appraisal Form 8283 Section B
Volunteer out-of-pocket expenses	Receipt Written records	Acknowledgment Written records	Acknowledgment Written records	Acknowledgment Written records

34. Make charitable contributions of up to $100,000 of 2017 distributions from IRAs. Current law provides an exclusion from gross income for certain distributions of up to $100,000 per year from a traditional IRA, where the distribution is contributed to a qualified tax-exempt organization to which deductible contributions can be made. This special treatment, which was made permanent under the PATH Act of 2015, applies only to distributions made on or after the date the IRA owner attains age 70½ and must be made directly from the IRA trustee to the charitable organization. Distributions that are excluded from income under this provision are not allowed as a deduction.

OBSERVATION

The provision can save taxes for those who itemize their deductions to the extent that AGI limitations would have otherwise reduced the amount of charitable contributions currently deductible. In addition, excluding the IRA distributions from AGI also results in a lower AGI, which may make deductions affected by AGI (such as medical deductions and miscellaneous itemized deductions) more valuable and may also reduce the amount of Social Security benefits that are subject to tax.

PLANNING TIP
Qualifying charitable distributions can be used to satisfy Required Minimum Distribution (RMD) requirements, thus allowing taxpayers to exclude income they would otherwise be required to include. As a practical matter however, such charitable distributions may not be made to a private foundation or donor advised fund.

35. Make intelligent gifts to charities. Do not give away loser stocks (those that are worth less today than what you paid for them). Instead, sell the shares and take advantage of the resulting capital loss to shelter your capital gains or income from other sources, as explained above. Then give cash to the charity. Since you just sold the stock, you will have the cash on hand. As for winner stocks, give them away to charity instead of donating cash. Under either situation, you recognize multiple tax benefits. When gifting appreciated stock to charity, you not only avoid paying capital gains taxes and gift taxes, but you may also be able to deduct the value of the stock for income tax and AMT purposes.

PLANNING TIP
Consider making a qualified conservation contribution, which is a contribution of real property interests exclusively for conservation purposes, including remainder interests and use restrictions granted in perpetuity. The charitable deduction is taken in the year of the transfer even though the charity does not receive the property until a later time, if ever.

For example, you can donate an easement on scenic farmland next to a national park and continue to farm the property. You may have to grant some access to the public, depending on the circumstances, but this can be limited in a manner that permits your continued enjoyment of the property. The amount of the deduction is generally the present value of the remainder interest on the date of the gift. Like other charitable contributions, gifts of remainder interests are subject to the AGI limitations and other restrictions on charitable deductions so contact us for details.

Another strategy to consider is a charitable remainder trust, where income-producing assets are transferred to an irrevocable trust. The donor or other noncharitable beneficiaries receive trust income for life, or for a period of years. The donor receives an up-front charitable contribution equal to the present value of the remainder interest. The charity receives the remaining trust assets when the income interests end.

36. Consider deducting state and local sales taxes in lieu of deducting state income taxes. For 2017, instead of deducting state and local income taxes, taxpayers are able to choose to deduct state and local sales taxes by either (1) accumulating receipts or (2) using IRS sales tax tables and adding actual sales taxes paid for major items, such as vehicles. Accordingly, to the extent possible, accumulate the receipts reflecting sales taxes you have paid this year and compare the total to the state income taxes paid this year. Keep in mind that the deduction for state and local sales taxes includes the amount provided in IRS tables plus the amounts of general state and local sales taxes paid on the purchase of motor vehicles, boats and airplanes.

OBSERVATION
This provision is attractive to taxpayers residing in states without an income tax, such as Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming; states that tax only dividends, such as New Hampshire and Tennessee; and in lower tax rate jurisdictions.

37. Charge charitable contributions. Charitable contributions charged to a credit card are deductible in the year charged, not when payment is made on the card. Therefore, charging charitable contributions to your credit card before year-end enables you to increase your 2017 charitable contributions deduction even if you are temporarily short on cash or simply want to defer payment until next year. Note, however, that any interest paid with respect to the charge is not deductible.

38. "Bunch" itemized deductions. Consider paying state and local taxes, medical expenses, charitable gifts, etc. in the same year as opposed to spreading the payments over two years. By bunching deductions and deferring taxable income along with using AGI-reducing techniques, you increase the value of all deductions and reduce your overall tax liability. If your 2017 AGI exceeds the $261,500 threshold for single taxpayers ($313,800 joint), however, the effectiveness of the bunching technique may be reduced as your itemized deductions will be limited. As always, consideration must also be given to the AMT.

In considering the strategies noted below, however, keep in mind that if you pay a deductible expense in December 2017 instead of in January 2018, you reduce your 2017 tax instead of your 2018 tax, but you also lose the use of your money for one month. Generally, this will be to your advantage, unless you have an alternative use for the funds that will produce a rate of return in that one month that will exceed the tax savings. In other words, you must decide whether the cash used to pay the expense early should be for something more urgent or more valuable than the increased tax benefit.

State and local taxes. As we discussed in item 5 above, consider paying in December 2017 those state and local taxes that have accrued (property, estimated income, etc.) that you would normally pay in the first part of 2018. This will allow you to accelerate your federal tax deduction a full year, if applicable. Since state and local taxes are not deductible for AMT purposes, however, review your regular and AMT positions to determine the most effective tax strategy.

> **PLANNING TIP**
> *If your deduction for sales taxes will be greater than the state and local income taxes deduction, you experience no tax benefit by accelerating your state and local tax payments.*

Deductible mortgage interest. As discussed above in item 6, you may wish to pay your January 2018 payment in December 2017.

> **PLANNING TIP**
> *With interest rates expected to rise in the near term, consider refinancing your mortgage to take advantage of the current lower rates. Any points you paid on a previous refinancing that have not been fully amortized would be deductible in full in 2017 as long as the previous mortgage is paid off by the end of the year. And even though the interest paid on a lower rate mortgage would be less, and would result in a smaller tax deduction, it also would improve your monthly cash flow. In other words, as noted above, use sound economic planning in your decision-making process rather than viewing every transaction in terms of its tax effect.*

The following chart illustrates the tax treatment of selected types of interest.

Interest Expense Deduction Summary*			
Type of debt	Not deductible	Itemized deduction	Business or above-the-line deduction
Consumer or personal	X		
Taxable investment (1)		X	
Qualified residence (2)		X	
Tax-exempt investment	X		
Trading and business activities			X
Passive activities (3)			X

* Deductibility may be subject to other rules and restrictions
1 Generally limited to net investment income
2 For 2017, including debt of up to $1,100,000 associated with primary and one secondary residence
3 Subject to passive activity rules

Charitable contributions. As discussed in item 7 above, consider paying 2018 pledges in 2017 to maximize the "bunching" effect.

Investment interest. This is interest on loans used to purchase or carry property held for investment purposes (*e.g.*, interest on margin accounts, interest on debt used to purchase taxable bonds, stock, etc.). Investment interest is fully deductible to the extent of net investment income, unless incurred to purchase securities that produce tax-exempt income. Net investment income is equal to investment income less deductible investment expenses. Sources of investment income include income from interest, nonqualified dividends, rents and royalties. Investment expenses include depreciation, depletion, attorney fees, accounting fees and management fees. If you bunch your investment expenses in one year so that little or no investment interest is deductible, the nondeductible investment interest can be carried forward to a succeeding tax year. The deduction for investment interest was preserved by the new Act.

