Tax Laws and Regulations Should Preserve Opportunity and Competition in Real Estate

MBA encourages policymakers to support and enact tax laws that support long-term economic growth, which is the foundation of strong real estate markets. Households and businesses take the tax treatment of transactions into account when making long-term economic decisions, and changes in tax policy most definitely have wide-ranging impacts. For example, consumers making decisions about housing consider potential tax benefits of purchasing of a home compared with renting. Similarly, businesses consider tax treatment of investments, costs, earnings, etc. when deciding where to direct efforts and investment.

OVERVIEW

- On December 22, 2017, President Trump signed H.R. 1, *the Tax Cuts and Jobs Act (TCJA)* into public law.
- While many of the TCJA changes impact all businesses alike (regardless of the specific industry), this comprehensive new tax law has numerous provisions that unambiguously affect the real estate finance industry.
- MBA supported elements of the TCJA that provided both homeowners and renters with more "take home" pay by lowering overall tax rates and nearly doubling the standard deduction.
- Some provisions of the new law, while not directly impacting the real estate finance, have some sort of indirect impact on the determination of whether a taxpayer should buy or rent – such as the provisions that temporarily modify:
    - The limit on the amount of acquisition indebtedness that is subject to interest deduction (i.e., reduces the limit from $1 million to $750,000 for both first and second homes);
    - The amount that taxpayers are allowed to deduct for state and local taxes (either income or property taxes of up to a cap of $10,000), and
    - The deduction of interest on home equity indebtedness.

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IMPACT

Key outcomes strongly supported by MBA that are reflected in the TCJA include the following:

- Preservation of the tax treatment of mortgage servicing rights.
- Preservation of the Business Interest Deduction for Real Estate and Like-Kind Exchange Rules for Real Property.
- Preservation of the Low-Income Housing Tax Credit (LIHTC) and the tax-exempt status for private activity bonds (PABs) that finance affordable housing.
- The reduction in corporate tax rates.
- The new deduction of up to 20 percent on qualified business income of eligible pass through entities.
- Preservation of tax treatment of capital gains on the sale of a home.

MBA'S POSITION / NEXT STEPS

- The TCJA seeks to promote economic growth by, among other things, reducing the tax rate for C corporations from 35 percent to 21 percent.
- To level the playing field between C corporations and businesses structured as pass throughs (such as LLCs, partnerships, sole proprietors), the legislation created a new provision that allows a pass through business to take a deduction of up to 20 percent for its qualified business income.
- While the deduction is generally available to all qualified pass through trades/businesses, it starts to become limited as income of a pass through entity that falls within the definition of a "specified service trade or business" reaches and exceeds the threshold amount.
- Since enactment, MBA has worked extensively – and successfully – with the government (e.g., Treasury Department, the Internal Revenue Service, Members of Congress) to obtain clarification on the eligibility of mortgage banking companies (organized as pass throughs) for the new 20 percent deduction.
    - MBA's strong advocacy on the issue resulted in implementing regulations that clearly state that mortgage banking companies that originate and sell loans are not specified service trades or businesses.
    - Essentially, the government agreed with MBA that mortgage banking companies (including independent mortgage banks) engaged in the business of making loans (regardless of how many they sell and to whom they sell the loans) are **<u>not</u>** "specified service trades or businesses" and, as a result, should be **<u>eligible</u>** for the pass through deduction under the new tax law.
    - This clarification is very important, and helps promote a level playing field that reflects the intent of Congress.
    - MBA strongly believes that Congress intended that the reduced tax rate that was made available to corporate taxpayers under the new legislation be also available to mortgage bankers organized as pass throughs.