Tax Insights
from PwC Private Tax

2024 Election results and the impact on high net-worth individuals

December 5, 2024

In brief

What happened?

Based on the November 5 election results, former President Donald J. Trump has been elected to serve as the 47th President of the United States and Republicans are also set to gain control of the US Senate and retain a slim majority in the US House.

Why is it relevant?

Control of the White House and Congress will provide President-elect Trump and Congressional Republicans the opportunity to set the direction of US tax policy and potentially enact the tax and trade policies that President-elect Trump proposed during his campaign.

That said, several key individual provisions enacted as part of the 2017 Tax Cuts and Jobs Act (TCJA) are set to expire at the end of 2025, including those that affect income, gift, and estate taxes. Failure to pass any new tax legislation or extend the current individual tax provisions of the TCJA before the law sunsets would result in across-the-board tax increases on virtually every individual taxpayer. Republicans will need to work together to address the expiring TCJA provisions prior to December 31, 2025.

Observation: Republican control of the White House and Congress will allow for the use of “budget reconciliation” procedures to enact any new tax legislation in 2025 with only Republican votes, as was the case in 2017 when the TCJA was enacted. However, the narrow Republican majorities in both the House and the Senate could make it challenging for Republicans in Congress to enact all of President-elect Trump’s campaign proposals. For this reason, negotiations on how to address the expiring TCJA tax provisions and other tax and trade proposals could delay action on a reconciliation tax bill until late 2025.

Action to consider

Individuals will need to assess the impact of President-elect Trump's tax policy proposals and monitor the possible expiration of the TCJA tax provisions on their personal tax situation. Examining the impact of allowing the provisions to sunset on estate and wealth planning may allow individuals to be well positioned at the end of 2025 to make adjustments as needed before 2026 begins.

In detail

Overview

Several individual TCJA tax provisions are scheduled to sunset by the end of 2025. While President-elect Trump has expressed his desire to extend these provisions or make them permanent, Federal budget limitations and the rising levels of Federal debt could make that goal difficult to achieve unless he can find alternative sources of funding. Potential revenue offsets include tariffs, economic growth, and repealing certain Federal tax incentives and clean energy credits from the Inflation Reduction Act (IRA). However, even if these measures are implemented, budget reconciliation procedures would likely prevent Trump and the Republican-controlled Congress from extending the TCJA provisions indefinitely (even before considering their cost). For a broader discussion on these issues, see this PwC Insight.

Observation: It is possible that any reconciliation bill enacted by Congress could extend the TCJA provisions for a limited period of time (e.g., six years relative to the 10-year period generally used for federal budget resolutions) to limit the cost of the bill and impact on the federal debt.

Observation: Taxpayers may want to consider actions that might be taken before December 31, 2025, given the potential for changes to existing TCJA provisions and the possibility of new revenue-raising proposals being considered to offset part of the cost of a 2025 tax bill. For example, taxpayers who are interested in claiming any of the energy credits or Federal tax incentives offered by the IRA should look to act sooner rather than later. It is possible that these credits may be scaled back by a President Trump and a Republican-controlled Congress, although a number of House and Senate Republicans have expressed support for preserving certain IRA energy credits.

Expiring TCJA Provisions

President-elect Trump has called for extending the expiring TCJA individual income tax and estate tax provisions (other than the $10,000 cap on state and local income taxes), most of which would sunset after 2025.

Observation: Due the uncertainty of what will be included in the bill and when it might pass, taxpayers who were planning to use the full gift and estate tax exemption in case it drops should still proceed with estate planning as there may be uncertainty regarding new tax provisions late into next year.

Key TCJA individual tax provisions scheduled to expire Dec. 31, 2025 include:		
	Tax Year 2025	**Tax Year 2026**
Top individual income tax rate	37%	39.6%
Pass-through business income deduction	20%	0%
Phase-out for itemized deductions	No phaseout	Reduced by 3% of AGI in excess of specified threshold
State and local income tax deduction	$10,000 cap	Unlimited
Mortgage interest deduction	$750,000	$1,000,000
Home equity line of credit interest deduction	Not deductible	$100,000
Miscellaneous itemized deductions	Not deductible	Deductible if expenses exceed 2% of AGI
Cash contributions to public charities	60% AGI	50% AGI
Alternative minimum tax exemption phaseout (MFJ)	$1,218,700	$199,500
Lifetime gift and estate tax exemption	$13,990,000	$7,000,000*
*Estimated		

Individual income tax rates

The TCJA made several changes to the individual income tax rates, the individual income tax brackets, and the determination of the capital gains tax rate; each of these changes is scheduled to sunset at the end of 2025.

In addition to decreasing the top income tax rate from 39.6% to 37%, the TCJA modified the income tax brackets so that the top rate did not begin to apply until taxpayers met much higher income thresholds. For example, prior to the TCJA, married taxpayers filing jointly were subject to the top income tax rate of 39.6% once their income exceeded $470,700. However, post TCJA, the top 37% income tax rate did not begin to apply to taxpayers filing jointly until their combined income exceeded $600,000 (this amount will increase to $751,600 in 2025).

Similar changes were made to the capital gains tax rate when determining when taxpayers would be subject to a 0%, 15%, or 20% tax rate on their capital gain net income. Previously, the capital gains tax rate was determined by reference to the individual income tax rate. For example, an individual income tax rate below 25% correlated to a capital gains tax rate of 0%; an income tax rate above or equal to 25% and below 39.6 % correlated to a 15% capital gains tax rate, and an income tax rate of 39.6% correlated to a capital gains tax rate of 20 percent. Under the TCJA, the capital gains tax rates are now determined based on specified income thresholds. The 0% rate cannot be applied on amounts that exceed $77,200, and then $479,000 for 15%.

