



Tax Planning: 2019 Year-End Guide

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Nearly two years ago, tax reform became reality – the first sweeping overhaul of the U.S. tax system since 1986. Corporate tax rates were reduced from 35% to 21%, the corporate alternative minimum tax was eliminated, and a new 20% deduction for pass-through qualifying business income was enacted. In return for these lower rates, deductions for public company executive compensation and interest expense were limited, and many popular corporate deductions were eliminated. Tax reform also extended and enhanced expensing of depreciable asset investments for certain qualifying property purchased after Sept. 27, 2017.

For individuals, the top individual rate was lowered from 39.6% to 37%, a new \$10,000 limit on the deduction for state and local taxes was imposed, and many itemized deductions were eliminated. The 3.8% tax on net investment income and the 0.9% additional payroll tax on wages that were imposed by the *Affordable Care Act* were retained.

Today, the IRS continues to release guidance on key components of tax reform at a rapid pace and will do so for the foreseeable future. It is important to stay abreast of tax reform guidance to plan for year-end, and Crowe is here to assist you along the way.



Gary Fox
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Tax planning is as essential as ever



Last year, most of the provisions of the massive Tax Cuts and Jobs Act (TCJA) went into effect. They included small income tax rate reductions for most individual tax brackets and a substantial reduction for corporations. The TCJA also provided a large tax deduction for owners of pass-through entities, expanded the availability of child credits to more higher-income taxpayers, and significantly increased exemptions for the individual alternative minimum tax (AMT) and the estate tax.

But it wasn't all good news for taxpayers. The TCJA also eliminated or limited many tax breaks, and much of the tax relief provided is only temporary (unless Congress acts to make it permanent).

What does this all mean? Tax planning is as essential as ever.

This guide provides an overview of some of the most consequential changes under the TCJA and other key tax provisions. Use it to work closely with your tax advisor to identify the best strategies for your particular situation. He or she also can keep you apprised of any new tax law developments that occur this year that might affect you.

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Planning for income and deductions can be a challenge post-TCJA



Even though tax rates on “ordinary income” generally went down under the Tax Cuts and Jobs Act (TCJA), these rates are still higher than those that apply to much of your investment income. So careful tax planning remains critical. Ordinary income generally includes salary, income from self-employment or business activities, interest, and distributions from tax-deferred retirement accounts. Some of it may also be subject to employment tax, or you may have to pay the alternative minimum tax (AMT), under which different tax rates apply. If possible, try to control to your tax advantage the timing of your ordinary income as well as your deductible expenses (which might be significantly reduced under the TCJA).

Timing income and expenses

Smart timing of income and expenses can reduce your tax liability, and poor timing can unnecessarily increase it. When you don’t expect to be subject to the AMT (see page 5) in the current year or the next year, deferring income to the next year and accelerating deductible expenses into the current year may be a good idea. Why? Because it will defer tax, which usually is beneficial.

But when you expect to be in a higher tax bracket next year — or you expect tax rates to rise — the opposite approach may be beneficial: Accelerating income will allow more income to be taxed at your current year’s lower rate. And deferring expenses will make the deductions more valuable, because deductions save more tax when you’re subject to a higher tax rate.

Whatever the reason behind your desire to time income and expenses, you may be able to control the timing of these income items:

CHART 1 2019 standard deduction

| Filing status | Standard deduction ¹ |
|-----------------------------|---------------------------------|
| Singles and separate filers | \$12,200 |
| Heads of households | \$18,350 |
| Joint filers | \$24,400 |

¹ Taxpayers age 65 or older or blind can claim an additional standard deduction: \$1,300 if married, \$1,650 if unmarried.

- ▲ Bonuses,
- ▲ Consulting or other self-employment income,
- ▲ U.S. Treasury bill income, and
- ▲ Retirement plan distributions, to the extent they won’t be subject to early-withdrawal penalties and aren’t required. (See page 22.)

Some *expenses* with potentially controllable timing are mortgage interest, investment interest expense and charitable contributions.

Impact of the TCJA on timing strategies

The TCJA makes timing income and deductions more challenging because some strategies that taxpayers have implemented in the past may no longer make sense. Here’s a look and some significant changes affecting deductions:

Reduced deduction for state and local tax. Property tax used to be a popular expense to time. But with the TCJA’s limit on the state and local tax deduction, property tax timing will likely provide little, if any, benefit for higher-income taxpayers.

Through 2025, your entire itemized deduction for state and local taxes — including property tax and either income or sales tax — is limited to \$10,000 (\$5,000 if you’re married

filing separately). (Deducting sales tax instead of income tax may be beneficial if you reside in a state with no, or low, income tax or you purchased a major item, such as a car or boat.)

The limit on the state and local tax deduction significantly impacts higher-income taxpayers with large state and local income tax and/or property tax bills. Not only is it affecting their timing strategies, but in many cases they’re experiencing a large drop in their total itemized deductions. (Homeowners should also consider the TCJA changes to the mortgage interest and home equity debt interest deductions. See page 14.)

Suspension of miscellaneous itemized deductions subject to the 2% floor.

This deduction for expenses such as certain professional fees, investment expenses and unreimbursed employee business expenses is suspended through 2025. While this eliminates the home office deduction for employees who work from home, if you’re self-employed, you may still be able to deduct home office expenses. (See Case Study 4 on page 14.)

More-restricted personal casualty and theft loss deduction. Through 2025, this itemized deduction is suspended except if the loss was due to an event officially declared a disaster by the President.

Increased standard deduction. When we're talking about timing deductions, we generally mean *itemized* deductions. Taxpayers can choose to either itemize certain deductions or take the standard deduction based on their filing status. Itemizing deductions when the total will be larger than the standard deduction saves tax.

The TCJA nearly doubled the standard deduction. While many higher-income taxpayers will still benefit from itemizing, some — such as those in low-tax states, who don't have mortgages or who aren't charitably inclined — may now save more tax by claiming the standard deduction. See Chart 1 for the 2019 standard deduction amounts.

Suspension of the itemized deduction reduction. It's not all bad news for itemized deductions. Under pre-TCJA law, if your adjusted gross income (AGI) exceeded the applicable threshold, certain itemized deductions were reduced by 3% of the AGI amount over the threshold (not to exceed 80% of otherwise allowable deductions).

Through 2025, the TCJA suspends this reduction.

Tax-advantaged saving for health care

You may be able to save taxes without having to worry about the medical expense deduction floor (see "What's new!" below) by contributing to one of these accounts:

HSA. If you're covered by a qualified high deductible health plan, you can contribute pretax income to an employer-sponsored Health Savings Account — or make deductible contributions to an HSA you set up yourself — up to \$3,500 for self-only coverage and \$7,000 for family coverage for 2019 (plus \$1,000 if you're age 55 or older). HSAs can bear interest or be invested, growing tax-deferred similar to an IRA. Withdrawals for qualified medical expenses are tax-free, and you can carry over a balance from year to year.

FSA. You can redirect pretax income to an employer-sponsored Flexible

Spending Account up to an employer-determined limit — not to exceed \$2,700 in 2019. The plan pays or reimburses you for qualified medical expenses. What you don't use by the plan year's end, you generally lose — though your plan might allow you to roll over up to \$500 to the next year. Or it might give you a 2½-month grace period to incur expenses to use up the previous year's contribution. If you have an HSA, your FSA is limited to funding certain permitted expenses.

Smaller AMT threat

The top AMT rate is 28%, compared to the top regular ordinary-income tax rate of 37%. But the AMT rate typically applies to a higher taxable income base. You must pay the AMT if your AMT liability exceeds your regular tax liability.

The TCJA substantially increases the AMT exemptions through 2025. (See Chart 8 on page 26.) This means fewer taxpayers will have to pay the AMT. In addition, there aren't as many differences between what's deductible for AMT purposes and regular tax purposes (see Chart 2 on page 6), which also will reduce AMT risk. However, AMT will remain a threat for some higher-income taxpayers.

So before timing your income and expenses, determine whether you're already likely to be subject to the AMT — or whether the actions you're considering might trigger it. Deductions used to calculate regular tax that aren't allowed under the AMT can trigger AMT liability. Some income items also might trigger or increase AMT liability:

- ▲ Long-term capital gains and qualified dividend income, even though they're taxed at the same rate for both regular tax and AMT purposes,
- ▲ Accelerated depreciation adjustments and related gain or loss differences when assets are sold, and
- ▲ Tax-exempt interest on certain private-activity municipal bonds. (For an exception, see the warning on page 13.)

Finally, in certain situations exercising incentive stock options (ISOs) can

WHAT'S NEW!

It may be harder to deduct medical expenses this year



If medical expenses not paid via tax-advantaged accounts or reimbursable by insurance exceed a certain percentage of your adjusted gross income (AGI), you can claim an itemized deduction for the amount exceeding that "floor." This floor has always been difficult for higher-income taxpayers to exceed, and it may be even harder this year.

The TCJA had reduced the floor from 10% to 7.5% for 2017 and 2018, but it will be 10% when you file your 2019 tax return unless Congress extends the 7.5% floor. (Check with your tax advisor for the latest information.)

Eligible expenses may include health insurance premiums, long-term-care insurance premiums (limits apply), medical and dental services, and prescription drugs. Mileage driven for health care purposes also can be deducted — at 20 cents per mile for 2019.

Consider bunching elective medical procedures (and any other services and purchases whose timing you can control without negatively affecting your or your family's health) into alternating years if it would help you exceed the applicable floor and you'd have enough total itemized deductions to benefit from itemizing.

If one spouse has high medical expenses and a relatively lower AGI, filing separately may allow that spouse to exceed the AGI floor and deduct some medical expenses that wouldn't be deductible if the couple filed jointly. **Warning:** Because the alternative minimum tax (AMT) exemption for separate returns is considerably lower than the exemption for joint returns, filing separately to exceed the floor could trigger the AMT.

trigger significant AMT liability. (See the warning at the top of page 9.)

Avoiding or reducing AMT

With proper planning, you may be able to avoid the AMT, reduce its impact or even take advantage of its lower maximum rate. To determine the right timing strategies for your situation, work with your tax advisor to assess whether:

You could be subject to the AMT this year. Consider accelerating income into this year, which may allow you to benefit from the lower maximum AMT rate. And deferring expenses you can't deduct for AMT purposes may allow you to preserve those deductions (but watch out for the annual limit on the state and local tax deduction). If you also defer expenses you can deduct for AMT purposes, the deductions may become more valuable because of the higher maximum regular tax rate. Finally, carefully consider the tax consequences of exercising ISOs.

You could be subject to the AMT next year. Consider taking the opposite approach. For instance, defer income to next year, because you'll likely pay a relatively lower AMT rate. Also, before year end consider selling any private-activity municipal bonds whose interest could be subject to the AMT.

If you pay AMT in one year on deferral items, such as depreciation adjustments, passive activity adjustments or the tax preference on ISO exercises, you may be entitled to a credit in a subsequent year. In effect, this factors in timing differences that reverse in later years.