You may be able to convert nondeductible interest to deductible investment interest by rearranging your borrowing. In addition, you may be able to increase your otherwise nondeductible investment interest by disposing of property that will generate a short-term capital gain. The extra investment interest deduction may even offset the entire tax on the gain. Disposing of property that will generate long-term capital gain will not increase your investment income unless you elect to pay regular income tax rates on the gain. Accordingly, you should review your debt and investment positions before disposing of such property.

PLANNING TIP

An election can be made to treat qualified dividend income as nonqualified. This would increase the amount of net investment income and consequently the amount of deductible investment interest. Although the election would result in qualified dividend income being taxed at the taxpayer's top marginal income tax rate, rather than, in general, at a 20 percent rate, tax savings could result. The only way to determine if this makes sense is to "crunch the numbers" and see if the overall tax liability decreases. Since investment interest is deductible for AMT purposes, making this election could reduce the AMT.

Medical and dental expenses. As discussed in item 4 above, medical deduction is allowed only to the extent that your unreimbursed medical outlays exceed 7.5 percent of your AGI. To exceed this threshold, you may have to bunch expenses into a single year by accelerating or deferring payment, as appropriate.

PLANNING TIP

Keep in mind that premiums paid on a qualified long-term care insurance policy are deductible as medical expenses. The maximum amount of the deduction is based on the taxpayer's age. For example, the deduction for such premiums paid for an individual age 40 or less is limited to $410, while the deduction for an individual age 71 or older is limited to $5,110. These limitations are per person, not per tax return, so a married couple where both husband and wife are 71 or older would be entitled to a maximum deduction of $10,220, subject to the 7.5 percent of AGI floor noted above.

OBSERVATION

A divorced parent generally can deduct medical payments incurred for his or her child even though the other parent claims the dependency exemption. Also, a child may be entitled to a deduction for the medical expenses paid on behalf of a parent, even though he or she cannot claim the parent as a dependent because the parent has gross income of at least $4,050 in 2017.

Miscellaneous itemized deductions. Bunching miscellaneous itemized deductions, such as tax preparation fees, investment advisory fees and other expenses incurred in generating investment income, in one year, in order to exceed the 2 percent of AGI floor that applies to such deductions, may also reduce your tax liability. Again, however, keep in mind that miscellaneous itemized deductions are not deductible for AMT purposes. However, as discussed in item 8 above, all miscellaneous deductions are eliminated under the new Act. Accordingly, if you are not subject to AMT, it is wise to pay these expenses in 2017.

39. Determine your level of participation in activities to either avoid or qualify for passive activity loss treatment. In general, if an individual spends more than 500 hours participating in an activity during the year, the activity will not be considered passive. There are other exceptions, as well.

As for real estate professionals, eligible taxpayers may deduct losses and credits from rental real estate activities in which they materially participate, since they will not be treated as passive and may be used to reduce nonpassive income. An eligible taxpayer for these purposes spends more than 750 hours of services during the tax year in real property trades or businesses. In addition, a taxpayer's personal use, or rental to others, of a vacation home during the last few days of the year may have a substantial tax impact.

40. Do not overlook the advantages of selling passive activities to free up suspended losses. Passive losses can be used to offset nonpassive income in the year you dispose of or abandon your entire interest in the activity in a taxable transaction, whether the transaction results in a gain or a loss.

PLANNING TIP

Dual tax benefit. If you have sufficient capital gains, you can sell a passive activity for a capital loss, offset the capital loss against the capital gains, and also deduct prior year suspended losses from that passive activity. Should the sale result in a gain, this may still be a sound strategy since the gain will be taxed at a rate lower than the ordinary tax rate permitted for the passive loss. Once again, crunch the numbers to determine the tax impact.

41. Increase your basis in partnerships or S corporations to take advantage of any losses generated by the pass-through entities. Keep in mind that loans made by a third party lender to an S corporation, and guaranteed by an S corporation shareholder, do not increase the shareholder's basis. The loan must be directly from the S corporation shareholder to the S corporation in order to increase his or her basis.

42. Pending divorce and marriage plans as well as employment changes, illness and retirement should include a review of the tax impact for 2017 and beyond. In regards to divorce and tax reform, the new Act treats alimony paid as a nondeductible expense (and non-taxable to the recipient) for divorce decrees, separation agreements, and certain modifications entered into after December 31, 2018. While initial versions of the bill slated this provision to take effect on January 1, 2018, divorcing couples now have an extra year to finalize proceedings without worrying about the tax effects of this otherwise life-changing event.

43. Take advantage of the $14,000 annual gift exclusion and unlimited medical and education expense exclusion. A donor may make a gift of $14,000 to any one donee or $28,000 to any one donee provided the donor is married and the gift is split with his or her spouse. Thus, a gift of $56,000 may be made by a husband and wife to another married couple. Medical and education expenses paid directly to the providing institution are not subject to gift tax. In addition, as indicated in the education planning section, contributions to Section 529 plans may also qualify for special gift tax exclusion treatment. A substantial tax reduction can be achieved by making gifts to your child or grandchild. In 2018, this exclusion will increase to $15,000.

For example, a parent can reduce the capital gains tax from the 20 percent rate to potentially zero percent by gifting stock or certain mutual funds, in lieu of cash, to a child or grandchild who is in the 10 percent or 15 percent tax bracket. Keep in mind that gifting to a child under 23 may not have the desired effect, since the "kiddie tax" may result in some of his or her income being taxed at your higher income tax rate. *See* item 13 above.

OBSERVATION

Even gifts that are not covered by the exclusion, and thus taxable, may not result in a tax liability. This is so because a tax credit wipes out the federal gift tax liability on the first taxable gifts that you make in your lifetime, up to $5,490,000 (for 2017). However, to the extent you use this credit against a gift tax liability, it reduces (or eliminates) the credit available for use against the federal estate tax at your death. The new Act doubles the unified credit for purposes of the estate, gift and generation-skipping tax to an inflation indexed $10 million ($11,200,000 for 2018).

PLANNING TIP

All of the strategies and observations noted in this guide are aimed at minimizing your income and gift tax costs. In other words, it is important that you ensure that your current and future wealth are not unduly diminished by those taxes. Although our focus is not on gift and estate tax planning, we strongly recommend that you consult with estate planning professionals to discuss such topics as gift, estate and generation-skipping transfer (GST) tax exemptions, the unlimited marital deduction, each spouse's exemption, and related items.

44. Increase federal tax withholding to avoid the underpayment of estimated tax penalty. For taxpayers with AGI of more than $150,000, 110 percent of your prior year liability (or 90 percent of your current year liability) must be paid to avoid the penalty. Attempting to compute how much tax you will owe and when you must pay it to avoid underpayment penalties is the key to determining which of the two methods to use. Accordingly, minimizing 2017 taxable income will result in the lowest possible estimated tax payments in 2018, if using the prior year safe harbor method. In addition, since withholding is treated as being paid equally throughout the year, a penalty for an estimate that was paid late can be eliminated through increased withholding. Similarly, you may wish to increase withholding of state and local taxes to avoid underpayment penalties and accelerate a federal tax deduction.

