

## Taking advantage of new tax changes Wednesday 3rd June 2009



On the 17 February 2009, the American Recovery and Reinvestment Tax Act of 2009 ("the Act") was signed into law by President Obama. The Act included \$300 billion in tax relief so if you own a business in the US or invest in a business in the US, it's important to understand these changes and capitalise on them now, as a number of the changes are either temporary or temporarily extend prior provisional law.

Highlights of major business deduction changes include:

- Generally, businesses settling debt for less than the amount owed are required to report the difference as income in the year of settlement. However, if certain debt is cancelled during 2009 or 2010, businesses will have the option of recognising the income ratably over a five year period.
- For qualifying property, businesses may elect to treat the acquisition as an expense under Sec. 179 of the Internal Revenue Code instead of a capital expenditure. During 2008, the annual expense maximum increased to \$250,000. The new law extends this \$250,000 deduction level to include the 2009 tax year. Phase-outs are in place based on the amount of total property acquired.
- The 50% bonus depreciation rule put in place 2008 was extended through 2009. Under this rule, businesses can recognise an additional deduction of 50% of the value of qualifying property acquired and placed in service during 2009. This rule is applied after any Sec. 179 expense.
- Eligible small businesses that incur a net operating loss ("NOL") during 2008 or 2009 or individual taxpayers that receive a distributive share of a qualified loss creating an NOL have the option of electing to carry back the NOL up to five years. This new, temporary rule will allow the taxpayer to elect to carry the NOL back anywhere from three to five years instead of the normal two.
- C corporations converting to S corporation status retain a built-in gain ("BIG") tax exposure on assets that appreciated in value during the life of the C corporation. For the 10 year period following conversion, the business will generally recognise a tax if it sells an asset that relates to the BIG. The new law temporarily reduces the recognition period for the BIG tax. For any taxable year beginning in 2009 or 2010, the BIG tax will not be imposed if the seventh taxable year in the recognition period proceeded the current year.
- Prior to 2008, individual taxpayers were able to exclude 50% of the gain on the sale of qualifying small business stock. The Act increases this to 75% for 2009-2010.

A number of new or expanded credits to tax were implemented in the Act. The majority of credit overhauls relate to energy efficiency, energy production, etc, so are fairly niche-oriented. There are, however, a few other credit changes in this bill. They include:

- A business may choose to forego the 50% bonus depreciation in favour of accelerating alternative minimum tax ("AMT") and research credits.
- The Work Opportunity Tax Credit offers businesses a tax credit for hiring employees from certain "targeted groups." Employers can claim a credit up to 40% of the first \$6,000 of wages paid during the first year of employment. The new rule has expanded the list of individuals included in the targeted groups to include an expanded definition of unemployed veterans and disconnected youth.
- The New Markets Tax Credit incentivises business to invest in entities that are qualified community development entities ("CDEs"). CDEs are entities whose goal is to serve or invest capital in low income communities and maintain accountability to the residents by community involvement on an oversight board.

As you have undoubtedly experienced, tax law is continually evolving. In fact, on the 4 May 2009, President Obama unveiled additional burdensome proposals that specifically address international tax concepts. For the sake of your own finances and your business' finances, it's important that you be aware of new laws. Personal knowledge or the utilisation of a tax professional is essential to ensure that all the advantages available to you are being utilised.

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