Employment taxes

In addition to income tax, you must pay Social Security and Medicare taxes on earned income, such as salary and bonuses. The 12.4% Social Security tax applies only up to the Social Security wage base of \$132,900 for 2019. All earned income is subject to the 2.9% Medicare tax. Both taxes are split equally between the employee and the employer.

Self-employment taxes

If you're self-employed, you pay both the employee and employer

CHART 2

What itemized deductions are also deductible for AMT purposes?

| Expense | Regular tax | AMT | For more information |
|---|-------------|-----|--|
| State and local income tax | ■ | | See "Impact of the TCJA on timing strategies" on page 4. |
| Property tax | ■ | | See "Home-related deductions" on page 14. |
| Mortgage interest | ■ | ■ | See "Home-related deductions" on page 14. |
| Interest on home equity debt used to improve your principal residence or second residence | ■ | ■ | See "Home-related deductions" on page 14. |
| Investment interest | ■ | ■ | See Case Study 3 on page 13. |
| Medical expenses | ■ | ■ | See "What's new!" on page 5. |
| Charitable contributions | ■ | ■ | See page 18. |

portions of employment taxes on your self-employment income. The employer portion (6.2% for Social Security tax and 1.45% for Medicare tax) is deductible above the line.

As a self-employed taxpayer, you may benefit from other above-the-line deductions as well. You can deduct 100% of health insurance costs for yourself, your spouse and your dependents, up to your net self-employment income. You also can deduct contributions to a retirement plan and, if you're eligible, an HSA for yourself. And you might be able to deduct home office expenses. (See Case Study 4 on page 14.) Above-the-line deductions are particularly valuable because they reduce your AGI and, depending on the specific deduction, your modified AGI (MAGI), which are the triggers for certain additional taxes and the phaseouts of many tax breaks.

Additional 0.9% Medicare tax

Another employment tax that higher-income taxpayers must be aware of is the additional 0.9% Medicare tax. It applies to FICA wages and net self-employment income exceeding \$200,000 per year (\$250,000 if married filing jointly and \$125,000 if married filing separately).

If your wages or self-employment income varies significantly from year to year or you're nearing the threshold for triggering the additional Medicare tax, income timing strategies may help

you avoid or minimize it. For example, if you're an employee, perhaps you can time when you receive a bonus or exercise stock options. If you're self-employed, you may have flexibility on when you purchase new equipment or invoice customers. If you're an S corporation shareholder-employee, you might save tax by adjusting how much you receive as salary vs. distributions. (See "Owner-employees" on this page below.)

Also consider the withholding rules. Employers must withhold the additional tax beginning in the pay period when wages exceed \$200,000 for the calendar year — without regard to an employee's filing status or income from other sources. So your employer might withhold the tax even if you aren't liable for it — or it might *not* withhold the tax even though you *are* liable for it.

If you *don't* owe the tax but your employer is withholding it, you can claim a credit on your 2019 income tax return. If you *do* owe the tax but your employer *isn't* withholding it, consider filing a W-4 form to request additional income tax withholding, which can be used to cover the shortfall and avoid interest and penalties. Or you can make estimated tax payments.

Owner-employees

There are special considerations if you're a business owner who also works in the business, depending on its structure:

Partnerships and limited liability companies. Generally, all trade or business income that flows through to you for income tax purposes is subject to self-employment taxes — even if the income isn't distributed to you. But such income may not be subject to self-employment taxes if you're a limited partner or the LLC member equivalent. Check with your tax advisor on whether the additional 0.9% Medicare tax on earned income or the 3.8% NIIT (see page 12) will apply.

S corporations. Only income you receive as salary is subject to employment taxes and, if applicable, the 0.9% Medicare tax. To reduce these taxes, you may want to keep your salary relatively — but not unreasonably — low and increase the income that is taxed to you through your Schedule K-1 by virtue of your share of the earnings from the business. That income isn't subject to the corporate level tax or the 0.9% Medicare tax and, typically, is not subject to the 3.8% NIIT. Plus, you may be able to benefit from the Section 199A deduction (see page 16) on the K-1 earnings.

C corporations. Only income you receive as salary is subject to employment taxes and, if applicable, the 0.9% Medicare tax. Nonetheless, you may prefer to take more income as salary (which is deductible at the corporate level) as opposed to dividends (which aren't deductible at the corporate level yet are still taxed at the shareholder

level and could be subject to the 3.8% NIIT) if the overall tax paid by both the corporation and you would be less.

Warning: The IRS scrutinizes corporate payments to shareholder-employees for possible misclassification, so tread carefully.

Estimated payments and withholding

You can be subject to penalties if you don't pay enough tax during the year through estimated tax payments and withholding. Here are some strategies to help avoid underpayment penalties:

Know the minimum payment rules.

For you to avoid penalties, your estimated payments and withholding must equal at least 90% of your tax liability for 2019 or 110% of your 2018 tax (100% if your 2018 AGI was \$150,000 or less or, if married filing separately, \$75,000 or less).

Warning: You may be at a greater risk for underwithholding due to TCJA changes. See "What's new!" below.

Use the annualized income installment method. This method often benefits taxpayers who have large variability in income from month to month due to bonuses, investment gains and losses, or seasonal income (at least if it's skewed toward the end of the year). Annualizing computes the tax due based on income, gains,

losses and deductions through each estimated tax period.

Estimate your tax liability and increase withholding. If you determine you've underpaid, consider having the tax shortfall withheld from your salary or year end bonus by Dec. 31. Because withholding is considered to have been paid ratably throughout the year, this is often a better strategy than making up the difference with an increased quarterly tax payment, which may still leave you exposed to penalties for earlier quarters.

Disclosure of Certain Abusive and Potentially Abusive Transactions

A reportable transaction is an abusive or potentially abusive transaction required to be reported to the IRS on a Form 8886, Reportable Transaction Disclosure Statement. There are different types of reportable transactions, including listed transactions and transactions of interest identified by the IRS. In some cases, a tax advisor may also have to disclose the reportable transaction to the IRS and provide participants with a number that the participant must include on the Form 8886 used to disclose the transaction. A taxpayer can participate in a reportable transaction directly, or the taxpayer may be treated as participating in a reportable transaction if a partnership or other flow through entity that they own participated in the reportable transaction. For example, a partner may be treated as participating in a listed transaction if the partner's allocable share of a charitable deduction shown on the partner's Schedule K-1 is based on the partnership's donation of a conservation easement that meets the requirements of IRS Notice 2017-10. Significant penalties may apply if the IRS denies the tax benefits the taxpayer claims from a reportable transaction. Additional significant penalties may apply and the period of limitations may remain open if a reportable transaction is not properly disclosed. Your tax advisor can assist in determining your disclosure obligations under these rules.

Warning: The IRS closely scrutinizes Forms 8886 and treats listed transactions, like conservation easement transactions described in IRS Notice 2017-10, as abusive tax shelters. ■

WHAT'S NEW!

Underwithholding may still be a risk



To reflect changes under the TCJA — such as the increase in the standard deduction, suspension of personal exemptions and changes in tax rates and brackets — for 2018 the IRS updated the tables that indicate how much employers should withhold from their employees' paychecks for federal income taxes. Generally the amount withheld was reduced.

As a result, some taxpayers didn't have enough withheld to pay their ultimate tax liabilities under the TCJA. They found themselves with an unexpected tax bill when they filed their 2018 tax returns. In some cases, taxpayers even owed interest and penalties, though the IRS has provided some relief in certain circumstances.

The withholding tables for 2019 are very similar to those for 2018, so you may still be at risk for underwithholding. An IRS calculator can help you more accurately estimate how much should be withheld. (Go to [IRS.gov](https://www.irs.gov) and search "withholding.") You may find that you need to increase your withholding by filling out a new Form W-4 and submitting it to your employer. You can modify your withholding at any time during the year, or even multiple times within a year.

What's the tax impact of your executive compensation?



If you're an executive or other key employee, you might receive stock-based compensation, such as restricted stock, restricted stock units (RSUs) or stock options (either incentive or nonqualified), or nonqualified deferred compensation (NQDC). The tax consequences of these types of compensation can be complex — subject to ordinary income, capital gains, employment and other taxes. So smart tax planning is crucial.

Restricted stock

Restricted stock is stock your employer grants to you subject to a substantial risk of forfeiture. Income recognition is normally deferred until the stock is no longer subject to that risk (that is, it's vested) or you sell it. When the restriction lapses, you pay taxes on the stock's fair market value (FMV) at your ordinary-income rate. (The FMV will be considered FICA income, so it could trigger or increase your exposure to the additional 0.9% Medicare tax. See page 6.)

But you can instead make a Section 83(b) election to recognize ordinary income when you receive the stock. This election, which you must make within 30 days after receiving the stock, allows you to convert potential future appreciation from ordinary income to long-term capital gains income and defer it until the stock is sold.

The election can be beneficial if the income at the grant date is negligible or the stock is likely to appreciate significantly before income would otherwise be recognized. And with ordinary-income rates now especially low under the Tax Cuts and Jobs Act (TCJA), it might be a good time to recognize income.

There are some potential disadvantages of a Sec. 83(b) election, however. First, prepaying tax in the current year could push you into a higher income tax bracket and trigger or increase your exposure to the additional 0.9% Medicare tax. But if your company is in the earlier stages of development, the income recognized may be relatively small.

Second, any taxes you pay because of the election can't be refunded if you eventually forfeit the stock or sell it at a decreased value. However, you'd have a capital loss in those situations.

Third, when you sell the shares, any gain will be included in net investment income and could trigger or increase your liability for the 3.8% NIIT. (See page 12.)

See Case Study 1 for additional information, and work with your tax advisor to map out whether the Sec. 83(b) election is appropriate for your situation.

RSUs

RSUs are contractual rights to receive stock, or its cash value, after the award has vested. Unlike restricted stock, RSUs aren't eligible for the Sec. 83(b) election. So there's no opportunity to convert ordinary income into capital gains.

But they do offer a limited ability to defer income taxes: Unlike restricted stock, which becomes taxable immediately upon vesting, RSUs aren't taxable until the employee actually receives the stock. So rather than having the stock delivered immediately upon vesting, you may be able to arrange with your employer to delay delivery.

Such a delay will defer income tax and may allow you to reduce or avoid exposure to the additional 0.9% Medicare tax (because the RSUs are treated as FICA income). However, any income deferral must satisfy the strict requirements of Internal Revenue Code Section 409A. Also keep in mind that it might be better to recognize income now because of the currently low tax rates.

Incentive stock options

ISOs allow you to buy company stock in the future (but before a set expiration date) at a fixed price equal to or greater than the stock's FMV at the date of the grant. Thus, ISOs don't provide a benefit until the stock appreciates in value. If it does, you can buy shares at a price *below* what they're then trading for, provided you're eligible to exercise the options.

