TAXATION

A Roundtable Discussion

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With the unique and uncharted scenarios that we have faced over the last few years, business owners, CFOs and other C-suite professionals have had to tackle more challenges than ever before. The economic climate has forced companies to make changes to the way they do business and to the way they approach their economic strategies, including the way they manage their taxes.

Financial stewards (accountants, financial planners, CFOs) have found themselves needing to be on the pulse of changing tax laws and strategies more than ever before while navigating the ever-changing business finance terrain. How has the taxation landscape changed and what do businesses need to know to optimize their balance sheets? To answer these and other pressing questions, we turned to the expertise of some of the leading taxation authorities in the region.

TAXATION ROUNDTABLE

Taxpayers in the real estate industry need to be mindful of how Section 1031 rules interact with the depreciation recapture rules and plan accordingly.'

–MICHAEL WIENER

Are there any big changes to tax laws in 2024 that businesses should be aware of?

GRONROOS: Taxes, everyone's favorite zeitgeist subject this time of year, are currently making headlines with the Tax Relief for American Families and Workers Act of 2024 (the "Act") passing in the House and awaiting Senate vote. The Act addresses several business deductions expired under TCJA, if enacted: a) Delays capitalization of domestic research and experimental (R&E) expenditures to December 31, 2025 reinstating taxpayers' ability to fully deduct domestically incurred R&E expenditures for tax years beginning after December 31, 2021, and before January 1, 2026 (15-year capitalization/ amortization for foreign R&E expenditures); b) Extends 100% bonus depreciation for qualified property placed in service after December 31, 2022, and before January 1, 2026; c) Extends method of determining the Business Interest Deduction Limitation (BIDL) by computing adjusted taxable income without regard to certain deductions for interest, depreciation, amortization, or depletion for tax years beginning after December 31, 2023, and before January 1, 2026; and d) Increases the limitation for taxpayers to expense depreciable tangible property purchased for use in the active conduct of a trade or business to $1.29 million, reduced by the amount by which the cost of qualifying property exceeds $3.22 million for property placed in service in taxable years beginning after December 31, 2023.

What should businesses be doing to prepare for the tax code provision expiration?

AMERIO: The 20 percent deduction of qualified business income (QBI) will no longer be available to small business owners. Eligible business owners should consider accelerating revenue from 2026 into 2025 and 2024. Additionally, businesses with future capital expenditure needs should make purchases before December 31, 2026. For tax year 2024, 60 percent of eligible purchases can benefit from bonus depreciation. For the years 2025 and 2026, the percentage of bonus depreciation declines to 40 percent and 20 percent, respectively.

What role does depreciation play in business taxation, and how can businesses use it to their advantage?

WIENER: Depreciation allows a business to defer taxes by taking write-offs from "paper losses" against its present income. While taking depreciation ultimately results in additional tax being due upon the sale of a business, it still allows taxpayers to achieve meaningful deferral. This is especially true in the real estate industry, where businesses can further defer taxation by combining depreciation with Section 1031 exchanges. Real estate owners can further accelerate their depreciation by using a so-called "cost segregation study" to re-classify components of their real estate as personal property that is eligible for accelerated depreciation, or even bonus depreciation. However, taxpayers in the real estate industry need to be mindful of how the Section 1031 rules interact with the depreciation recapture rules and plan accordingly.

ELKNER: The opportunity to select between bonus depreciation, Section 179 expensing, and regular depreciation could be an important planning tool. It should also be taken into consideration in conjunction with NOL carryovers, various tax credit carryovers, QBI, PTET, and forecasts of future income and cash flow. Depreciation, unlike Section 179 (a provision allowing for full deduction of the "asset's" cost as an expense when put in service), provides a vehicle for reflecting the loss in value of an asset spread over multiple tax years, helping the taxpayer reduce his income to reflect this loss of value. As an example of the benefits, note that if a business places qualified assets into service in the Year 2024, the bonus depreciation is only 60% of the assets cost, thus the business should consider utilizing Section 179 first, which will allow 100% expensing of the cost, thereby maximizing their benefit in 2024.

GRONROOS: Currently, bonus deprecation phases out over five years: there is an 80 percent bonus for property placed in service after January 1, 2023 and before January 1, 2024 and 60 percent bonus beginning on January 1, 2024. Given this current phase out of bonus, businesses should assess their capital expenditure planning though 2027. Businesses should evaluate accelerating asset purchases to claim bonus depreciation. Consideration should be given to forgoing bonus depreciation in favor of the Section 179 deduction, which allows businesses to expense the cost of any qualifying property (up to 1.16 million with certain reductions) for the taxable year in which it is placed in service. Additionally, if businesses are considering constructing a new building, renovating or expanding an existing building, making leasehold improvements or acquiring real property and land improvements, consideration should be given to a cost segregation study. These studies evaluate the components of the project, allocating costs between real property and personal property that depreciate at varying rates, to increase tax deductions and reduce taxable income.

