ALERT

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Proposed Rules for Full Expensing of Capital Investments

Proposed regulations explain the mechanics of immediate expensing ("bonus depreciation") allowing taxpayers to deduct 100 percent of the cost of eligible property.

Following last year's tax reform, taxpayers may now immediately expense the full cost of certain tangible property, whether purchased new or used. Under amended section 168(k) of the Internal Revenue Code ("IRC"), qualified property eligible for immediate expensing includes most equipment and other tangible assets with a maximum tax depreciation period of 20 years, provided the taxpayer acquires the property and places it in service after September 27, 2017, and before January 1, 2023.

Taxpayers can elect to apply the August 3, 2018, proposed regulations immediately in many cases. Key features include:

- No fix for a widely criticized statutory drafting error that prevents immediate expensing for certain commercial real estate improvements;
- Rules that generally permit lessees to claim immediate expensing after acquiring the leased property;
- Rules clarifying when property is considered to be placed in service for purposes of the September 27, 2017, qualification date;
- Clarification that taxpayers generally can expense qualified property purchased in a stock acquisition that is a deemed asset acquisition under IRC section 338 or section 336(e);
- Rules applying immediate expensing to acquisitions involving a consolidated group of corporations; and
- A rule recharacterizing a "series of related transactions" as a single transfer from the initial holder to the final holder.

Significantly, the proposed regulations address partnership transactions and generally allow the purchaser of a partnership interest to expense any resulting basis adjustment in the partnership's qualified property. The proposed regulations, however, do not similarly allow immediate expensing of basis adjustments resulting from distributions to partners or extend immediate expensing to "remedial allocations" under IRC section 704(c), that is, allocations of deemed depreciation deductions to noncontributing partners arising from the contribution of appreciated property to a partnership.

Further, the proposed regulations clarify the treatment of a single-member LLC's conversion to a partnership for tax purposes, such as when a third party acquires an interest in the LLC from the LLC's sole member. Under the proposed regulations, immediately expensing generally is available only to the acquiring partner, not the partnership as a whole.


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