ISOs receive tax-favored treatment but must comply with many rules. Here are the key tax consequences:

- ▲ You owe no tax when ISOs are granted.
- ▲ You owe no regular income tax when you exercise the ISOs.
- ▲ If you sell the stock *after* holding the shares at least one year from the exercise date and two years from the grant date, you pay tax on the sale at your long-term capital gains rate. You also may owe the NIIT.
- ▲ If you sell the stock *before* long-term capital gains treatment applies, a "disqualifying disposition" occurs and any gain is taxed as compensation at ordinary-income rates. (Disqualified dispositions aren't, however, subject to FICA and Medicare tax, including the additional 0.9% Medicare tax.)

Warning: If you don't sell the stock in the year of exercise, a tax "preference" item is created for the difference between the stock's FMV and the exercise price (the "bargain element") that can trigger the AMT. A future AMT credit, however, should mitigate this AMT hit. Plus, you may now be at lower AMT risk because of the higher AMT exemption and exemption phaseout range under the TCJA. (See Chart 8 on page 26.) Consult your tax advisor because the rules are complex.

If you've received ISOs, plan carefully when to exercise them and whether to immediately sell shares received from an exercise or hold them. Waiting to exercise ISOs until just before the expiration date (when the stock value may be the highest, assuming the stock is appreciating) and holding on to the stock long enough to garner long-term capital gains treatment often is beneficial. But there's also market risk to consider. Plus, acting earlier can be advantageous in several situations:

- ▲ Exercise early to start the holding period so you can sell and receive long-term capital gains treatment sooner.
- ▲ Exercise when the bargain element is small or when the market price is close to bottoming out to reduce or eliminate AMT liability.
- ▲ Exercise annually so you can buy only the number of shares that will achieve a breakeven point between the AMT and regular tax and thereby incur no additional tax.
- ▲ Sell in a disqualifying disposition and pay the higher ordinary-income rate to avoid the AMT on potentially disappearing appreciation.

On the negative side, exercising early accelerates the need for funds to buy the stock, exposes you to a loss if the shares' value drops below your exercise cost, and may create a tax cost if the preference item from the exercise generates an AMT liability.

CASE STUDY 1

The TCJA provides tax deferral opportunity in certain circumstances

Jason was about to receive some stock-based compensation from his employer, so he contacted his tax advisor to find out what the tax consequences would be. His advisor explained that the tax treatment would depend on the type of stock-based compensation. For example, Jason might be able to take advantage of the Section 83(b) election. (See "Restricted stock" on page 8.) Or he might be eligible for a tax break under the TCJA.



The TCJA break allows for the deferral of tax on stock-based compensation in certain circumstances. Generally, it gives taxpayers the opportunity to match the taxation of restricted stock and stock options with the timing of the sale of the stock. It's intended for situations in which there is no ready market for the sale of the stock.

The availability of the deferral opportunity is limited, however. It generally will apply only if at least 80% of full-time employees are covered by the stock-based compensation plan.

The timing of ISO exercises also could positively or negatively affect your liability for the higher ordinary-income tax rates, the 20% long-term capital gains rate and the NIIT. See Case Study 1 for additional information and, with your tax advisor, evaluate the risks and crunch the numbers to determine the best strategy for you.

Nonqualified stock options

The tax treatment of NQSOs is different from the tax treatment of ISOs: NQSOs create compensation income (taxed at ordinary-income rates) on the bargain element when exercised (regardless of whether the stock is held or sold immediately), but they don't create an AMT preference item.

You may need to make estimated tax payments or increase withholding to fully cover the tax on the exercise. Keep in mind that an exercise could trigger or increase exposure to top tax rates, the additional 0.9% Medicare tax and the NIIT.

NQDC plans

These plans pay executives in the future for services to be currently performed. They differ from qualified plans, such as

401(k)s, in several ways. For example, unlike 401(k) plans, NQDC plans can favor highly compensated employees, but plan funding isn't protected from the employer's creditors. (For more on 401(k)s, see page 22.)

One important NQDC tax issue is that employment taxes (see page 6) are generally due once services have been performed and there's no longer a substantial risk of forfeiture — even though compensation may not be paid or recognized for income tax purposes until much later. So your employer may withhold your portion of the employment taxes from your salary or ask you to write a check for the liability. Or it may pay your portion, in which case you'll have additional taxable income. **Warning:** The additional 0.9% Medicare tax could also apply.

Keep in mind that the rules for NQDC plans are tighter than they once were, and the penalties for noncompliance can be severe: You could be taxed on plan benefits at the time of vesting, and a 20% penalty and potential interest charges also could apply. So check with your employer to make sure it's addressing any compliance issues. ■

The ins and outs of taxes on investments



Tax treatment of investments varies dramatically based on factors such as type of investment, type of income it produces, how long you've held it and whether any special limitations or breaks apply. And while the Tax Cuts and Jobs Act (TCJA) didn't change the long-term capital gains rates, its changes to ordinary-income tax rates and tax brackets do have an impact. Here's a look at some of the ins and outs of taxes on investments. But remember that taxes should never be the primary driver of your investment decisions.

Capital gains tax and timing

Although time, not timing, is generally the key to long-term investment success, timing can have a dramatic impact on the tax consequences of investment activities. Your long-term capital gains rate can be as much as 20 percentage points lower than your ordinary-income tax rate. The long-term capital gains rate applies to investments held for more than 12 months. The applicable rate depends on your income level and the type of asset you've sold. (See Chart 3.)

Because of TCJA-related changes to the brackets, through 2025 the top long-term gains rate of 20% kicks in before the top ordinary-income rate does. (See Chart 8 on page 26.) Higher rates still apply to certain types of assets. (See Chart 3.)

Holding on to an investment until you've owned it more than one year

may help substantially cut tax on any gain. Keeping it even longer can also make tax sense.

Remember: Appreciation on investments isn't taxed until the investments are sold, deferring tax and perhaps allowing you to time the sale to your tax advantage — such as in a year when you have capital losses to absorb the capital gain. Or, if you've cashed in some big gains during the year and want to reduce

your 2019 tax liability, look for unrealized losses in your portfolio and consider selling them before year end to offset your gains. Both long- and short-term gains and losses can offset one another.

Wash sale rule

If you want to achieve a tax loss with minimal change in your portfolio's asset allocation, consider the wash sale rule. It prevents you from taking a loss on a security if you buy a substantially identical

CHART 3 What's the maximum 2019 capital gains tax rate?

| Type of gain | Rate ¹ |
|--|-------------------------------------|
| Short-term (assets held 12 months or less) | Taxpayer's ordinary-income tax rate |
| Long-term (assets held more than 12 months) | 15% |
| Some key exceptions | |
| Long-term gain of certain higher-income taxpayers | 20% ² |
| Most long-term gain that would be taxed at 10% or 12% based on the taxpayer's ordinary-income rate | 0% |
| Long-term gain on collectibles, such as artwork and antiques | 28% |
| Long-term gain attributable to certain recapture of prior depreciation on real property | 25% |
| Gain on qualified small business (QSB) stock held more than 5 years | |
| ■ Acquired on or before Feb. 17, 2009 | 14% ³ |
| ■ Acquired after Feb. 17, 2009, and before Sept. 28, 2010 | 7% ⁴ |
| ■ Acquired on or after Sept. 28, 2010 | 0% |

¹ In addition, the 3.8% NIIT applies to net investment income to the extent that modified adjusted gross income (MAGI) exceeds \$200,000 (singles and heads of households), \$250,000 (married filing jointly) or \$125,000 (married filing separately).

² The 20% rate applies to taxpayers with taxable income exceeding \$434,550 (singles), \$461,700 (heads of households), \$488,850 (joint filers) or \$244,425 (separate filers).

³ Effective rate based on a 50% exclusion from a 28% rate.

⁴ Effective rate based on a 75% exclusion from a 28% rate.

security (or an option to buy such a security) within 30 days before or after you sell the security that created the loss. You can recognize the loss only when you sell the replacement security.

Fortunately, there are ways to avoid triggering the wash sale rule and still achieve your goals. For example, you can:

- ▲ Sell the security and immediately buy securities of a different company in the same industry or shares in a mutual fund that holds securities much like the ones you sold,
- ▲ Sell the security and wait 31 days to repurchase the same security, or
- ▲ Before selling the security, purchase additional shares of that security equal to the number you want to sell at a loss, and then wait 31 days to sell the original portion.

Alternatively, you can do a bond swap, where you sell a bond, take a loss and then immediately buy another bond of similar quality and duration from a different issuer. Generally, the wash sale rule doesn't apply because the bonds aren't considered substantially identical. Thus, you can achieve a tax loss with virtually no change in economic position.

Warning: You can't avoid the wash sale rule by selling stock at a loss in a taxable account and purchasing the same stock within 30 days in a tax-advantaged retirement account.

Loss carryovers

If net losses exceed net gains, you can deduct only \$3,000 (\$1,500 for married taxpayers filing separately) of the net losses per year against other income (such as wages, self-employment and business income, dividends and interest).

You can carry forward excess losses until death. Loss carryovers can be a powerful tax-saving tool in future years if you have a large investment portfolio, real estate holdings or a closely held business that might generate substantial future capital gains.

Finally, remember that capital gains distributions from mutual funds can also absorb capital losses.

0% rate

The 0% rate generally applies to long-term gain that would be taxed at 10% or 12%, based on the taxpayer's ordinary-income rate. However, a very small portion of income in the top of the 12% brackets won't be eligible for the 0% rate.

If you have adult children in the 10% or 12% tax bracket, consider transferring appreciated assets to them so they can sell the assets and enjoy the 0% rate. But keep in mind that the 0% rate applies only to the extent that capital gains "fill up" the gap between your child's taxable income and the top end of the 0% bracket. For 2019, the 0% bracket for singles tops out at \$39,375 (just \$100 less than the top of the 12% ordinary-income bracket).

Warning: If the child will be under age 24 on Dec. 31, first make sure he or she won't be subject to the "kiddie tax." (See page 20.) Also consider any gift tax consequences. (See page 24.)

Paying attention to details

If you don't pay attention to the details, the tax consequences of a sale may be different from what you expect. For example, the trade date, not the settlement date, of publicly traded securities determines the year in which you recognize the gain or loss.

And if you bought the same security at different times and prices and want to sell high-tax-basis shares to reduce gain or increase a loss to offset

other gains, be sure to specifically identify which block of shares is being sold.

Mutual funds

Investing in mutual funds is an easy way to diversify your portfolio. But beware of the tax pitfalls. First, mutual funds with high turnover rates can create income that's taxed at ordinary-income rates. Choosing funds that provide primarily long-term gains can save you more tax dollars because of the lower long-term rates.

Second, earnings on mutual funds are typically reinvested, and unless you or your investment advisor increases your basis accordingly, you may report more gain than required when you sell the fund. Brokerage firms are required to track (and report to the IRS) your cost basis in mutual funds acquired during the tax year.

Third, buying equity mutual fund shares late in the year can be costly taxwise. Such funds often declare a large capital gains distribution at year end, which is a taxable event. If you own the shares on the distribution's record date, you'll be taxed on the full distribution amount even if it includes significant gains realized by the fund before you owned the shares. And you'll pay tax on those gains in the current year — even if you reinvest the distribution.