OBSERVATION
If you are not earning wages but are taking distributions from qualified plans or IRAs, federal tax withholding on those distributions could also result in avoiding the underpayment of estimated tax penalty.

45. Review your estate plan documents. Despite the new Act doubling the estate, gift and GST tax exemptions to $11.2 million per U.S. domiciliary, wealth transfer strategies are important. If you have not examined your estate plan within the last two years, you should consider doing so immediately. While addressing your will, also consider the benefits of a living will, medical power of attorney and durable power of attorney and the appropriateness of your beneficiary designations on your retirement accounts and life insurance policies.

46. Consider tax payments by credit card. IRS accepts tax payments by credit and debit cards. Consequently, taxpayers may wish to pay tax payments with a credit card to earn frequent flyer miles, cash-back bonuses, reward points and other perks. The fees charged to you (on average 2.5 percent of the tax paid) by the card issuer, however, may exceed the benefits received.

47. Qualify for plug-in energy tax credits. The qualified plug-in electric drive motor vehicle credit is primarily for four wheeled vehicles that meet certain battery and kilowatt requirements. The base amount of the credit is $2,500 per vehicle. The allowable credit increases to $5,000 per vehicle based on a formula which increases the credit by $417 for every kilowatt hour of battery capacity in excess of five.

OBSERVATION
The credit is not subject to any income phaseouts for high-income taxpayers, which makes buying one of these qualified vehicles a perfect end of year tax saving maneuver.

48. Consider accelerating life insurance benefits. Subject to certain requirements, an individual who is chronically or terminally ill may exclude payments received under a life insurance policy from income. Similarly, payments received from selling a life insurance policy to a viatical settlement provider, who regularly engages in the business of purchasing or taking assignments of such policies, may also be excluded.

49. Exclude amounts received for physical injuries and deduct qualified legal fees against gross income. Although amounts received as damages attributable to non-physical injuries and punitive damages are gross income in the year received, amounts received for physical injuries are excluded from gross income. Legal fees attributable to employment-related unlawful discrimination lawsuits (as well as certain other actions) are chargeable against gross income. Finally, damages received by a spouse, which are due to loss of consortium due to physical injuries of the other spouse, are also excluded from income. However, it is important to note that settlements must be properly structured in order to capitalize on these deductions and exclusions.

50. Deduct moving expenses. In 2017, qualified moving expenses are deductible whether or not the individual incurring them itemizes his or her deductions, so there are no AGI phaseouts to address. Qualified expenses include the cost of moving household goods and personal effects, plus traveling (including lodging but not meals) to your new residence from your old residence. Distance, length of employment and commencement of work tests must be satisfied in order for the expenses to be deductible. However, this deduction was repealed in the new Act, beginning in 2018 for individuals who are not active duty members of the armed forces.

PLANNING TIP

Pay all deductible moving expenses prior to the end of 2017, as the deduction expires on December 31.

51. Manage your nanny tax. If you employ household workers, try to keep payments to each household worker under $2,000 ($2,100 for 2018). If you pay $2,000 or more to a worker, you are required to withhold Social Security and Medicare taxes from them, and remit those withholdings, along with matching employer payroll taxes, on your individual income tax return, on Schedule H.

Focus on Corporate Executives: Planning Tips

Consider delaying the exercise of incentive stock options (ISOs), aka statutory options. The special tax treatment afforded to taxpayers for regular tax purposes when an ISO is exercised includes no taxation at the time the ISO is exercised, deferral of tax on the benefit associated with the ISO until disposition of the stock, and taxation of the entire profit on the sale of stock acquired through ISO exercise at the lower long-term capital gain rates as long as you hold the option for more than two years from date of grant and one year from date of exercise. Employment taxes do not apply on the exercise of an ISO.

OBSERVATION

This special treatment, however, is not allowed for AMT purposes. Under the AMT rules, you must include in your AMT income, in the year the ISO stock becomes freely transferable or is not subject to a substantial risk of forfeiture, the bargain purchase price, which is the difference between the ISO stock's value and the lower price you paid for it. For most taxpayers, this occurs in the year the ISO is exercised. Consequently, even though you are not taxed for regular tax purposes, you may still have to pay AMT on the bargain purchase price when you exercise the ISO, even though you did not sell the stock and even if the stock price declines significantly after you exercise the ISO. Under these circumstances, the tax benefits of your ISO will clearly be diminished. With the passage of the new Act, the impact of the AMT has been diminished, though careful analysis of the tax environment and AMT exposure through the exercise of ISOs is necessary for maximum tax savings. A delayed exercise to 2018 may prove beneficial.

PLANNING TIP

Retirees generally have 90 days after retirement to exercise the options that qualify as ISO. If you are newly in or approaching retirement, evaluate whether the exercise of remaining ISOs will be beneficial.

Manage your AMT risk. While exercising ISOs could trigger AMT, the AMT may be avoided with careful planning. For example, for tax year 2017, the potential AMT harshness may be ameliorated by the availability of a partial refund for unused AMT credits that are more than three years old. In addition, disqualifying dispositions of incentive stock options can be used for AMT purposes. Assuming the exercise of the ISO creates an AMT liability, the sale of some or all of the securities obtained through the exercise of the ISO prior to the end of the year in which the options were exercised (otherwise known as a disqualifying disposition) may provide meaningful benefits. First, even though any gain on the sale would be subject to ordinary income tax, the amount of the ISO creating the AMT liability will be reduced and possibly eliminated. Secondly, the proceeds realized from selling the securities can be used to make an estimated tax payment to cover some or all of the AMT liability created by the exercise of the ISO. (*See* the discussion earlier in Beware the Secret Tax.) Incidentally, federal income tax withholding is not required on disqualifying dispositions. As you can see, these technically complex ISO rules require careful tax planning strategies.

Take advantage of deferred compensation contributions to maximize the benefits of deferring income. Annual limits for compensation must be taken into account for each employee in determining contributions or benefits under a qualified retirement plan. For 2017, the limit, as adjusted for inflation, is $270,000. This means that, for an executive earning $300,000 a year, deductible contributions to, for instance, a 15 percent profit-sharing plan are limited to 15 percent of $270,000 or $40,500. But there is a way to avoid this limitation which you might want to consider.

Benefits that are not subject to the qualified plan limitations can be provided through Nonqualified Deferred Compensation (NQDC) agreements. These deferred compensation agreements are contracts between an employer and an employee for the payment of compensation in the future—at retirement, on the occurrence of a specific event (such as a corporate takeover), or after a specified number of years, in consideration of continued employment by the employee.

Unlike a qualified plan, these NQDC plans are funded at the discretion of the employer and are subject to the claims of creditors. Essentially, the trust is under the employer's control, and, structured properly, will result in a deferral of income taxes for the employee on the amount of compensation deferred above the traditional limitations.