Has talent and human capital constraints of qualified tax professionals impacted your ability to serve clients?

ELKNER: Our firm is an active member of GGI Global Alliance, which is a worldwide alliance of well-established and experienced accounting, consulting, and law firms that are committed to providing clients with specialist solutions for their international business requirements. GGI is a valuable resource for expertise in serving international clients. Our membership with GGI is valuable since it can be a challenge to provide excellent customer service where the client's culture is undergoing fundamental shifts in expectations, such as in Japan. For example, the traditional Japanese business culture has a specific style of interpersonal relationship building. It can be overly stylistic to the uninitiated. Yet trying to emulate what is expected, with the appropriate language, demonstrates our attention to detail and understanding of the client's needs beyond mere accounting services.

With the Tax Cut Jobs Act (TCJA) coming ever nearer to its sunset in 2025, what are some of the ways high-net-worth individuals and businesses will be impacted?

WIENER: The phase out of so-called "bonus depreciation." As a result of the Tax Cut Jobs Act (TCJA), prior to 2023, taxpayers could deduct 100% of the cost of qualifying assets in the year in which the assets were placed into service. In 2023, the 100% number was reduced to 80%. As the law is presently written, bonus depreciation will continue to phase out by 20% each year until it is completely eliminated in 2027. However, on January 31 of this year, the House of Representatives passed legislation that would extend 100% bonus depreciation for property placed in service after the end of 2022 but before the start of 2026. Since this change would be retroactive to 2023, potentially affected taxpayers should consider extending their 2023 tax filing deadlines in order to see whether this provision ultimately becomes law.

GRONROOS: In addition to some of the business deductions discussed above, high-net-worth individuals should be warned that key individual income tax provisions will expire on December 31, 2025. There are 23 such provisions, including: a) Increase in the individual income tax rates combined with a narrowing of the tax brackets – the top tax bracket increases from 37 to 39.6 percent while the tax brackets compress, resulting in more income being subject to higher rates; b) Expiration of the qualified business income (QBI) deduction that allows business owners and owners of pass-through entities to deduct up to 20 percent of their QBI, which is the taxpayer's net income from a qualified trade or business; c) Reinstatement of the limitations on itemized deductions; d) Expiration of the $10,000 deduction cap for state and local taxes. After 2025, the $10,000 limit no longer applies, but the deduction becomes part of other income-based phase-outs; and e) Reduction of estate and gift tax exemption from $13.6 million (the exemption is currently $13.6 million for 2024, inflation adjusted each year) to $5 million (this amount is inflation adjusted as well).

How do recent changes in tax laws affect small businesses compared to large corporations?

AMERIO: Small businesses have always been more affected by changes in tax laws, and this has become even more apparent after the COVID-19 pandemic. There are still many job openings that remain unfilled with a shortage of qualified candidates, and increased taxes on small business owners leave less money available to hire new employees or raise compensation for those already employed. Coupled with the fact that in the post-lockdown period, 99 million people are not even actively looking for work anymore, small business owners face difficulty nurturing their workforce and thereby investing in their business.

WIENER: In the fall of 2023, the IRS announced a new enforcement initiative focused on the largest and most complex partnerships, using the increased funding the IRS is receiving due to the passage of the Inflation Reduction Act. While the IRS' recent announcement emphasizes a focus on large partnerships, other smaller and mid-sized partnerships should not dismiss this news, since many of the same tools that can be applied towards auditing large partnerships can also be applied to audits of smaller partnerships. Prior to 2018, the so-called "TEFRA" audit regime for partnerships made it burdensome and complicated for the IRS to audit partnerships. Accordingly, partnership audits for these years were relatively rare. However, for tax years starting or after January 1, 2018, the audit rules enacted by the Bipartisan Budget Act of 2015 have made it easier for the IRS to audit partnerships of all sizes.

Are your small business clients appropriately prepared to comply with new federal business ownership information reporting requirements? If not, how are you helping them?

ELKNER: Our firm informs our clients of new reporting requirements through business newsletters. It is important to maintain good communication with our clients to address their needs and concerns. Our team recommends an annual meeting with our clients to ensure an understanding of their basic ownership structure and address any changes in the current year. An additional recommendation our team suggests to our clients is that they meet with their legal counsel to review their company's entity in the US if it applies. Our last recommendation is to understand their goals and plans for business expansion or contraction and discuss their projections of future income or losses.