Small business stock

By purchasing stock in certain small businesses, you can diversify your portfolio. You also may enjoy preferential tax treatment:

Conversion of capital loss to ordinary loss. If you sell qualifying Section 1244 small business stock at a loss, you can treat up to \$50,000 (\$100,000, if married filing jointly) as an ordinary, rather than a capital, loss — regardless of your holding period. This means you can use it to offset ordinary income, reducing your tax by as much as 37%

of this portion of the loss. Sec. 1244 applies only if total capital invested isn't more than \$1 million.

Tax-free gain rollovers. If within 60 days of selling qualified small business (QSB) stock you buy other QSB stock with the proceeds, you can defer the tax on your gain until you dispose of the new stock. The rolled-over gain reduces your basis in the new stock. For determining long-term capital gains treatment, the new stock's holding period includes the holding period of the stock you sold. To be a QSB, a business must be engaged in an active trade or business and must not have assets that exceed \$50 million, among other requirements.

Exclusion of gain. Generally, taxpayers selling QSB stock are allowed to exclude up to 50% of their gain if they've held the stock for more than five years. But, depending on the acquisition date, the exclusion may be greater: The exclusion is 75% for stock acquired after Feb. 17, 2009, and before Sept. 28, 2010, and 100% for stock acquired on or after Sept. 28, 2010.

The taxable portion of any QSB gain will be subject to the lesser of your ordinary-income rate or 28%, rather than the normal long-term gains rate. (See Chart 3 on page 10.) Thus, if the 28% rate and the 50% exclusion apply, the effective rate on the QSB gain will be 14% ($28\% \times 50\%$).

Keep in mind that all three of these tax benefits are subject to additional requirements and limits. Consult your tax and financial advisors to be sure an investment in small business stock is right for you.

Passive activities

If you've invested in a trade or business in which you don't materially participate and where income or loss flows through to your tax return, remember the passive activity rules. Why? Passive activity

income may be subject to the 3.8% NIIT (See Case Study 2), and passive activity losses generally are deductible only against income from other passive activities. You can carry forward disallowed losses to the following year, subject to the loss limitation discussed on page 11.

To avoid passive activity treatment, you must "materially participate" in the activity, which typically means you must participate in the trade or business more than 500 hours during the year or demonstrate that your involvement constitutes substantially all of the participation in the activity. But there are other ways to meet the material participation test. Plus, there are special rules that apply to real estate. (See page 15.) To help ensure your hours claim will be able to withstand IRS scrutiny, carefully track and document your time. Contemporaneous recordkeeping is better than records that are created after the fact.

If you don't pass the material participation test, consider:

Increasing your involvement. If you can exceed 500 hours, the activity no longer will be subject to passive activity rules.

Grouping activities. You may be able to group certain activities together to be treated as one activity for tax purposes and exceed the 500-hour threshold. But the rules are complex, and there are potential downsides to consider.

Looking at other activities. If you have passive losses, one option is to invest in an additional income-producing trade or business that will be passive to you. Under this strategy, you'll have passive income that can absorb some or all of your passive losses.

Disposing of the activity. This generally allows you to deduct all passive losses — including any loss on disposition (subject to basis

CASE STUDY 2

Watch out for the NIIT



Earlier this year, Dev accepted a new job with a large salary increase. His investment portfolio also was doing well, so he was concerned that he could become subject to the 3.8% net investment income tax (NIIT). He contacted his tax advisor to learn more.

She explained that taxpayers with modified adjusted gross income (MAGI) over \$200,000 per year (\$250,000 if married filing jointly and \$125,000 if married filing separately) may owe the NIIT on top of whatever other tax they owe on their investment income. The NIIT equals 3.8% of the lesser of

net investment income or the amount by which MAGI exceeds the applicable threshold. Net investment income can include capital gains, dividends, interest, rental income and other investment-related income (but not business income or self-rental income from an active trade or business).

Dev's advisor explained that many of the strategies that can help him save or defer income tax on his investments can also help him avoid or defer NIIT liability. And because the threshold for the NIIT is based on MAGI, strategies that reduce his MAGI — such as making retirement plan contributions (see page 22) — could also help him avoid or reduce NIIT liability.

and capital loss limitations). But, again, the rules are complex.

Even if you do pass the material participation test, be aware that your loss deduction might still be limited under the TCJA's rules for deducting business losses. See Case Study 6 on page 16.

Income investments

Qualified dividends are taxed at the favorable long-term capital gains tax rate rather than at your higher ordinary-income tax rate.

Interest income, however, generally is taxed at ordinary-income rates. So stocks that pay qualified dividends may be more attractive taxwise than other income investments, such as CDs and taxable bonds. But there are exceptions.

Some dividends, for example, are subject to ordinary-income rates. These include certain dividends from:

- ▲ Real estate investment trusts (REITs),
- ▲ Regulated investment companies (RICs),
- ▲ Money market mutual funds, and
- ▲ Certain foreign investments.

The tax treatment of bond income varies. For example:

- ▲ Corporate bond interest is fully taxable for federal and state purposes.
- ▲ Bonds (except U.S. savings bonds) with original issue discount (OID) build up "interest" as they rise toward maturity. You're generally considered to earn a portion of that interest annually — even though the bonds don't pay this interest annually — and you must pay tax on it.
- ▲ Interest on U.S. government bonds is taxable on federal returns but exempt by federal law on state and local returns.

CASE STUDY 3

Can you deduct investment interest expense?

Frida borrowed to make some investments this year, and she was wondering if the interest would be deductible. So she consulted her tax advisor.

He told her that investment interest expense — interest on debt used to buy assets held for investment, such as margin debt used to buy securities — generally is deductible for both regular tax and alternative minimum tax (AMT) purposes. But special rules apply.



First, Frida's investment interest expense deduction would be limited to her net investment income, which, for the purposes of this deduction, generally includes taxable interest, nonqualified dividends and net short-term capital gains (but not long-term capital gains), reduced by other investment expenses. Any disallowed interest expense is carried forward, and Frida can deduct it in a later year against net investment income.

If her interest expense exceeds her net investment income, Frida may elect to treat all or a portion of her net long-term capital gains or qualified dividends as investment income in order to deduct more of her investment interest expense. But if she does, that portion of the long-term capital gain or dividend will be taxed at ordinary-income rates.

Frida's advisor also explained that payments a short seller makes to the stock lender in lieu of dividends may be deductible as investment interest expense. But interest on debt used to buy securities that pay tax-exempt income, such as municipal bonds, isn't deductible. Finally, he told Frida to keep in mind that passive interest expense — interest on debt incurred to fund a passive activity — becomes part of her overall passive activity income or loss, subject to limitations.

- ▲ Interest on state and local government bonds is excludable on federal returns. If the bonds were issued in your home state, interest also may be excludable on your state return, depending on the state.

The fact that a bond is exempt from federal tax doesn't necessarily make it a better choice than a comparable taxable bond. Municipal bonds, for example, typically offer lower yields than comparable corporate bonds. To make a fair comparison, you need to calculate the tax-equivalent yield — which incorporates tax savings into the municipal bond's yield — using this formula:

$$\text{Tax-equivalent yield} = \text{actual yield} / (1 - \text{your marginal tax rate}).$$

But you also need to consider factors such as risk and how well each bond will help achieve your overall investment goals.

Warning: Tax-exempt interest from private-activity municipal bonds can trigger or increase AMT liability. However, any income from tax-exempt bonds issued in 2009 and 2010 (along with 2009 and 2010 re-fundings of bonds issued after Dec. 31, 2003, and before Jan. 1, 2009) is excluded from the AMT. And AMT is less of a risk for most taxpayers now. (See page 5.) ■

Saving taxes on your home and other real estate



There are many ways you can maximize the tax benefits associated with owning a principal residence, vacation home or rental property. Tax planning is also important if you'd like to sell your home or other real estate this year. But don't forget about the Tax Cuts and Jobs Act (TCJA). It impacts some home-related deductions and some tax breaks for real estate investors and other real property businesses.

Home-related deductions

The TCJA included many changes affecting tax breaks for home ownership. Consider these itemized deductions in your tax planning:

Property tax deduction. Through 2025, the property tax deduction is subject to a \$10,000 limit on combined deductions for state and local taxes. (See page 4 for more details.)

Higher-income taxpayers owning valuable homes in high-property-tax locations have seen a huge drop in the federal tax benefit they receive from their property tax payments.

Mortgage interest deduction.

You generally can deduct interest on mortgage debt incurred to purchase, build or improve your principal residence and a second residence. Points paid related to your principal residence also may be deductible. Through 2025, the TCJA reduces the mortgage debt limit from \$1 million to \$750,000 for debt incurred after Dec. 15, 2017, with some limited exceptions.

Home equity debt interest deduction.

Through 2025, the TCJA effectively limits the home equity interest deduction to debt that would qualify for the home mortgage interest deduction. (Under

pre-TCJA law, interest was deductible on up to \$100,000 of home equity debt used for any purpose, such as to pay off credit card debt or to buy a car.)

Home rental rules

If you rent out all or a portion of your principal residence or second home for less than 15 days, you don't have to report the income. But expenses directly associated with the rental, such as advertising and cleaning, won't be deductible.

If you rent out your principal residence or second home for 15 days or more, you'll have to report the income. But you may be entitled to deduct some or all of your rental expenses — such as utilities, repairs, insurance and depreciation. Exactly what you can deduct depends on whether the home is classified as a rental property for tax purposes (based on the amount of personal vs. rental use):

Rental property. You can deduct rental expenses, including losses, subject to the real estate activity rules discussed at right. Property tax attributable to the rental use of the home *isn't* subject to the \$10,000 limit on the state and local tax deduction. You can't deduct any interest that's attributable to your personal use of the home. However, you *can* take the personal portion of property tax as an itemized deduction (subject to the \$10,000 limit).

Nonrental property. You can deduct rental expenses only to the extent of your rental or other passive income. Any excess can be carried forward to offset rental income in future years. You also can take an itemized deduction for the personal portion of

CASE STUDY 4

The self-employed can still claim the home office deduction

Taylor had heard that the TCJA had eliminated the home office deduction. When she met with her tax advisor, however, she was relieved to learn that she was still eligible. Why?

Her advisor explained that, under the TCJA, *employees* can no longer deduct home office expenses, because of the suspension of miscellaneous deductions subject to the 2% of adjusted gross income (AGI) floor. (See page 4.)

However, Taylor is *self-employed*. As long as her home office is her principal place of business (or used substantially and regularly to conduct business) and that's the only use of the space, she likely can deduct from her self-employment income a portion of her mortgage interest, property taxes, insurance, utilities and certain other expenses, and the depreciation allocable to the space. Or she may be able to use the simplified method for calculating the deduction.

Using the simplified option, Taylor can deduct \$5 per square foot for up to 300 square feet (maximum of \$1,500 per year). Although she won't be able to depreciate the portion of her home that's used as an office — as she could filing Form 8829 — she can claim mortgage interest, property taxes and casualty losses as itemized deductions to the extent otherwise allowable, without needing to apportion them between personal and business use of her home.

both mortgage interest and property taxes, subject to the applicable limits. In some instances, it may be beneficial to reduce personal use of a residence so it will be classified as a rental property.