Consider filing an IRC Section 83(b) election with regard to year-end restricted stock grants to preserve potential capital gain treatment. If you make the election within 30 days of the grant, you will pay income taxes currently on the spread between the market price (the value of the stock) and the grant price (the amount you paid for the stock). The benefit, however, is that you defer taxation on the future appreciation in the value of the restricted stock until the stock is sold and the post-election increase in the stock's value is taxed at the lower capital gain rates rather than the higher ordinary income rates. The risk with making the election, however, is that the stock price might decline by the vesting date and you will have then prepaid income tax on an unrealized gain. The rules governing restricted stock awards are technically complex and call for some careful tax planning strategies.

Opt for a lump-sum distribution of employer stock from a retirement plan. Employer stock distributed as part of a lump-sum distribution from a qualified plan is taxed based on the plan's basis in the stock rather than on its value, unless a taxpayer elects otherwise. Consequently, assuming the value of the stock exceeds its cost, the tax on the unrealized appreciation is deferred until a later date, when the stock is sold. This could be many years after receipt of the employer stock. As an added benefit, when the stock is sold at a later date the gain is subject to tax at the more favorable long-term capital gains rate. Cash or other nonemployer stock distributed as part of the lump-sum distribution will be taxed at ordinary income tax rates.

Implement strategies associated with international tax planning. For executives on assignment in foreign countries, consider implementing strategies that will reduce your individual tax costs, such as maximizing the foreign earned income and housing exclusion provisions. The preparation of tax equalization calculations may be beneficial in determining the breakdown of compensation to the maximize tax benefits associated with international assignments.

OBSERVATION

International employers typically have tax-equalization, reimbursement policies for its U.S. citizens and residents working abroad, and those with foreign nationals working in the U.S. While some workers may experience a tax savings as a result of the new Act (and the employers tax reimbursement would similarly decrease), some workers may experience a federal income tax increase. As a result, international employers may wish to project how the new Act could impact its tax equalization, reimbursement costs.

Consider engaging a new tax service provider. We administer a flexible Executive Tax Assistance Program (ETAP) designed for corporate executives, providing comprehensive, confidential and highly personalized individual and business tax preparation, planning and consulting services. The principal objectives of ETAP are to streamline interaction between the busy executive and needed advisors and to assist the executive in achieving tax, financial and related objectives. This is accomplished through a coordinated approach delivered by a primary core of specialists intimately familiar with, and taking a personal interest in, the executive's tax and related financial objectives. The result of our ETAP is more effective solutions and greater peace of mind for the busy executive without the conflict of interest risks presented by the dual activities of the employer company's auditors performing tax services for company personnel.

Tax Planning Strategies for Businesses

52. Decrease your tax liability on pass-through income. Business income from pass-through entities is currently taxed at the ordinary individual tax rates of the owners or shareholders. Under the new Act, taxpayers who receive qualified business income from a partnership, S corporation, sole proprietorship, or rental property will be allowed a 20 percent deduction, subject to taxable income phase outs and complex calculations, in arriving at taxable income. The deduction will also be afforded to taxpayers who receive qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income. For owners with taxable incomes over $315,000 (joint filers) or $157,500 (all other filers), this deduction is subject to reduction or elimination (*see* discussion below).

Expanded Discussion on Pass-Through Deduction Under the New Act

Generally, with minor limitations, the deduction for qualified business income will be 20 percent of that income, whether or not from a specified service trade or business (such as lawyers, doctors, etc., *see* discussion below) until the taxpayer's taxable income reaches $315,000 for married individuals filing jointly and $157,500 for all other filers. If taxable income exceeds these thresholds, and is below $415,000 for married individuals filing jointly, and $207,500 for all other filers, the 20 percent deduction, whether income was from a specified service business or not, would be subject to additional limitations based on the owner's pro rata share of W-2 wages paid by the business and the business' basis in qualified property.

If a taxpayer's taxable income exceeds $415,000 for married individuals filing jointly, and $207,500 for all other filers, owners of specified service businesses would no longer qualify for the deduction, while owners of other businesses would remain subject to the W-2 wage limitations discussed above.

A qualified trade or business is defined as any trade or business other than a specified service trade or business and other than the trade or business of being an employee. Specified services are defined as a trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services and brokerage services (investing and investment management, trading, dealing in securities, partnership interests, or commodities, and any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees). Notably absent from this list, and specifically excluded from the definition of specified services, are engineering and architectural services.

PLANNING TIPS

There are certain planning devices taxpayers can use in order to take advantage of these deductions. It would be wise for taxpayers to defer qualified pass-through income until after 2017 in order to receive the 20 percent deduction. In addition, those service businesses listed above should consider methods to increase tax-deferred income or decrease taxable income at the entity level, so that owners close to the $157,500/$315,000 threshold can take full advantage of the pass through deduction. Some methods of reducing taxable income to fall within these thresholds include:

- *Consider the current status of contractors/employees. If the taxpayer is within the phase out range and subject to wage limitations, it may be beneficial to deem current contractors as employees, subject to W-2 wages. This both increases the W-2 wage base and will provides entity level deductions for additional payroll taxes and benefits to reduce pass through income to the shareholder/partner.*
- *Take full advantage of retirement vehicles, which serve to reduce taxable income at the shareholder/partner level.*
- *Partners and shareholders should plan to maximize above-the-line (such as retirement plan contributions, health insurance, among others) and itemized deductions for purposes of reducing taxable income.*

53. Take advantage of lower expected corporate rates. For 2017, corporate rates are based on brackets of income, with the lowest rate being 15 percent and the highest rate at 39 percent as follows:

Over	But not over	Tax rate is
$0	$50,000	15%
$50,000	$75,000	25%
$75,000	$100,000	34%
$100,000	$335,000	39%
$335,000	$10,000,000	34%
$10,000,000	$15,000,000	35%
$15,000,000	$18,333,333	38%
$18,333,333	-	35%

With the passage of the new Act, corporations will now be subject to a flat 21 percent tax rate beginning in 2018. The 21 percent rate will also apply to personal service corporations such as accounting firms and law firms.

PLANNING TIP

In certain scenarios, taxpayers can defer income until the following year. For example, IRS rules allow an accrual basis taxpayer to defer unearned revenue for up to one year. When possible, taxpayers should defer income until after 2017 in order to have it taxed at the proposed lower rates. Taxpayers may also benefit from accelerating deductions when possible. For example, a company may elect to pay wages, including bonuses that normally would not be paid until the following year, to its employees before year-end in order to lower income taxed at the higher 2017 corporate rates.

Don't Let the Simple Rate Change Fool You

The change in the corporate tax rate is straightforward compared to the changes and related restrictions for pass-through entities. Despite the significant decrease in the corporate tax rate to 21 percent from 35 percent, the corporate tax structure may not be advantageous for closely held business owners currently established as S corporations, limited liability companies or partnerships. Beginning in 2018, corporations may enjoy a lower tax rate on their profits but they will still encounter a second tax on dividends distributed to owners. The profit of a corporation is taxed to the corporation when earned, and then is taxed to the shareholders when distributed as dividends. This creates a double tax. The corporation does not receive a tax deduction when it distributes dividends to shareholders and shareholders cannot deduct any losses of the corporation. Alternatively, income earned by pass-through entities is taxed only once at the owner level.

Another benefit to the pass-through structure of limited liability companies and partnerships is their flexibility for allocating income/loss and distributing cash/assets. The owners must agree on the allocations and the allocations must have substantial economic effect. Also, limited liability companies and partnerships are generally easier to form, manage and operate. They are less regulated in terms of laws governing the formation and because the owners control the way the business operates.