How does international taxation impact businesses engaged in cross-border operations?

GRONROOS: US-based businesses engaged in cross-border operations have many opportunities to increase cash

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flow by taking a global approach to tax planning, which ensures that the optimal strategy prevails when considering all jurisdictions involved. These opportunities may include: optimizing export incentives (goods and services); managing double taxation; effective repatriation of earnings back to the US. Given the IRS' continued focus on transfer pricing, including exams, businesses should review their intercompany transfer pricing and cost-sharing agreements with their foreign affiliates to ensure their documentation comprehensively addresses IRS requirements and adequately support arm's length intercompany pricing.

What specific federal or state changes to taxation are likely to cause the most significant problems for your clients' businesses? Why?

WIENER: The so-called "Mansion Tax" enacted in Los Angeles comes to mind. This tax is an additional documentary transfer tax on the sale of real estate in the City of Los Angeles. The tax applies to real estate that is worth more than $5,000,000. For real estate worth more than $5,000,000 but less than $10,000,000, the tax rate is 4% of the entire property value. For real estate worth $10,000,000 or more, the tax is 5.5% of the entire property value. What makes this tax so harsh is that it is calculated on the basis of the entire value of the property, including any liabilities encumbering the property. The tax applies to all classes of real estate, including multi-family, commercial and industrial properties. This tax has had a chilling effect on Los Angeles real estate transactions.

Can you elaborate on tax incentives and credits available to businesses and how they can leverage them effectively?

GRONROOS: Businesses should regularly collaborate with their tax advisors regarding near- and long-term plans to leverage available incentives and credits. For instance, startup businesses investing heavily in research and development activities yet lacking federal income tax liabilities may utilize their federal research tax credit as a cash flow management tool. Specifically, as a payroll tax credit up to $500,000, $250,000 to offset the 6.2% employer portion of Social Security payroll tax and an additional $250,000 to offset 1.45% employer portion of Medicare payroll tax. This tax credit is available to qualified small businesses meeting certain criteria and claim the credit and election on a currently filed return. Businesses significantly expanding their workforce may benefit from the Work Opportunity Tax Credit (WOTC) that incentivizes hiring employees from designated groups helping these individuals find steady employment. This federal income tax credit is based on a percentage of the first-year wages paid to individuals certified by a state workforce agency as being a member of one of 10 targeted groups. It applies during the first year of employment; rehired employees are not eligible. There is no limit to the number of individuals that an employer can hire as part of the program so long as they begin work on or before December 31, 2025.

What are some of the biggest mistakes companies make when it comes to managing their finances?

AMERIO: Inadequate cash flow management can be dangerous to a company's financial health. Improperly tracked cash flow may lead to difficulties in managing short-term obligations, such as paying bills or employees' salaries, which can lead to longer-term negative consequences. Businesses may have to resort to borrowing money at higher interest rates to make these payments, which could potentially affect the creditworthiness of the company. Poor budgeting, both in the form of spending too much and not spending enough, is also a big mistake that many businesses make. It is easy to get caught up in the excitement of the early stages of a business, and caution should be exercised before investing in superfluous assets.

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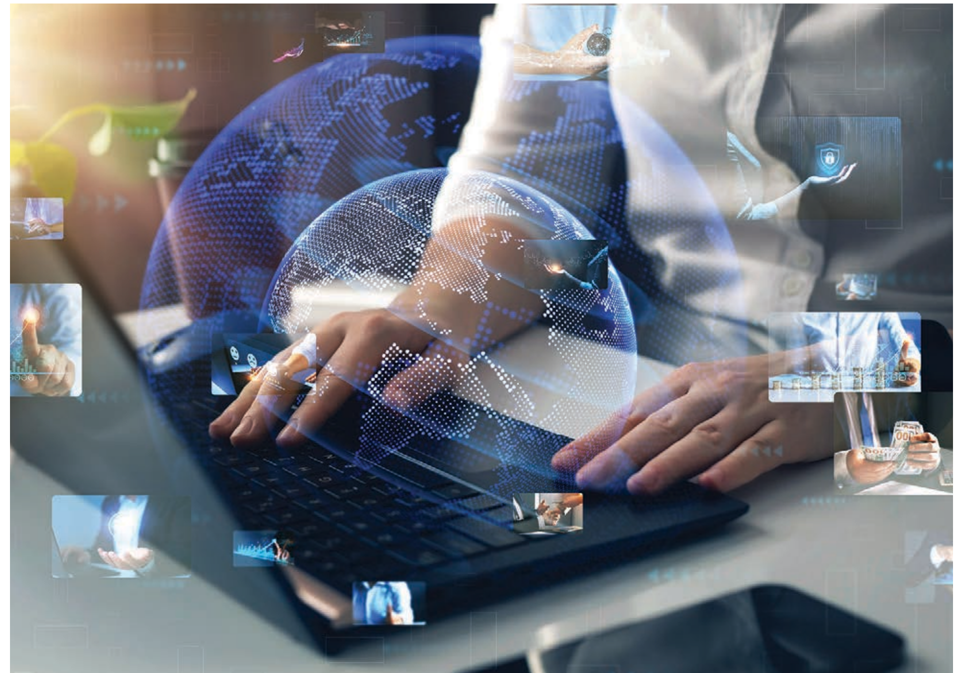
Underspending may seem like a good thing at first, but it may come at the expense of lacking staying power. Not having enough capital at the start to cover losses in the initial stages, until breaking even, is one of the most significant causes for a business to fail.