Home sales

When you sell your principal residence, you can exclude up to \$250,000 of gain (\$500,000 for married couples filing jointly) if you meet certain tests. Gain that qualifies for exclusion will also be excluded from the 3.8% NIIT. (See page 12.) To support an accurate tax basis, maintain thorough records, including information on your original cost and subsequent improvements, reduced by any casualty losses and depreciation claimed based on business use. **Warning:** Gain that's allocable to a period of "nonqualified" use generally isn't excludable.

Losses on the sale of any personal residence aren't deductible. But if part of your home is rented out or used exclusively for your business, the loss attributable to that portion may be deductible.

Because a second home is ineligible for the gain exclusion, consider converting it to rental use before selling. It can be considered a business asset, and you may be able to defer tax on any gains through an installment sale or a Section 1031 exchange. Or you may be able to deduct a loss, but only to the extent attributable to a decline in value *after* the conversion.

Real estate activity rules

Income and losses from investment real estate or rental property are passive by definition — unless you're a real estate professional. Why is this important? Passive activity income and losses have some negative tax consequences. (See "Passive activities" on page 12.)

To qualify as a real estate professional, you must annually perform:

- ▲ More than 50% of your personal services in real property trades or businesses in which you materially participate, and

- ▲ More than 750 hours of service in these businesses during the year.

Each year stands on its own, and there are other nuances to be aware of. If you're concerned you'll fail either test and be subject to the NIIT or stuck with passive losses, consider increasing your hours so you'll meet the test. Keep in mind that special rules for spouses may help you meet the material participation test.

Warning: To help withstand IRS scrutiny, be sure to keep adequate records of time spent.

Depreciation-related breaks

Two valuable depreciation-related breaks may be available to real estate investors:

1. Bonus depreciation. This additional first-year depreciation is available for qualified assets, which before the TCJA included qualified improvement property. But due to a drafting error in the TCJA, qualified improvement property will be eligible for bonus depreciation only if a technical correction is issued. (Check with your tax advisor for the latest information.)

When available, bonus depreciation is increased to 100% (up from 50%) for qualified property placed in service through Dec. 31, 2022. For 2023 through 2026, bonus depreciation is scheduled to be gradually reduced. **Warning:** Under the TCJA, real estate businesses that elect to deduct 100% of their business interest are ineligible for bonus depreciation.

2. Section 179 expensing election.

This allows you to deduct (rather than depreciate over a number of years) qualified improvement property — a definition expanded by the TCJA from leasehold-improvement, restaurant and retail-improvement property. The TCJA also allows Sec. 179 expensing for certain depreciable tangible personal property used predominantly to furnish lodging and for the following improvements to nonresidential real property: roofs,

HVAC equipment, fire protection and alarm systems, and security systems.

For qualifying property placed in service in 2019, the expensing limit is \$1.02 million. The break begins to phase out dollar-for-dollar when asset acquisitions for the year exceed \$2.55 million. (These amounts are adjusted annually for inflation.)

Business interest expense deduction

Under the TCJA, interest paid or accrued by a business is deductible up to 30% of "adjusted taxable income." Taxpayers (other than tax shelters) with average annual gross receipts of \$25 million or less for the three previous tax years are exempt from the interest expense deduction limitation.

Some other taxpayers are also exempt, including real property businesses — but only if they elect to continue to fully deduct their interest. And if they make the election, they're required to use the alternative depreciation system for real property used in the business.

Tax-deferral strategies

It's possible to divest yourself of appreciated investment real estate but defer the tax liability. Such strategies may even help you keep your income low enough to avoid triggering the 3.8% NIIT and the 20% long-term capital gains rate. Consider these deferral strategies:

Installment sale. An installment sale allows you to defer gains by spreading them over several years as you receive the proceeds. **Warning:** Ordinary gain from certain depreciation recapture is recognized in the year of sale, even if no cash is received.

Sec. 1031 exchange. Also known as a "like-kind" exchange, this technique allows you to exchange one real estate investment property for another and defer paying tax on any gain until you sell the replacement property. Discuss the limits and risks with your tax advisor. ■

Tax planning is a juggling act for business owners



As a business owner, you must keep your eye on your company's income and expenses and applicable tax breaks, which the complexities of the Tax Cuts and Jobs Act (TCJA) makes especially challenging. But you also need to look out for your own financial future, which requires retirement planning and exit planning. And if you might sell your business or acquire another, it's critical to consider the tax consequences.

Business structure

Income taxation and owner liability are the main factors that differentiate one business structure from another. Many business owners choose entities that combine pass-through taxation with limited liability, namely limited liability companies (LLCs) and S corporations. But TCJA changes warrant revisiting the tax consequences of business structure.

The now-flat corporate rate (21%) is significantly lower than the top individual rate (37%), providing significant tax benefits to C corporations and helping to mitigate the impact of double taxation for their owners. In addition, the corporate alternative minimum tax

(AMT) has been repealed, while the individual AMT remains (though it will affect far fewer taxpayers — see page 5.) But, the TCJA also introduced a powerful deduction for owners of pass-through entities. (See below.)

For tax or other reasons, a structure change may be beneficial in certain situations. But there also may be unwelcome tax consequences that effectively prevent such a change.

Sec. 199A deduction for pass-through businesses

Through 2025, the TCJA provides the Sec. 199A deduction for sole proprietors and owners of pass-through business entities, such as partnerships, S corporations and LLCs that are treated as sole proprietorships or as partnerships for tax purposes. The deduction generally equals 20% of qualified business income (QBI), subject to limitations that can begin to apply if taxable income exceeds the applicable threshold — \$160,700 or, if married filing jointly, \$321,400 (\$160,725 for separate filers). The limits fully apply when taxable income exceeds \$210,700 and \$421,400 (\$210,725), respectively.

QBI is generally defined as the net amount of qualified items of income, gain, deduction and loss that are effectively connected with the conduct of a U.S. business. QBI doesn't include certain investment items, reasonable compensation paid to an owner for services rendered to the business, or any guaranteed payments to a partner or LLC member treated as a partner for services rendered to the partnership or LLC.

The 199A deduction isn't allowed in calculating the owner's adjusted gross income, but it reduces taxable income.

When the income-based limit applies to owners of pass-through entities, the 199A deduction generally can't exceed the greater of the owner's share of:

- ▲ 50% of the amount of W-2 wages paid to employees by the qualified business during the tax year, or
- ▲ The sum of 25% of W-2 wages plus 2.5% of the cost of qualified property.

Qualified property is the depreciable tangible property (including real estate) owned by a qualified business as of year end and used by the business at any point during the tax year to produce qualified business income.

Another limitation for taxpayers subject to the income-based limit is that the 199A deduction generally isn't available for income from "specified service businesses." Examples include businesses that involve investment-type services and most professional practices (other than engineering and architecture).

The W-2 wage and property limitations and the service business limitation

CASE STUDY 5

Beware of the business loss deduction

Gina's business was struggling and she was concerned she'd have a significant business loss this year. She met with her tax advisor to discuss the potential tax consequences. He explained that she would be able to claim a tax deduction, but it would be subject to the TCJA's limit on deductions for pass-through business losses. Through 2025, owners of pass-through entities can't deduct an "excess" business loss in the current year.

For 2019, an excess business loss is the excess of aggregate business deductions for the tax year over the sum of:

- Aggregate business income and gains for the tax year, and
- \$255,000, or \$510,000 for married couples filing jointly.

The excess business loss is carried forward to the following tax year and can be deducted under the rules for net operating loss carryforwards.

don't apply if your taxable income is under the applicable threshold. In that case, you should qualify for the full 20% QBI deduction.

Retirement saving

If most of your money is tied up in your business, retirement can be a challenge. So if you haven't already set up a tax-advantaged retirement plan, consider doing so this year. If you might be subject to the 3.8% NIIT (see page 12), this may be particularly beneficial because retirement plan contributions can reduce your modified adjusted gross income (MAGI) and thus help you reduce or avoid the NIIT. Keep in mind that, if you have employees, they generally must be allowed to participate in the plan, provided they work enough hours and meet other qualification requirements. Here are a few options:

Profit-sharing plan. This is a defined contribution plan that allows discretionary employer contributions and flexibility in plan design. You can make deductible 2019 contributions (see Chart 4 for limits) as late as the due date of your 2019 income tax return, including extensions — provided your plan exists on Dec. 31, 2019.

SEP. A Simplified Employee Pension is a defined contribution plan that provides benefits similar to those of a profit-sharing plan. But you can establish a SEP in 2020 and still make deductible 2019 contributions as late as the due date of your 2019 income tax return, including extensions. (See Chart 4 for contribution limits.)

Defined benefit plan. This plan sets a future pension benefit and then actuarially calculates the contributions needed to attain that benefit. The maximum compensation for benefit purposes for 2019 is generally \$225,000 or 100% of average earned income for the highest three consecutive years, if less. Because it's actuarially driven, the 2019 contribution needed to attain the future benefit may exceed the maximum contributions allowed by other plans, depending on your age and the desired benefit.

You can make deductible 2019 contributions until the due date of your 2019 income tax return, including extensions — provided your plan exists

CHART 4

Profit-sharing plan vs. SEP: How much can you contribute?

| Profit-sharing plan | SEP |
|---|---|
| 2019 maximum contribution: \$56,000 or \$62,000 | 2019 maximum contribution: \$56,000 |
| Additional limits: You can't contribute more than 25% of your compensation generally. But you can contribute 100% up to the 401(k) limits if the plan includes a 401(k) arrangement. To qualify for the \$62,000 limit, your plan must include a 401(k) arrangement. And you must be eligible to make catch-up contributions (that is, be age 50 or older). | Additional limits: You can't contribute more than 25% of your eligible compensation. (Special rules apply if you're self-employed.) To make the maximum contribution, your eligible compensation must be at least \$224,000 (\$280,000 before the deduction if you're self-employed). |
| <i>Note: Other factors may further limit your maximum contribution.</i> | |

on Dec. 31, 2019. **Warning:** Employer contributions generally are required.

Exit planning

An exit strategy is a plan for passing on responsibility for running the company, transferring ownership and extracting your money from the business. This requires planning well in advance of the transition. Here are the most common exit options:

Buy-sell agreement. When a business has more than one owner, a buy-sell agreement can control what happens to the business when a specified event occurs, such as an owner's retirement, disability or death. It's critical to factor in tax and funding issues when drafting a buy-sell agreement.

Succession within the family. You can pass your business on to family members by giving them interests, selling them interests or doing some of each. With the higher gift tax exemption in effect under the TCJA for the next several years, now may be a particularly good time to transfer ownership interests in your business. (See page 24 for more on estate and gift planning.) Valuation discounts may further reduce the taxable value of the gift.

ESOP. An employee stock ownership plan is a qualified retirement plan created primarily to purchase your company's stock. It can provide liquidity and various tax benefits.

Sale to an outsider. If you can find the right buyer, you may be able to sell the business at a premium.