Businesses, particularly those in service industries who are excluded from the proposed pass-through deduction, should consider if electing C corporation status would be a more favorable structure. Companies who generate significant income, reinvest in their business and do not distribute cash to its investors could see a benefit of a lower corporate tax rate. Further, transitioning to a C corporation may be advantageous if you anticipate long-term ownership. However, owners considering a transition to a C corporation should also be mindful of the accumulated earning tax (20 percent tax on companies maintaining too much cash) and the personal holding company tax (25 percent penalty on undistributed passive income earned in a closely held C corporation).

54. Make plans to entertain clients by year-end. Currently, a business can deduct 50 percent of the expenses incurred while entertaining clients for business purposes. Under the new Act, any entertainment expenses incurred after 2017 will no longer be deductible.

PLANNING TIP

If possible, any planned entertainment activities with clients should be conducted before year-end, or prepaid for early 2018. The deduction for meals is preserved, so to the extent possible, be sure to break out the food portion of any entertainment expense incurred, and, as always, maintain contemporaneous logs or other evidence of the business purpose of all meals and entertainment expenditures.

55. Strategically time purchases of business property. For 2017, businesses can expense up to $510,000 of qualified business property purchased during the year. This $510,000 deduction is phased out, dollar for dollar, by the amount that the qualified property purchased exceeds $2,030,000. Additionally, bonus depreciation can be claimed on 50 percent of qualified new property placed in service during the year, and the first year bonus depreciation on passenger automobiles is currently $8,000. The new Act increases the expense limitation to $1 million, and the phase out amount to $2,500,000 starting in 2018. In addition, under the new law, property placed in service after September 27, 2017, and before January 1, 2023, will be entitled to bonus depreciation of 100 percent. The definition of qualified property for purposes of bonus depreciation is also expanded to include the purchase of used property, so long as the taxpayer has not previously used the property (such as in a sale-leaseback transaction).

If you are approaching the current limits discussed above, or are considering purchasing used property, you should wait until after year-end to make any large purchases of qualified business property, in order to benefit from the larger expensing limitations enacted with the new Act. Qualified business property includes, but is not limited to equipment, tangible personal property used in business, business vehicles, computers and office furniture.

> **PLANNING TIP**
> *If you are making multiple purchases of qualified property, pick assets with longer depreciable lives to expense. By doing this, you will depreciate your other assets over shorter recovery periods, thus accelerating and maximizing your depreciation deduction.*

56. Select the appropriate business automobile. For business passenger cars first placed in service in 2017, the ceiling for depreciation deductions is $3,160. Higher deductible amounts apply for certain trucks and vans (passenger autos built on a truck chassis, including SUVs and vans). Vehicles such as SUVs and vans with gross vehicle weight ratings of between 6,000 pounds and 14,000 pounds are restricted to a first year deduction of $3,560, in addition to the $25,000 that is permitted to be expensed under IRC Section 179. Automobiles that are used 100 percent for business are also eligible for bonus depreciation of $8,000. Under the new Act, the depreciation limitation for passenger automobiles placed in service after 2017 will increase to $10,000 for the year the automobile is placed in service, $16,000 for the second year, $9,600 for the third year and $5,760 for the fourth year.

Comparison of New Vehicle Depreciation in 2017 and 2018

	2017		2018	
	Passenger Automobiles	SUVs, Vans, Trucks	Passenger Automobiles	SUVs, Vans, Trucks
Section 179	-0-	$25,000	-0-	$25,000
Bonus Depreciation	$8,000	$8,000	100%	100%
Year 1	$3,160	$3,560	$10,000	$10,000
Year 2	$5,100	$5,700	$16,000	$16,000
Year 3	$3,050	$3,450	$9,600	$9,600
Year 4	$1,875	$2,075	$5,760	$5,760

›› ILLUSTRATION

If you purchase an SUV that costs $75,000 before the end of 2017, assuming the SUV would qualify for the expensing election, you would be allowed a $25,000 deduction on this year's tax return. In addition, the remaining adjusted basis of $50,000 ($75,000 cost less $25,000 expensed under Section 179) would be eligible for a depreciation deduction of $11,560 under the general depreciation rules, resulting in a total first year write-off of $36,560. The remaining $38,440 ($75,000 original cost less $36,560 deductible currently) would be recovered in future years under the general depreciation rules.

By way of comparison, the $36,560 in deductions for the SUV reflected above compares favorably with a passenger automobile costing $75,000 and placed in service before the end of the year. The passenger automobile is limited to maximum first year depreciation of $3,160, including the expensing election. However, allowable depreciation for electric vehicles is higher than that for non-electric vehicles.

57. Understand the benefits of dividend timing. Under current tax laws, corporations may generally deduct dividends received from domestic subsidiaries as follows:

% Ownership	Deductible Portion of Dividends
0% - 19.99	70% Dividend Received Deduction
20% - 79.99%	80% Dividend Received Deduction
80% - 100%	100% Dividend Received Deduction

Additionally, U.S. corporations are permitted a limited deduction for dividends received from their foreign subsidiaries.

Beginning in 2018, the 70 percent deduction for dividends received from domestic subsidiaries will be reduced to 50 percent, and the 80 percent deduction will be reduced to 65 percent. Dividends received from foreign subsidiaries will now be 100 percent deductible.

PLANNING TIP

Corporations receiving the 80 percent deduction will benefit slightly from accelerating receipt of dividends from domestic corporations before year-end. Those receiving the 70 percent deduction will not be afforded the same benefit as the effective tax rate will be identical.

By electing to defer receipt of dividends form a *foreign* subsidiary until after year-end, taxpayers may receive the benefit of being allowed the full deduction for dividends received.

58. Take advantage of the deduction for U.S. production activities. Current tax law allows a taxpayer to take a deduction equal to 6 percent of the lesser of income from domestic production activities or the entity's taxable income. The deduction is limited to 50 percent of wages paid to its employees for the year. Beginning in 2018, this deduction will no longer be allowed under the new Act.

PLANNING TIP

To the extent possible, perform domestic production activities before 2018 in order capture the deduction before it is repealed. If you are expecting to incur large domestic production activities expenses in 2017, you can also pay wages before December 31, 2017, to the extent possible to increase the 50 percent wage limitation.

59. Be sure to receive maximum benefit for business interest. Businesses that incur interest expense will have limited benefit under the new rules. The new Act limits the interest expense deduction to 30 percent of the adjusted taxable income of the business. Certain smaller businesses (less than $15 million in annual gross receipts) will be exempt from this limitation after 2017.

PLANNING TIP

Maximize your deduction for business interest if you make interest payments before year-end. In doing so, you will ensure that your deduction is not limited to 30 percent of your businesses adjusted taxable income. If your company has annual gross receipts of less than $15 million, your interest expense deduction will not be limited under the new rules.

60. Spend less time worrying about accounting methods. Current tax law poses reporting complications for businesses with average gross receipts exceeding a certain threshold. In 2017, if average gross receipts exceed $5 million, taxpayers are not permitted to use the simpler cash method of accounting. Similarly, businesses with average gross receipts of over $10 million are not able to account for inventories as materials and supplies, and force taxpayers to use uniform capitalization rules. Beginning in 2018, the thresholds for both accounting methods will increase to $25 million under the newly passed tax law.