What are the potential tax implications for businesses engaged in e-commerce and digital transactions?

ELKNER: Businesses that engage in multijurisdictional operations need to be fully apprised of the tax requirements of all jurisdictions that touch and concern their operations and sales. It is important to note that the criteria for determining nexus for sales tax purposes is often different from the criteria for determining nexus for income tax purposes. It is also important for companies to be in compliance with various registration and reporting requirements. Thus, the business' domicile, where their goods land or are acquired or services are rendered, can produce their own tax obligations. An easy example is sales tax, where internet sales of goods or services, will still result in a sales tax obligation for the businesses in the jurisdiction where the item has been sold or delivered. Working with an experienced CPA is a vital resource that should be engaged in all planning and development projects.

GRONROOS: E-commerce and digital transactions can quickly become traps for the unwary because of a 2018 Supreme Court holding that allows states to impose economic sales tax nexus on out-of-state companies. Companies take heed of this ruling because it immediately allowed states to impose their sales tax laws and filing requirements on out-of-state companies selling digital goods, software, online goods, tangible personal property, etc., to customers inside that state if the economic nexus threshold is exceeded. The general rule of thumb is $100,000 of sales or 200 separate transactions sold into a state during a calendar year. Some states have higher or lower thresholds. Companies with digital transactions and online sales to customers located in multiple states should monitor and register for sales tax in all states where they establish sales tax nexus. The states are aggressive in pursuing audits of out-of-state companies that are not registered, assessing tax, plus penalties and interest.



How do tax treaties between countries affect multinational corporations, and what challenges do they pose?

ELKNER: Tax treaties allow multinational corporations to be taxed at a reduced rate or become exempt from taxes on certain items of income for residents of foreign countries. Over 75 countries hold active tax treaties with the US and help multinational corporations avoid double taxation of international income. Multinational corporations have challenges because different countries have varying tax laws and regulations, and compliances across international countries are frequently complex. Penalties for noncompliance with reporting and disclosure requirements can be severe. Careful consideration should be given to various elections available, and transfer pricing analyses are highly recommended. Also, the Base Erosion and Profit Shifting (BEPS) project makes it harder to shift the profits to the lower tax countries.

What are some of the things that tech savvy accountants can do for their clients now that they couldn't before?

AMERIO: Technologically savvy accountants can take advantage of cloud-based software applications that streamline repetitive processes, such as reconciling bank statements, managing accounts payable and receivable, and payroll. Data that is saved in the cloud allows staff across departments to access the information from anywhere in the world in real time. The benefit of this automation is that the margin of error is greatly reduced due to notifications and

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alerts that can be set up when balances are off. With the time saved by this automation, accountants can focus their time and energy on higher-value needs, such as strategic and advisory services.

What considerations should businesses take into account when planning for succession or ownership transfer in terms of tax implications?

GRONROOS: In considering a transfer of ownership, avoiding tax pitfalls at the entity and owner level is crucial. Owners who wish to sell need to start planning now as the 2024 gift and estate exemption is $13,610,000 (if married, $27,220,000), set to return to $5 million after December 31, 2025. Businesses that have not been through a transaction should engage tax advisors to prepare for extensive tax matters discussions. Tax due diligence seeks to uncover any historical, current, or immediate tax issues associated with the operations of the target business. Tax due diligence encompasses direct income-based taxes and indirect taxes such as business activity taxes, sales tax, payroll taxes, etc. Having the wrong advisors in the due diligence phase may result in tax liability concerns, purchase price holdbacks or adjustments for potential historical tax issues. Unintended results from transaction structuring, especially when an owner is involved post-transaction, risks harming relationships. If the owner rolls over equity, the rollover should be structured in a tax-deferred manner. Further, if the negotiations lead to a structure that isn't owner favorable, tax advisors can ensure the owner is compensated for unexpected tax liabilities related to the structure. Managing tax intricacies safeguards a smooth transition.