Sale or acquisition

Whether you're selling your business as part of an exit strategy or acquiring another company to help grow your business, the tax consequences can have a major impact on the transaction's success or failure. Consider installment sales, for example. A taxable sale might be structured as an installment sale if the buyer lacks sufficient cash or pays a contingent amount based on the business's performance.

An installment sale also may make sense if the seller wishes to spread the gain over a number of years. This could be especially beneficial if it would allow the seller to stay under the thresholds for triggering the 3.8% NIIT or the 20% long-term capital gains rate. But an installment sale can backfire on the seller. For example:

- ▲ Depreciation recapture must be reported as gain in the year of sale, no matter how much cash the seller receives.
- ▲ If tax rates increase, the overall tax could wind up being more.

With a corporation, a key consideration is whether the deal should be structured as an asset sale or a stock sale. If a stock sale is chosen, another important question is whether it should be a tax-deferred transfer or a taxable sale.

Of course, tax consequences are only one of many important considerations when planning a sale or acquisition. ■

Take advantage of one of the most flexible tax planning tools



Giving to charity can provide not only the satisfaction of doing good, but also large tax deductions. On top of that, it's one of the most flexible tax planning tools because you can control the timing to best meet your needs. As long as you itemize deductions and keep in mind the various rules and limits, charitable giving can play a key role in your tax planning.

Cash donations

Outright gifts of cash (which include donations made via check, credit card and payroll deduction) are the easiest to make. The substantiation requirements depend on the gift's value:

- ▲ Gifts under \$250 can be supported by a canceled check, credit card receipt or written communication from the charity.
- ▲ Gifts of \$250 or more must be substantiated by the charity.

Deductions for cash gifts to public charities can't exceed 60% of your adjusted gross income (AGI). Before the TCJA, the limit was 50%. The AGI limit remains at 30% for cash donations to nonoperating private foundations. Contributions exceeding the applicable AGI limit can be carried forward for up to five years.

Warning: Charitable contribution deductions are allowed for alternative minimum tax (AMT) purposes, but your tax savings may be less if you're subject to the AMT. For example, if you're in the 37% tax bracket for

regular income tax purposes, but the 28% tax bracket for AMT purposes, your deduction may be worth only 28% instead of 37%.

Stock donations

Appreciated publicly traded securities you've held more than one year are long-term capital gains property, which often makes one of the best charitable gifts. Why? Because you can deduct the current fair market value and avoid

the capital gains tax you'd pay if you sold the property. This will be especially beneficial to taxpayers facing the 3.8% NIIT (see page 12) or the top 20% long-term capital gains rate this year.

Donations of long-term capital gains property are subject to tighter deduction limits, however — 30% of AGI for gifts to public charities, 20% for gifts to nonoperating private foundations.

CHART 5 How much can you deduct for your donation?

Cash. This includes not just actual cash but gifts made by check, credit card or payroll deduction. You may deduct 100%.

Ordinary-income property. Examples include stocks and bonds held one year or less, inventory, and property subject to depreciation recapture. You generally may deduct only the lesser of fair market value or your tax basis.

Long-term capital gains property. You may deduct the current fair market value of appreciated stocks, bonds and other securities and real estate held more than one year.

Tangible personal property. Your deduction depends on the situation:

- If the property *isn't* related to the charity's tax-exempt function (such as an antique donated for a charity auction), your deduction is limited to your basis.
- If the property *is* related to the charity's tax-exempt function (such as an antique donated to a museum for its collection), you can deduct the fair market value.

Vehicle. Unless it's being used by the charity, you generally may deduct only the amount the charity receives when it sells the vehicle.

Use of property. Examples include use of a vacation home and a loan of artwork. Generally, you receive no deduction because it isn't considered a completed gift. There may, however, be ways to structure the gift to enable you to get a deduction.

Services. You may deduct only your out-of-pocket expenses, not the fair market value of your services. You can deduct 14 cents per charitable mile driven.

Payments made in exchange for college athletic event seating rights. Under the TCJA, these are no longer deductible.

Note: You must itemize to claim charitable deductions on your income tax return, and your annual charitable deductions may be reduced if they exceed certain limits based on your AGI, the type of donation and the type of charity receiving the donation. If you receive some benefit from the charity relating to your donation, such as services or products, your deduction must be reduced by the value of the benefit you receive. Various substantiation requirements also apply. Consult your tax advisor for additional details.

Don't donate stock that's worth less than your basis. Instead, sell the stock so you can deduct the loss and then donate the cash proceeds to charity.

IRA donations

Taxpayers age 70½ or older are allowed to make direct contributions from their IRA to qualified charitable organizations, up to \$100,000 per tax year. A charitable deduction can't be claimed for the contributions. But the amounts aren't deemed taxable income and can be used to satisfy an IRA owner's required minimum distribution. (See page 23.) A direct contribution might be tax-smart if you won't benefit from the charitable deduction.

To take advantage of the exclusion from income for IRA contributions to charity on your 2019 tax return, you'll need to arrange a direct transfer by the IRA trustee to an eligible charity by Dec. 31, 2019.

Making gifts over time

If you don't know which charities you want to benefit but you'd like to start making large contributions now, consider a private foundation. It offers you significant control over how your donations ultimately will be used. You must comply with complex rules, however, which can make foundations expensive to run. Also, the AGI limits for deductibility of contributions to nonoperating foundations are lower. (See "Cash donations" and "Stock donations") on page 18.

If you'd like to influence how your donations are spent but avoid a foundation's downsides, consider a donor-advised fund (DAF). Many larger public charities and investment firms offer them. **Warning:** To deduct your DAF contribution, obtain a written acknowledgment from the sponsoring organization that it has exclusive legal control over the assets contributed.

Charitable remainder trusts

To benefit a charity while helping ensure your own financial future, consider a CRT. Here's how it works:

- ▲ For a given term, the CRT pays an amount to you annually (some of which generally is taxable).
- ▲ At the term's end, the CRT's remaining assets pass to one or more charities.
- ▲ When you fund the CRT, you receive an income tax deduction for the present value of the amount that will go to charity.
- ▲ The property is removed from your taxable estate.

You may owe capital gains tax when you receive the payments. However, because the payments are spread over time, much of the liability will be deferred. Plus, a portion of each payment might be considered tax-free return of principal. This may help you reduce or avoid exposure to the 3.8% NIIT and the 20% top long-term capital gains rate.

You can name someone other than yourself as income beneficiary or fund the CRT at your death, but the tax consequences will be different.

Charitable lead trusts

To benefit charity while transferring assets to loved ones at a reduced tax cost, consider a CLT. It works as follows:

- ▲ For a given term, the CLT pays an amount to one or more charities.
- ▲ At the term's end, the CLT's remaining assets pass to one or more loved ones you name as remainder beneficiaries.
- ▲ When you fund the CLT, you make a taxable gift equal to the present value of the amount that will go to the remainder beneficiaries.

- ▲ The property is removed from your taxable estate.

For gift tax purposes, the amount of the remainder interest is determined using the assumption that the trust assets will grow at the Section 7520 rate. The lower the Sec. 7520 rate, the smaller the remainder interest and the lower the possible gift tax — or the less of your lifetime gift tax exemption you'll have to use up. If the trust's earnings outperform the Sec. 7520 rate, the excess earnings will be transferred to the remainder beneficiaries gift- and estate-tax-free.

Because the Sec. 7520 rate is still fairly low, now may be a good time to lock in a relatively low rate while still available and take the chance that your actual return will outperform it. Keep in mind, however, that the increased gift and estate tax exemption may reduce the tax benefits of a CLT, depending on your specific situation. (For more on estate and gift taxes, see page 24.)

You can name yourself as the remainder beneficiary or fund the CLT at your death, but the tax consequences will be different.

Qualified charities

Before you donate, it's critical to make sure the charity you're considering is indeed a qualified charity — that it's eligible to receive tax-deductible contributions.

The IRS's online search tool, Tax Exempt Organization Search, can help you more easily find out whether an organization is eligible to receive tax-deductible charitable contributions. You can access the tool at <https://apps.irs.gov/app/eos>. According to the IRS, you may rely on this list in determining deductibility of your contributions.

Also, don't forget that political donations aren't deductible. ■

How to start your child on the right financial track



Whether you're a parent or a grandparent, you likely want to do what you can to start the children in your life off on the right financial track. To pave the way, it's important to show young people the value of saving and provide them with the best education possible. By taking advantage of tax breaks for you and your children, you can do both. If you're a grandparent, you also may be able to take advantage of some of these breaks — or help your grandchildren take advantage of them.

Child credit

Some higher-income taxpayers who couldn't benefit from the child credit before the Tax Cuts and Jobs Act (TCJA) went into effect are now finding that they do. The TCJA has significantly raised the modified adjusted gross income (MAGI) phaseout ranges for the credit. Through 2025, the total credit amount a taxpayer is allowed to claim is reduced by \$50 for every \$1,000 (or part of a \$1,000) by which MAGI exceeds \$200,000, or \$400,000 for married couples filing jointly. The thresholds used to be only \$75,000 and \$110,000, respectively.

Tax credits reduce your tax bill dollar for dollar (unlike deductions, which just reduce the amount of income subject to tax), so they're particularly valuable. Under the TCJA:

- ▲ For each child under age 17 at the end of 2019, you may be able to claim a \$2,000 credit.
- ▲ For each qualifying dependent other than a qualifying child (such as a dependent child age 17 or older or a dependent elderly parent), a \$500 family credit may be available.

If you adopt, you might be eligible for the adoption credit. It's \$14,080 for 2019, but it's subject to a MAGI-based phaseout that's lower than for the child credit (\$211,160–\$251,160 for both heads of households and joint filers).

"Kiddie tax"

The "kiddie tax" generally applies to most unearned income of children under age 19 and of full-time students under age 24 (unless the students provide more than half of their own support from earned income). Before 2018, unearned income subject to the kiddie tax was generally taxed at the parents' tax rate.

Through 2025, the TCJA makes the kiddie tax harsher. Now a child's unearned income beyond \$2,200 (for 2019) will be taxed according to the tax brackets used for trusts and estates, which for 2019 are taxed at the highest marginal rate of 37% once taxable income exceeds \$12,750. In contrast, for a married couple filing jointly, the highest rate doesn't kick in until their 2019 taxable income tops \$612,350. In other words, children's unearned income often will be taxed at *higher* rates than their parents' income.

IRAs for teens

One of the best ways to get children on the right financial track is to set up IRAs for them. Their retirement may seem too far off to warrant saving now, but IRAs can be ideal for teenagers precisely because they likely will have many years to let their accounts grow tax-deferred or tax-free.

The 2019 contribution limit is the lesser of \$6,000 or 100% of earned income. A teen's *traditional* IRA contributions typically are deductible, but distributions will be taxed. *Roth* IRA contributions aren't deductible, but qualified distributions will be tax-free.

If your children or grandchildren don't have earned income and you own a business, consider hiring them. As the business owner, you can deduct their pay, and other tax benefits may apply. **Warning:** The children must be paid in line with what you'd pay nonfamily employees for the same work.