PLANNING TIP

If your business' income is approaching these thresholds as the year comes to an end, determine whether the increased thresholds scheduled to be in place in 2018 would make deferring income into 2018 a particularly useful strategy. In the future, this reform would allow taxpayers to put less thought and planning into income recognition in order to remain under the income thresholds.

61. Determine the merits of switching from the accrual method to the cash method of accounting. Businesses that sell merchandise generally use the accrual (rather than the cash) method of accounting to account for revenue and inventory related to the merchandise. While this may provide a more complete picture of the financial status of a business, from a tax perspective it provides much less flexibility in terms of planning options and is more difficult to use than the cash method of accounting. The good news is that, beginning in 2018, businesses with average gross receipts over the last three years of $25 million or less, that would otherwise be required to use the accrual method of accounting, can elect to use the cash method. While there are some caveats to obtaining this relief, it is a tax saving strategy worth considering if your business can meet the average gross receipts test and is currently using the accrual method of accounting.

62. Select the most tax-efficient inventory method. If you must track inventories, you may be able to realize meaningful income tax savings based on your selected inventory method. For example, in a period of falling prices, the first-in, first-out "FIFO) method will provide larger tax savings since it assumes that higher priced inventory units purchased first are the first ones sold. Conversely, in a period of rising prices, the use of the last-in, first-out (LIFO) method can produce income tax savings since it assumes that the higher priced inventory units purchased last were the first ones sold. IRS approval may be needed. Call us for details.

63. Establish a tax-efficient business structure. Businesses may operate under various structures, including general partnership, limited liability company, limited liability partnership, S corporation, C corporation and sole proprietorship. Owner liability and income taxation are the primary factors that distinguish one from another, but it is prudent to consider other characteristics as well. The decision should be made between you and your team of legal and financial advisers.

PLANNING TIP

Regarding S corporation ownership requirements: (1) the number of shareholders permitted cannot exceed 100 and (2) all members of a family (up to six generations) are treated as one shareholder. Additionally, suspended losses or deductions, with respect to stock transferred incident to divorce, are to be treated as incurred by the corporation with respect to the transferee in the subsequent tax year.

Under item (2), a *family* is defined as the common ancestor and all lineal descendants of the common ancestor, as well as the spouses, or former spouses, of these individuals. An adopted child or foster child is treated as a natural child if certain requirements are satisfied.

64. Consider the benefits of establishing a home office. Expenses related to your home office are deductible as long as the portion of your home that qualifies as a home office is used exclusively and on a regular basis as a principal place of business or is used for administrative or management activities of a trade or business. A simplified home office deduction is also available to taxpayers, which minimizes expense tracking, while providing a flat rate deduction per square foot of office space. In addition to claiming a deduction for home office expenses, the ability to qualify as a home office may enable you to deduct the cost of traveling between your home and other locations where you conduct business.

TAX TIDBIT

There is a potential downside for claiming home office deductions. For example, on the sale of your home, home office depreciation previously taken does not qualify for the exclusion of gain on the sale of a principal residence.

OBSERVATION

The IRS continues to intensely scrutinize employee/independent contractor status. If the IRS examines this situation and reclassifies the worker as an employee, not only are employment taxes due, but steep penalties will be assessed. The IRS' three-category approach (i.e., behavioral control, financial control and type of relationship) essentially distills the 20-factor test IRS had used to determine whether a worker was an employee or an independent contractor. Call us if you desire a review of your worker classification.

65. Examine and properly classify your independent contractors and employees. The question of whether a worker is an independent contractor or employee for federal income and employment tax purposes is a complex one. It is intensely factual, and the consequences of misclassifying a worker can be serious. In general, the person (or entity) who controls how a job is performed is the employer. There are many factors requiring assessment to properly determine degree of control, as discussed below. Therefore, if the worker has control, the worker is self-employed, and is an independent contractor, and is subject to self-employment taxes. On the other hand, if a worker is an employee, the company must withhold federal income and payroll taxes, pay the employer's share of Federal Insurance Contributions Act (FICA) taxes on the wages plus (Federal Unemployment Tax Act) FUTA tax, and often provide the worker with fringe benefits that are made available to other employees. There may be state tax obligations as well. Since these employer obligations do not apply for a worker who is an independent contractor, the savings can be substantial.

OBSERVATION
When employing your child or grandchild, keep in mind that any wages paid must be reasonable given the child's age and work skills. Also, if the child is in college or entering soon, excessive earned income may have a detrimental impact on the student's eligibility for financial aid.

66. Establish an accountable expense reimbursement plan. Employers are allowed to deduct, and employees are allowed to exclude from gross income, employer expense reimbursements if paid under an accountable plan. Accordingly, both the employer and employee benefit from establishing an accountable plan, which requires specific reporting, substantiation of business expenses and return of any excess cash advances.

67. Consider the advantages of employing your child (or grandchild). Employing your children (or grandchildren) shifts income from you to them, which typically subjects the income to the child's lower tax bracket and may actually avoid tax entirely (due to the child's standard deduction). There are also payroll tax savings since wages paid by sole proprietors to their children age 17 and younger are exempt from both Social Security and unemployment taxes. Employing your children has the added benefit of providing them with earned income, which enables them to contribute to a traditional IRA. Better yet, making contributions to Roth IRAs on income shielded by the child's standard deduction is tax-free now and, in general, will be tax free upon distribution.

68. Don't overlook your business tax credits. Credits are dollar-for-dollar reductions in tax and are much more valuable than deductions (which are valued at the corporate tax bracket of up to 38 percent). Employers can claim the Work Opportunity Tax Credit (WOTC), a 40 percent credit for the first $6,000 of wages paid to each employee, if they hire individuals from designated target groups.

PLANNING TIP
Other credits such as the retirement plan tax credit and the research and development tax credit may also be available but certain actions must take place before year-end to qualify.

69. Perform a compensation study. Businesses can maintain deductibility, yet avoid payroll taxes, on compensation moved from salary to fringe benefits. Employees will enjoy the tax savings resulting from lower taxable compensation. Benefits typically shifted include medical insurance, parking and employee discounts. This may be a positive way to attract and retain employees. Keep in mind, however, and as noted above, that the deduction for U.S. production activities is limited by the amount of wages paid to employees, so shifting amounts from compensation into fringe benefits may reduce that deduction.

PLANNING TIP

Consider paying dividends in lieu of owner salaries in a family-owned C corporation. If you expect to personally be in the 28 percent or higher tax bracket for 2017 and you own a C corporation that you expect to be in the 15 percent income tax bracket (taxable income of $50,000 or less), you could net more cash after taxes by paying yourself some dividends in lieu of additional salary. This is because dividend income is subject to a maximum 20 percent tax rate, while your salary is subject to your 28 percent or higher tax rate, plus you and your corporation must pay payroll taxes on your salary.

OBSERVATION

Any dividends paid to you must be paid to other owners as well. This is ideal in the context of a family-owned C corporation, since a family recipient who is in the 10 percent or 15 percent tax brackets (which many children are) will not pay taxes on this dividend income. On the other hand, however, if there are multiple non-family member shareholders, paying dividends could alter the bottom-line cash flow available to the various shareholders, which may make this strategy unworkable in some situations.