How can businesses stay informed about changes in tax regulations, and what resources or tools do you recommend for effective tax planning and compliance?

ELKNER: Businesses need to be proactive due to frequent changes in tax laws and regulations. At the same time, the taxpayer must beware of fraudulent publications and data. It is important to only subscribe to tax articles from reliable resources such as CCH, retain informative tax professionals, and attend tax seminars held by or endorsed by the IRS and/or state tax authorities and AICPA. Other excellent resources include the IRS bulletin and US State Regulations & Administrative Code publications. In addition, membership in a trade association (also known as an industry trade group, business association, sector association, or industry body) can be very useful in keeping a business apprised of current industry-specific tax issues.

What's the biggest piece of advice you give your clients when it comes to planning for the future?

WIENER: Staying informed is paramount. Regularly consult your attorneys and accountants so you can stay up to date on changes to the tax laws and how they can affect your business.

AMERIO: Attempting to predict tax legislation is an impossible task. Clients can do their part to plan for the future by educating themselves and staying abreast of any changes. One of the ways to do this is, in addition to consulting with a tax advisor, is to regularly check official government sources, such as the IRS' and FTB's websites. Staying informed of their rights can help them maximize tax savings and minimize future tax liabilities.

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2024 Tax Planning Considerations

As macroeconomic trends upend long-term planning, business cycles are turning over faster than ever. Recent tax changes coupled with the potential for an economic slowdown have made it even more critical for companies and individuals to make smart decisions on investments and financing.

To help companies understand their planning options, Grant Thornton LLP, one of America's largest professional services firms, has released 2024 tax-planning guides.

"Whether it's a new stricter limit on the ability to deduct interest expenses, increasingly aggressive state tax law initiatives, or companies dealing with new foreign tax credit rules, taxpayers and businesses must contend with a lot of challenges in the upcoming year," said Dustin Stamper, managing director in Grant Thornton's Washington National Tax Office. "As 2023 comes to a close and the new year begins, it's an ideal time for companies and individuals to assess their plans and identify key tax-planning opportunities."

Here are some of the most important tax-planning considerations for businesses and individuals heading into 2024:

- **Document and substantiate.** The Internal Revenue Service (IRS) has $60 billion in new funding, much of it earmarked for enforcement. The IRS is also already launching compliance initiatives aimed at many common taxpayer issues. Taxpayers should expect increased scrutiny, so it's critical to document and substantiate important positions, including research and development (R&D) credit claims, transfer pricing positions, partner capital accounts, M&A transaction costs and many others.
- **Energy credits.** The Inflation Reduction Act's transformative new energy tax package can benefit taxpayers outside of the renewable industry and traditional energy supply chain. It has never been more economical for ordinary companies to pursue renewable energy, conservations and efficiency improvements, especially those with environmental, social and governance (ESG) goals. The energy cost savings together with the tax benefits can make a compelling case. Taxpayers can benefit even if they owe no tax thanks to the ability to sell the energy credits. Businesses that aren't looking to pursue energy projects can evaluate purchasing credits as a tax mitigation strategy, though these transactions carry risk.
- **Prepare for public stock buyback tax.** Public companies should be preparing to report and pay a new 1% tax on stock buybacks. The tax became effective for redemptions in 2023, and the form and payments are expected to be due by April 30, 2024. There are several exceptions to the rules, and mergers and acquisitions can be treated differently depending on the structure. As the end of the year approaches, public companies should consider the timing of stock transactions, particularly because new stock issuances in any given year can offset redemption activity in that same year but not in future years.
- **SALT deduction**. Pass-through businesses should consider state elections that can benefit owners who are affected by the $10,000 cap on deducting state and local tax (SALT).

Many states now allow pass-through businesses to be taxed at the entity level, with a credit or exception that relieves owners of their own tax on any of the business income. This allows a business to fully deduct state tax against the owner's share of income, rather than having owners pay tax and take a limited SALT deduction at the individual level. Whether these elections will ultimately benefit owners can be complex, and a thorough analysis is recommended.
- **Fixed assets.** Taxpayers can no longer fully deduct the cost of new equipment in the year it's placed in service. Bonus depreciation is only 80% for property placed in service in 2023 and will only be 60% in 2024 without legislation. Businesses facing increased tax because of shrinking deductions can consider a repairs analysis to identify costs that are not considered improvements and can be deducted as repairs. A cost segregation study can also identify property that can be depreciated more quickly.

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