529 plans

Section 529 plans provide another tax-advantaged savings opportunity. You can choose a prepaid tuition plan to secure current tuition rates or a tax-advantaged savings plan to fund education expenses. Here are some of the possible benefits of such plans:

- ▲ Although contributions aren't deductible for federal purposes, any growth is tax-deferred. (Some states do offer tax breaks for contributing.)

- ▲ The plans usually offer high contribution limits, and there are no income limits for contributing.
- ▲ There's generally no beneficiary age limit for contributions or distributions.
- ▲ You can control the account, even after the child is of legal age.
- ▲ You can make tax-free rollovers to another qualifying family member.
- ▲ A special break for 529 plans allows you to front-load five years' worth of annual gift tax exclusions and make up to a \$75,000 contribution (or \$150,000 if you split the gift with your spouse) per beneficiary in 2019.

Prepaid tuition vs. savings plan

With a 529 *prepaid tuition plan*, if your contract is for four years of tuition, tuition is guaranteed regardless of its cost at the time the beneficiary actually attends the school. One downside is that there's uncertainty in how benefits will be applied if the beneficiary attends a different school. Another negative is that the plan doesn't cover costs other than tuition, such as room and board.

A 529 *college savings plan*, on the other hand, can be used to pay a student's expenses at most postsecondary educational institutions. Distributions used to pay qualified postsecondary school expenses (such as tuition, mandatory fees, books, supplies, computer equipment, software, Internet service and, generally, room and board) are income-tax-free for federal purposes and typically for state purposes as well, making the tax deferral a permanent savings.

The TCJA permanently allows tax-free distributions for elementary and secondary school tuition up to \$10,000 per year per student.

The biggest downside may be that you don't have direct control over investment decisions; you're limited to the options the plan offers. Additionally, for funds already in the plan, you can make changes to your investment options only twice during the year or when you change beneficiaries. For these reasons, some taxpayers prefer Coverdell ESAs.

But each time you make a *new* contribution to a 529 savings plan, you can select a different option for that contribution, regardless of how many times you contribute throughout the year. And every 12 months you can make a tax-free rollover to a different 529 plan for the same child.

ESAs

Coverdell Education Savings Accounts are like 529 savings plans in that contributions aren't deductible for federal purposes, but plan assets can grow tax-deferred and distributions used to pay qualified education expenses are income-tax-free.

One of the biggest ESA advantages used to be that they allowed tax-free distributions for elementary and secondary school costs and 529 plans didn't. With the TCJA enhancements to 529 plans, this is less of an advantage. But ESAs still have a leg up because they can be used for elementary and secondary school expenses other than just tuition — and there's no dollar limit on these annual distributions. Another advantage is that you have more investment options.

ESAs are worth considering if you'd like to have direct control over how your contributions are invested or if you want to fund elementary or secondary education expenses in

excess of \$10,000 per year or that aren't tuition.

But the \$2,000 contribution limit is low, and it begins to phase out at a MAGI of \$190,000 for married couples filing jointly and \$95,000 for other filers. No contribution can be made when MAGI hits \$220,000 and \$110,000, respectively.

Also, contributions can generally be made only for beneficiaries under age 18. When the beneficiary turns age 30, the ESA generally must be distributed within 30 days, and any earnings may be subject to tax and a 10% penalty.

ABLE accounts

Achieving a Better Life Experience accounts offer a tax-advantaged way to fund qualified disability expenses for a beneficiary who became blind or disabled before age 26. For federal purposes, tax treatment is similar to that of Sec. 529 college savings plans.

Under the TCJA, through 2025, 529 plan funds can be rolled over to an ABLE account without penalty if the ABLE account is owned by the beneficiary of the 529 plan or a member of the beneficiary's family. Such rolled-over amounts count toward the overall ABLE account annual contribution limit (\$15,000 for 2019).

American Opportunity credit

When your child enters college, you may not qualify for the American Opportunity credit because your income is too high (phaseout range of \$80,000–\$90,000; \$160,000–\$180,000 for joint filers), but your child might. The maximum credit, *per student*, is \$2,500 per year for the first four years of postsecondary education. And both the credit and a tax-free 529 plan or ESA distribution can be taken as long as expenses paid with the distribution aren't used to claim the credit. ■

Retirement plans can minimize taxes and help maximize investment returns



Although you're allowed to contribute only a limited amount to tax-advantaged retirement plans, those tax advantages make the plans especially powerful for taxpayers in the top income tax brackets. So don't ignore these plans just because what you can invest in them annually may be small compared to what you invest elsewhere. To fully leverage their might, also be careful when taking retirement plan distributions. Look ahead and watch out for tax traps.

Retirement plan contributions

Contributing the maximum you're allowed (see Chart 6) to an employer-sponsored defined contribution plan, such as a 401(k), is likely a smart move:

- ▲ Contributions are typically pretax, reducing your modified adjusted gross income (MAGI). This in turn can help you reduce or avoid exposure to the 3.8% NIIT. (See page 12.)
- ▲ Plan assets can grow tax-deferred — meaning you pay no income tax until you take distributions.
- ▲ Your employer may match some or all of your contributions.
- ▲ Your age,
- ▲ Whether the conversion would push you into a higher income tax bracket or trigger the 3.8% NIIT,
- ▲ Whether you can afford to pay the tax on the conversion,
- ▲ Your tax bracket now and expected tax bracket in retirement, and
- ▲ Whether you'll need the IRA funds in retirement.

If you participate in a 401(k), 403(b) or 457 plan, it may allow you to designate some or all of your contributions as Roth contributions. While Roth contributions don't reduce your current MAGI, qualified distributions will be tax-free. Roth contributions may be especially beneficial for higher-income earners, who are ineligible to contribute to a Roth IRA.

Roth IRA conversions

If you have a traditional IRA, consider whether you might benefit from

converting some or all of it to a Roth IRA. A conversion can allow you to turn tax-deferred future growth into tax-free growth. It also can provide estate planning advantages. Unlike other retirement plans, Roth IRAs don't require you to take distributions during your lifetime, so you can let the entire balance grow tax-free over your lifetime for the benefit of your heirs.

There's no income-based limit on who can convert to a Roth IRA. But the converted amount is taxable in the year of the conversion. Whether a conversion makes sense for you depends on factors such as:

Your tax advisor can run the numbers and help you decide if a conversion is right for you this year.

But in your conversion decision, keep in mind that, under the TCJA, there's no longer the option to undo a Roth IRA conversion by "recharacterizing" the account as a traditional IRA by Oct. 15 of the following year (if you extended your tax return). You can, however, still recharacterize *new* Roth IRA contributions as traditional contributions if you do it by the applicable deadline and meet all other rules.

If you *don't* have a traditional IRA, consider a "back door" Roth IRA: You set up a traditional account and make a nondeductible contribution to it. You then wait until the transaction clears and convert the traditional account to a Roth account. The only tax due will be on any growth in the account between the time you made the contribution and the date of conversion.

CHART 6 Retirement plan contribution limits for 2019

| | Regular contribution | Catch-up contribution ¹ |
|---|----------------------|------------------------------------|
| Traditional and Roth IRAs | \$ 6,000 | \$ 1,000 |
| 401(k)s, 403(b)s, 457s and SARSEPs ² | \$ 19,000 | \$ 6,000 |
| SIMPLEs | \$ 13,000 | \$ 3,000 |

¹ For taxpayers age 50 or older by the end of the tax year.

² Includes Roth versions where applicable.

Note: Other factors may further limit your maximum contribution. If you're a business owner or self-employed, you may be able to set up a plan that allows you to make much larger contributions. See Chart 4 on page 17.

Early withdrawals

With a few exceptions, retirement plan distributions before age 59½ are subject to a 10% penalty on top of any income tax that ordinarily would be due on a withdrawal. This means that, if you're in the top tax bracket of 37%, you can lose almost half of your withdrawal to taxes and penalties — and perhaps more than half if you're also subject to state income taxes and/or penalties. Additionally, you'll lose the potential tax-deferred future growth on the withdrawn amount.

If you have a Roth account, you can withdraw up to your contribution amount without incurring taxes or penalties. But you'll be losing the potential tax-free growth on the withdrawn amount.

So if you're in need of cash, consider tapping your taxable investment accounts rather than dipping into your retirement plan. (See page 10 for information on the tax treatment of investments.)

Leaving a job

When you change jobs or retire, avoid taking a lump-sum distribution from your employer's retirement plan because it generally will be taxable — and potentially subject to the 10% early-withdrawal penalty. Here are options that will help you avoid current income tax and penalties:

Staying put. You may be able to leave your money in your old plan. But if you'll be participating in a new employer's plan or you already have an IRA, this may not be the best option. Why? Because keeping track of multiple plans can make managing your retirement assets more difficult. Also consider how well the old plan's investment options meet your needs.

A rollover to your new employer's plan. This may be a good solution if you're changing jobs, because it may leave you with only one retirement plan to keep track of. But also evaluate the new plan's investment options.

WHAT'S NEW!

Could you be affected by retirement plan changes?

As of this writing, legislation has been proposed that would make a variety of tax law changes related to retirement plans. Here are some of the most significant changes that could affect you:

- Allowing penalty-free IRA withdrawals for the birth or adoption of a child,
- Repealing the maximum age of 70½ for making traditional IRA contributions,
- Increasing the age for beginning required minimum distributions (RMDs) from age 70½ to age 72, and
- Reducing the time period for RMDs for most beneficiaries inheriting IRAs other than surviving spouses.



For the latest information on this retirement plan legislation, contact your tax advisor.

A rollover to an IRA. If you participate in a new employer's plan, this will require keeping track of two plans. But it may be the best alternative because IRAs offer nearly unlimited investment choices.

If you choose a rollover, request a direct rollover from your old plan to your new plan or IRA. If the funds are sent to you by check, you'll need to make an indirect rollover (that is, deposit the funds into a new IRA) within 60 days to avoid tax and potential penalties.

Warning: If you don't do a direct rollover, the check you receive from your old plan may be net of 20% federal income tax withholding. If you don't roll over the gross amount (making up for the withheld amount with other funds), you'll be subject to income tax — and potentially the 10% penalty — on the difference.

Required minimum distributions

Historically, in the year in which a taxpayer reaches age 70½, he or she has had to begin to take annual required minimum distributions from his or her IRAs (except Roth IRAs) and, generally, from any defined contribution plans. However, the age may be increased — see “What's new!” above. If you don't comply with the RMD rules, you can owe a penalty equal to 50% of the amount you should have withdrawn but didn't.

An RMD deferral is allowed for the initial year, but you'll have to take two RMDs the next year. And you can avoid the RMD rule for a non-IRA Roth plan by rolling the funds into a Roth IRA.

So, should you take distributions after age 59½ but before RMDs apply, or take more than the RMD? Waiting as long as possible to take distributions generally is advantageous because of tax-deferred compounding. But a distribution (or larger distribution) in a year your tax rate is lower than usual may save tax.