70. Establish Health Savings Accounts (HSA) and other cafeteria plans (i.e., Section 125 Plans or flexible spending accounts). These plans provide an IRS-approved way to lower taxes for both employers and employees, since they enable employees to set aside, on a pre-tax basis, funds from their paychecks for adoption expenses, certain employer-sponsored insurance premium contributions, dependent care costs and unreimbursed medical expenses. Furthermore, Section 125 plans are permitted to offer salary-reduction HSA contributions for eligible employees as part of the menu of plan choices. Thus, employers can sponsor the HSAs and employer contributions are not subject to income or employment taxes.

Funds contributed by employees are free of federal income tax (at a maximum rate of 39.6 percent), Social Security and Medicare taxes (at 7.65 percent), and most state income taxes (at maximum rates as high as 13 percent), resulting in a tax savings of as much as 60 percent. The employer pays less in Social Security matching tax. Like an accountable expense reimbursement plan, it can assist an organization in achieving its strategic goals by enhancing its ability to attract and retain talented, experienced people. Since many restrictions apply, you should carefully review this arrangement before instituting a plan. Please contact us for details.

PLANNING TIP

Consider naming your spouse as beneficiary of your HSA, as the surviving spouse is not subject to income tax on distributions as long as they are used for medical expenses. Anyone other than your spouse will be taxed on the balance remaining in the HSA upon the owner's death.

71. Consider the necessity of a succession plan. It is important for business owners to create a strategy to transfer the business in the event of death, disability or retirement. Failure to properly transition the business cannot only create a greater tax burden, but turn a successful business into a failed business. Together with your lawyer and financial advisers, you can transfer control as desired, develop a buy-sell agreement, create an employee stock ownership plan and carry out the succession of your business in an orderly fashion.

72. Deduct your business bad debts. Since business bad debts are treated as ordinary losses and can be deducted when either partially or wholly worthless, it is prudent to examine your receivables before year-end. Not getting paid for services or merchandise that you have sold is bad enough; do not pour salt into the wound by paying income tax on income you will never realize.

73. Do not become trapped by the hobby loss rules. If your business will realize a loss this year, you should address the so-called "hobby loss" rules to ensure that the loss will be deductible and thereby maximize the tax benefits of the loss.

74. Sell your company's stock, rather than its assets. If you are considering selling your business, try to structure the transaction as a sale of the company's stock, rather than as a sale of the company's assets. A sale of your company's stock will be treated as the sale of a capital asset, and the preferential long-term capital gain rates discussed below will apply. A sale of the company's assets, on the other hand, will typically result in at least some of the gain being taxed at the much higher ordinary income tax rates. However, since the buyer will generally want to structure the transaction as a purchase of the company's assets, in order to increase his or her depreciation deductions, some negotiating on both parties' parts should be expected.

Tax Planning Strategies for Nonprofits

75. Expect less favorable rules in calculating unrelated business taxable income. Currently, nonprofit organizations (and nontaxable accounts, such as IRAs) are required to pay tax on unrelated business taxable income (UBTI) in excess of $1,000. With the new tax law in effect, nonprofits will see an increase in reportable UBTI. Starting in 2018, when calculating UBTI, businesses are currently allowed a deduction for certain fringe benefits provided to employees (*i.e.*, transportation, on-premises gyms). The new law will eliminate such deductions. The new law will also require that businesses that carry on more than one unrelated business to separately calculate UBTI for each business. In essence, the Senate proposes that deductions from one unrelated business could not be used to offset UBTI from another unrelated business.

> **PLANNING TIP**
> *Nonprofit organizations carrying on unrelated business activities should make an effort to provide fringe benefits to employees before year-end. For example, perhaps an employee is paid for travel benefits through their paycheck. It would be in the best interest of the company to pay the employee before 2018, thus ensuring the deduction in calculating UBTI. This will also free up more deductions before year-end to use against UBTI of a separate unrelated business.*

76. Executive employees of nonprofits could cost even more. Current law provides that the compensation of executives is taxable at the current standard individual income tax rates. However, the new tax law assesses an additional 21 percen excise tax on executive compensation. This additional tax will be assessed to the nonprofit, based on the organization's five highest paid employees with compensation in excess of $1 million.

> **PLANNING TIP**
> *Accelerating executive compensation to be paid before year-end could lessen the impact of the additional 20 percent tax. Keep in mind, the rule applies to any employee over the $1 million threshold starting in tax year 2017.*

77. Beware of recapture of tax benefit on property not used for an exempt purpose. In general, this provision recovers the tax benefit for charitable contributions of tangible personal property with respect to which a fair market value deduction is claimed and which is not used for exempt purposes. The provision applies to appreciated tangible personal property that is identified by the donee organization, for example on IRS Form 8283, as for a use related to the purpose or function constituting the donee's basis for exemption, and for which a deduction of more than $5,000 is claimed.

Under the provision, if a donee organization disposes of applicable property within three years of the contribution of the property, the donor is subject to an adjustment of the tax benefit. If the disposition occurs in the same tax year the donor made the contribution, the donor's deduction generally is its basis and not fair market value. If the disposition occurs in a subsequent year, the donor must include as ordinary income for its taxable year in which the disposition occurs an amount equal to the excess, if any, of (1) the amount of the deduction previously claimed by the donor as a charitable contribution with respect to such property, over (2) the donor's basis in such property at the time of the contribution.

A penalty of $10,000 applies to a person that identifies applicable property as having a use that is related to a purpose or function constituting the basis for the donee's exemption knowing that it is not intended for such use.

78. Ensure that your private foundation meets the minimum distribution requirements. A foundation is required to distribute approximately 5 percent of the average fair market value of its assets each year. Qualifying distributions meeting this requirement include grants and certain operating expenses. Penalties are imposed in the form of an excise tax on the foundation if it fails to make qualifying distributions within 12 months after the close of the tax year. While earlier drafts of the new Act included a simplification of this excise tax, the final version of the legislation does not make any modifications to the excise tax.

For our clients, we calculate and report the foundation's progress against the required minimum annual 5 percent distribution of foundation assets throughout the year. If you currently serve as an officer for a private foundation you should work with a tax advisor to determine your required minimum distribution.

Tax Planning Strategies for Estates and Trusts

79. Accelerate termination of certain trusts and estates or fully offset income in 2017. In prior years, it was typically recommended that if a trust or estate did not have enough income to fully absorb any current non-business charges such as legal and accounting fees, as the termination year of the trust or estate approaches, the trustee should consider deferring payment of such amounts until the termination year so that the deductions would pass out to the beneficiary(s) in the year of termination as excess deductions deductible as a miscellaneous itemized deduction. However, since miscellaneous itemized deductions will no longer be allowed beginning in 2018, it may be advantageous to pay as much of those expenses in 2017 as will offset income and/or accelerate the termination of the trust or estate by December 31, 2017, to ensure the beneficiary(s) will be permitted to deduct the excess deductions flowing through to them on their Schedule K-1**.**

80. Take advantage of increased gifting exclusions. As discussed earlier in item 43, the annual gift tax exclusion will increase from $14,000 in 2017 to $15,000 in 2018, regardless of the newly passed tax reform. Also, under the new tax law, the estate and gift tax unified credit will increase from $5,490,000 to $11,200,000, beginning in 2018. For both simple and complex trusts, grantors should consider funding in 2018 (not in 2017) as the gift tax limit will increase dramatically. For additional discussion on estate and gift tax modifications under the new Act, read Duane Morris' Wealth Planning Practice Group *Alert*.

ILLUSTRATION

Gifts are generally only subject to the gift tax in very limited circumstances. For example, say Betty funds an irrevocable trust for the benefit of her grandchild. Betty was never married. In 2017, she contributes $7 million to the trust. The first $14,000 of any present interest gift in 2017 (and $15,000 in 2018) can pass freely to the recipient, without any gift tax reporting obligation. When the gift exceeds the annual exclusion amount, a gift tax return must be filed for the year, but no gift tax is paid unless the gift exceeds Betty's remaining lifetime unified credit. Since Betty has made no gifts exceeding the annual exclusion amount during her lifetime and has never filed a gift tax return to reduce her unified credit, she would use her entire credit on the 2017 gift, with a $1,496,000 taxable gift, resulting in a tax of $544,200 (40 percent of gift exceeding $1million + $345,800). If the gift were to be made in 2018 instead of 2017, with the expected increase of the unified credit, and to a lesser extent, the increase in the annual exclusion, no gift tax would be due.

		2017		2018	
Gift		$	7,000,000	$	7,000,000
Annual Exclusion	Less:	$	14,000	$	15,000
Unified Credit	Less:	$	5,490,000	$	11,200,000
Taxable Gift		$	1,496,000	$	0
Gift Tax Due		**$**	**544,200**	**$**	**0**
Credit before gift		$	5,490,000	$	11,200,000
Credit used toward gift		$	5,490,000	$	6,985,000
Credit remaining		$	0	$	4,215,000

81. Minimize the income taxes applicable to estates and trusts. The tax rates that apply to estates and trusts continue to be significantly compressed. Estate and trust taxable income (exclusive of long-term capital gain and qualified dividend income) of more than $12,500 for 2017 is taxed at a marginal tax rate of 39.6 percent (37 percent in 2018). Consequently, it may be beneficial to distribute income from the estate or trust to the beneficiary for the purpose of shifting the income to a lower tax rate. Additionally, trusts and estates can minimize income taxes by employing many of the tax planning strategies that are applicable to individuals, including the investment, "bunching" of deductions, and deferral of income strategies noted above.

2018 Tax Rates Applicable to Estates and Trusts

Taxable Income	Tax Rate
$0 - $2,550	10%
$2,551 - $9,150	24%
$9,151 - $12,500	35%
$12,501 - over	37%

82. Consider deferring distributions until 2018 for complex trusts. Tax rates for individuals will be reduced in 2018 as compared to 2017 (see our discussion of tax rates above). For complex trusts, it will be advantageous to hold off any discretionary distributions until after January 1, 2018, so that income flowing through to beneficiaries will be subject to reduced tax rates in 2018 on the individual level. If it is determined in early 2018, that the deferred distributions would in fact not be advantageous, the trust may then make the election under the 65-day rule, bouncing the distribution back to tax year 2017.

83. Consider an election under the 65-day rule. Considering the compressed brackets with exceptionally high tax rates on income held within the estate or trust, it is feasible in many scenarios to lessen the total income tax hit by distributing income to be taxed at the beneficiary level, in lieu of the entity level.

With an election under Section 663(b), complex trust and estate distributions made within the first 65 days of 2018 may be treated as paid and deductible by the trust or estate in 2017. The election of the 65-day rule is an invaluable tactic, giving the trustee the opportunity to distribute income after the end of the year, once the total taxable income of the trust can be more accurately determined.

Tax Planning Strategies for International Taxpayers

84. Consider deferring foreign dividends received. Under current law U.S. citizens, resident individuals and domestic corporations are generally taxed on all income, whether earned in the U.S. or abroad. The bill provides a 100 percent deduction for foreign-source portion of dividends received from "specified 10 percent owned foreign corporations" by U.S. corporate shareholders, subject to a one-year holding period. No foreign tax credit (or deduction for foreign taxes paid with respect to qualifying dividends) is permitted for foreign taxes paid or accrued with respect to a qualifying dividend.

This provision is designed eliminate the "lock-out" effect that encourages U.S. companies not to bring earnings back to the United States.

> **PLANNING TIP**
> *As the provision would be effective for distributions made after 2017, any deferral of dividends to 2018 would be advantageous for U.S. citizens, resident individuals, and domestic corporations.*

TAX TIDBITS

The new Act also repeals the active trade or business exception under Code Section 367, which generally disallows nonrecognition treatment for transfers of property to a foreign corporation.

In addition, the new law imposes a mandatory tax on post-86 accumulated foreign earnings held in cash or cash equivalents of 15.5 percent and on post-86 accumulated foreign earnings held in illiquid assets of 8 percent. Taxpayers would be able to elect to pay any resulting liability over an eight-year period.

85. Be aware of new foreign tax credit rules. To mitigate the effects of double taxation, the U.S. currently allows a credit or deduction for foreign income taxes paid designed to offset, in whole or in part, the U.S. tax owned on foreign income. Under the new Act, the indirect foreign tax credit under Code Section 902 is repealed. As a result, no foreign tax credit or deduction is permitted for taxes paid or accrued with respect to exempt dividends. Also, income from sale of inventory is sourced based solely on the basis of production activities. Furthermore, the new law adds a separate foreign tax credit limitation "basket" for foreign branch income, further segregating the income and taxes applicable to other "baskets" of income, generally reducing the utility of the foreign tax credit.

PLANNING TIP

To the extent possible, be sure to utilize any current foreign tax credits before year-end, as the new rules look to limit the foreign tax credit's impact in 2018.

86. Mind new Subpart F rules. Subpart F income has been modified under the new Act, which generally applies to Controlled Foreign Corporations (CFCs). A CFC, in short, is defined as a foreign corporation in which U.S. persons (shareholders) own more than 50 percent of the corporation's stock (measured by vote or value). The new law expands the definition of U.S. shareholder to include corporations. The legislation also repeals current taxation of previously excluded qualified investments under Code Section 955. Additionally, it repeals foreign base income as Subpart F income under Code Section 954.

OBSERVATION

Although the new Act does not modify the CFC look-through rules, the stock attribution rules for determining CFC status are modified to treat a U.S. corporation as constructively owning stock held by its foreign shareholder. The bill also eliminates the requirements that a U.S. parent corporation must control a foreign subsidiary for 30 days before subpart F inclusions apply.

TAG'S Perspective

As many of the 2017 tax savings opportunities disappear after December 31, 2017, now may be the last time to execute strategies that can both improve your 2017 tax situation and establish future tax savings. Without investing a little time before year-end, you may only discover tax saving opportunities when your tax return is being prepared—at which time it will likely be too late. If you would like to discuss the strategies indicated herein or have other concerns, please do not hesitate to contact Michael A. Gillen at 215.979.1635 or magillen@duanemorris.com, or the practitioner with whom you are in regular contact.