Be sure, however, to consider the lost future tax-deferred growth and, if applicable, whether the distribution could: 1) cause Social Security payments to become taxable, 2) increase income-based Medicare premiums and prescription drug charges, or 3) affect other tax breaks with income-based limits.

Warning: While retirement plan distributions aren't subject to the additional 0.9% Medicare tax (see page 6) or 3.8% NIIT, they are included in your MAGI. That means they could trigger or increase the NIIT, because the thresholds for that tax are based on MAGI.

If you've inherited a retirement plan, consult your tax advisor about the distribution rules that apply to you. ■

Seize opportunities while they're available



Because the Tax Cuts and Jobs Act (TCJA) has put estate, gift and generation-skipping transfer (GST) tax exemptions at record-high levels, far fewer taxpayers are worrying about these taxes. But the high exemptions currently are available only through 2025. And Congress could pass legislation that reduces the limits sooner. So whether or not you'd be subject to estate taxes under the current exemptions, it's a good idea to consider if you can seize opportunities to potentially lock in tax savings today. Those same opportunities might not be available in the future.

Estate tax

While the TCJA keeps the estate tax rate at 40%, it has doubled the exemption base amount from \$5 million to \$10 million. The inflation-adjusted amount for 2019 is \$11.4 million. (See Chart 7.)

Without further legislation, the estate tax exemption will return to an inflation-adjusted \$5 million in 2026. So taxpayers with estates in the roughly \$6 million to \$11 million range (twice that for married couples), whose estates would escape estate taxes if they were to die while the doubled exemption is in effect, still need to keep potential post-2025 estate tax liability in mind in their estate planning.

Gift tax

The gift tax continues to follow the estate tax, so the gift tax exemption also has increased under the TCJA. (See Chart 7.) Any gift tax exemption used during your lifetime reduces the estate tax exemption available at death. Using

up some of your exemption during your lifetime can be tax-smart, especially if your estate exceeds roughly \$6 million (twice that if you're married). (See Case Study 6.)

You also can exclude certain gifts of up to \$15,000 per recipient in 2019 (\$30,000 per recipient if your spouse elects to split the gift with you or you're giving joint or community property) without depleting any of your gift and estate tax exemption.

Warning: You need to use your annual exclusion by Dec. 31. The exclusion doesn't carry over from year to year.

For example, if you don't make an annual exclusion gift to your grandson this year, you can't add \$15,000 to your 2020 exclusion to make a \$30,000 tax-free gift to him next year.

GST tax

The generation-skipping transfer (GST) tax generally applies to transfers (both during your lifetime and at death) made to people more than one generation below you, such as your grandchildren. This is in addition to any gift or estate tax due. The GST tax continues to follow the estate tax, so the GST tax exemption also has increased under the TCJA. (See Chart 7.)

CASE STUDY 6

Interplay of gift and estate tax exemptions



Debra has an estate of \$12 million. In 2019, she has already made \$15,000 annual exclusion gifts to each of her chosen beneficiaries. She's pleased that the gift and estate tax exemption has essentially doubled and, with future inflation-adjustments, might be enough to protect her entire estate. But she's in good health and believes she'll live beyond 2025. So she's concerned about having substantial estate tax exposure, especially considering that her assets likely will continue to appreciate. She feels she has sufficient assets for her future living expenses, and decides to make a large gift beyond annual exclusion gifts this year.

If Debra uses \$6 million of her gift tax exemption to make additional "taxable" gifts, her estate exemption would be reduced from \$11.4 to \$5.4 million. If the exemption ever drops in the future to an amount greater than \$6 million (for example \$6.3 million) she will still be treated as having used the first \$6 million, so her estate exclusion would only be the excess above the gift (e.g. \$300,000). However, even if the exemption drops instead to an amount less than \$6 million, she will still have removed the full \$6 million and all future appreciation on that gift from her taxable estate.

She does, however, need to keep in mind her beneficiaries' income tax. Gifted assets don't receive the "step-up" in basis that bequeathed assets do. This means that, if beneficiaries sell the assets, their taxable capital gains will be determined based on Debra's basis in the assets. So their capital gains tax could be higher than if they inherited the assets.

CHART 7 2019 transfer tax exemptions and rates

| | Estate tax | Gift tax | GST tax |
|------------------|-----------------------------|----------------|----------------|
| Exemption | \$11.4 million ¹ | \$11.4 million | \$11.4 million |
| Rate | 40% | 40% | 40% |

¹ Less any gift tax exemption already used during life.

The GST tax exemption can be a valuable tax-saving tool for taxpayers with large estates whose children also have — or may eventually have — large estates. With proper planning, they can use the exemption to make transfers to grandchildren and avoid any tax at their children's generation.

State taxes

Even before the TCJA, many states imposed estate tax at a lower threshold than the federal government did. Now the differences in some states are even more dramatic. To avoid unexpected tax liability or other unintended consequences, it's critical to consider state law. Consult a tax advisor familiar with the law of your particular state.

Exemption portability

If one spouse dies and part (or all) of his or her estate tax exemption is unused at his or her death, the estate can elect to permit the surviving spouse to use the deceased spouse's remaining estate tax exemption. This exemption "portability" provides flexibility at the time of the first spouse's death, but it has some limits. Portability is available only from the most recently deceased spouse, doesn't apply to the GST tax exemption and isn't recognized by many states.

And portability doesn't protect future growth on assets from estate tax like applying the exemption to a credit shelter (or bypass) trust does. Such a trust offers other benefits as well, such as creditor protection, remarriage protection, GST tax planning and possible state estate tax benefits.

So married couples should still consider these trusts — and consider transferring assets to each other to the extent necessary to fully fund them at the first death. Transfers to a spouse (during life or at death) aren't subject to gift or estate tax as long as he or she is a U.S. citizen.

Tax-smart giving

Giving away assets now will help reduce the size of your taxable estate. Here are some strategies for tax-smart giving:

Choose gifts wisely. Consider both estate and income tax consequences and the economic aspects of any gifts you'd like to make:

- ▲ To minimize *estate tax*, gift property with the greatest future appreciation potential.
- ▲ To minimize *your beneficiary's income tax*, gift property that hasn't appreciated significantly while you've owned it.
- ▲ To minimize *your own income tax*, don't gift property that's declined in value. Instead, consider selling the property so you can take the tax loss and then gifting the sale proceeds.

Plan gifts to grandchildren carefully.

Annual exclusion gifts are generally exempt from the GST tax if given directly to the grandchild, so they also help you preserve your GST tax exemption for other transfers. For gifts to a grandchild that don't qualify for the annual exclusion you generally must apply both your GST tax exemption and your gift tax exemption.

Take advantage of valuation

discounts. If you own a business, you can leverage your gift tax

exclusions and exemption by gifting ownership interests, which may be eligible for valuation discounts. So, for example, if the combined discount is 25%, in 2019 you can gift an ownership interest equal to as much as \$20,000 tax-free because the discounted value doesn't exceed the \$15,000 annual exclusion.

Pay tuition and medical expenses.

You may pay these expenses without the payment being treated as a taxable gift to the student or patient, as long as the payment is made directly to the provider.

Make gifts to charity. Donations to qualified charities aren't subject to gift tax. They may also be eligible for an income tax deduction, but you must itemize deductions and follow additional rules and limits. (See page 18.)

Trusts

Trusts can provide significant tax savings while allowing you to decide how the assets will be administered and distributed to beneficiaries. For those with large estates, funding them now, while the gift tax exemption is high, may be particularly tax-smart. Here are some trusts to consider:

A qualified personal residence trust (QPRT). It allows you to give your home to your children today — removing it from your taxable estate at a reduced gift tax cost (provided you survive the trust's term) — while you retain the right to live in it for a certain period.

A grantor-retained annuity trust (GRAT).

It works on the same principle as a QPRT, but allows you to transfer other assets; you receive payments back from the trust for a certain period.

A GST — or "dynasty" — trust. It can help you leverage both your gift and GST tax exemptions. And it can be an excellent way to potentially lock in the currently high exemptions while removing future appreciation from your estate. ■

CHART 8 2019 individual income tax rate schedules

| Regular tax brackets | | | | |
|-----------------------|-------------------------|-------------------------|--|---------------------------|
| Tax rate | Single | Head of household | Married filing jointly or surviving spouse | Married filing separately |
| 10% | \$ 0 – \$ 9,700 | \$ 0 – \$ 13,850 | \$ 0 – \$ 19,400 | \$ 0 – \$ 9,700 |
| 12% | \$ 9,701 – \$ 39,475 | \$ 13,851 – \$ 52,850 | \$ 19,401 – \$ 78,950 | \$ 9,701 – \$ 39,475 |
| 22% | \$ 39,476 – \$ 84,200 | \$ 52,851 – \$ 84,200 | \$ 78,951 – \$ 168,400 | \$ 39,476 – \$ 84,200 |
| 24% | \$ 84,201 – \$ 160,725 | \$ 84,201 – \$ 160,700 | \$ 168,401 – \$ 321,450 | \$ 84,201 – \$ 160,725 |
| 32% | \$ 160,726 – \$ 204,100 | \$ 160,701 – \$ 204,100 | \$ 321,451 – \$ 408,200 | \$ 160,726 – \$ 204,100 |
| 35% | \$ 204,101 – \$ 510,300 | \$ 204,101 – \$ 510,300 | \$ 408,201 – \$ 612,350 | \$ 204,101 – \$ 306,175 |
| 37% | Over \$ 510,300 | Over \$ 510,300 | Over \$ 612,350 | Over \$ 306,175 |
| AMT brackets | | | | |
| Tax rate | Single | Head of household | Married filing jointly or surviving spouse | Married filing separately |
| 26% | \$ 0 – \$ 194,800 | \$ 0 – \$ 194,800 | \$ 0 – \$ 194,800 | \$ 0 – \$ 97,400 |
| 28% | Over \$ 194,800 | Over \$ 194,800 | Over \$ 194,800 | Over \$ 97,400 |
| AMT exemptions | | | | |
| | Single | Head of household | Married filing jointly or surviving spouse | Married filing separately |
| Amount | \$ 71,700 | \$ 71,700 | \$ 111,700 | \$ 55,850 |
| Phaseout ¹ | \$ 510,300 – \$ 797,100 | \$ 510,300 – \$ 797,100 | \$ 1,020,600 – \$ 1,467,400 | \$ 510,300 – \$ 733,700 |

¹ The AMT income ranges over which the exemption phases out and only a partial exemption is available. The exemption is completely phased out if AMT income exceeds the top of the applicable range.

Note: Consult your tax advisor for AMT rates and exemptions for children subject to the "kiddie tax."

CHART 9 2019 corporate income tax rates

| Tax rate | Type of corporation |
|----------|------------------------------|
| 21% | C corporation |
| 21% | Personal service corporation |

CHART 10 2019 estate and trust income tax rate schedule

| Tax rate | Tax brackets |
|----------|----------------------|
| 10% | \$ 0 – \$ 2,600 |
| 24% | \$ 2,601 – \$ 9,300 |
| 35% | \$ 9,301 – \$ 12,750 |
| 37% | Over \$ 12,750 |



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