Observation: Taxpayers may want to consider accelerating income into 2025 since the individual income tax rates could increase and the amount at which each rate applies could decrease.

Observation: Taxpayers may want to consider whether there is an advantage in recognizing capital gains in 2025 or 2026. If a taxpayer is subject to the top income tax rate and recognized $479,000 of capital gains, the capital gains would be subject to the 15% rate in 2025 but the 20% rate in 2026 if the lower capital gains rate expires.

Charitable contribution deduction

Prior to the enactment of the TCJA, cash contributions to public charities (including donor advised funds, or DAFs) were limited to 50% of an individual's adjusted gross income. TCJA temporarily increased this limitation from 50% to 60% for tax years beginning after December 31, 2017 and before January 1, 2026 (note: this limitation was also temporarily increased from 60% to 100% for contributions to public charities made in tax years 2020 or 2021 as a result of the COVID-19 pandemic). The TCJA provision is scheduled to expire at the end of 2025, which means cash contributions to public charities and DAFs would once again be limited to 50% (rather than 60%) of an individual's adjusted gross income.

Observation: If the TCJA sunsets, then individuals may want to consider accelerating cash charitable contributions to qualified charitable organizations (including public charities and donor advised funds) into 2025 when they are deductible up to 60% of adjusted gross income, rather than 50%. Note that there may be special considerations if you have both cash and noncash contributions in the same year.

Itemized deduction phase-out

For tax years beginning before January 1, 2018, certain taxpayers were required to reduce their itemized deductions by the lesser of (i) 3% of AGI in excess of specified dollar thresholds, or (ii) 80% of their total itemized deductions otherwise allowable. This reduction rule was colloquially referred to as the 'Pease' limitation (after being proposed by former Ohio Congressman Donald Pease). The limitation did not apply to medical expenses, investment interest expense, casualty or theft losses, or gambling losses. The TCJA temporarily suspended the Pease limitation for tax years beginning after December 31, 2017 and before January 1, 2026.

Observation: If the TCJA sunsets, then taxpayers will need to consider the impact of the Pease limitation on their personal tax situation, including whether it makes sense to accelerate certain itemized deductions (such as charitable contributions) into 2025. For example, a single taxpayer with $1,000,000 of AGI who transfers $575,000 to a public charity in 2025 would be entitled to deduct the contribution in full, because $575,000 is less than 60% of AGI ($600,000). If the TCJA sunsets and that same transfer is made in 2026, then only $500,000 of the total $575,000 contribution would be deductible due to the 50% AGI threshold. Further, a portion of the $500,000 deductible contribution may also be reduced by the Pease limitation. Assuming the AGI threshold for a single taxpayer in 2026 is $250,000, then the $500,000 charitable contribution would be reduced by $22,500 (i.e. $1,000,000 – $250,000 = $750,000 * 3% = $22,500). As a result, the taxpayer's charitable contribution deduction in 2026 would be limited to $477,500, compared to $575,000 if that same contribution was made in 2025.

State and local tax deduction

The TCJA imposed a $10,000 cap on an individual's deduction for state and local taxes (SALT), including income taxes, real estate taxes and personal property taxes. For many high net-worth taxpayers, particularly those in states such as California, New York, and New Jersey with high income tax rates, the loss of the state tax deduction significantly reduced their allowable itemized deductions.

In response to the SALT cap, many states have enacted so-called pass-through entity (PTE) tax structures that enable a pass-through entity (such as a partnership or S-corporation) to elect to pay tax at the entity-level on the pass-through entity's taxable income. The tax paid by the pass-through entity flows through as a deduction to the

individual partner or shareholder, thereby circumventing the SALT cap by converting what would otherwise be an itemized deduction (capped at $10,000) into an above the line deduction without limitation.

The $10,000 SALT cap is scheduled to sunset for tax years beginning after December 31, 2025. At the same time, PTET regimes in several states (such as California, Illinois, and Massachusetts) are also scheduled to sunset on December 31, 2025, irrespective of whether the SALT cap goes away.

Observation: President-elect Trump has expressed his support for either increasing the $10,000 SALT cap or eliminating it entirely. Key Republican Congressional leaders have indicated that the SALT cap repeal is unlikely but have expressed support for changes to the current cap with measures that could include increasing the cap for joint filers. The revenue cost of changes to the federal SALT cap could be offset by changes to the corporate deduction for state and local taxes and measures restricting the use of PTET regimes.

Observation: For taxpayers who have either not opted into a PTET structure or who derive most of their income from W-2 earnings, the increase or elimination of the $10,000 SALT cap would likely result in an increase to their allowable itemized deductions. However, because state taxes are considered an alternative minimum tax (AMT) preference item, some taxpayers may not receive the benefit of the additional state tax deduction if they find themselves subject to AMT.

Observation: In many cases, the PTET structure enables participating partners or shareholders to claim an above the line deduction on their individual income tax return for any state tax payments made by the electing entity. Because this deduction is included as a component of AGI, it avoids not only the SALT cap, but also the AMT preference that would otherwise apply to a state income tax payment claimed as an itemized deduction. For this reason, taxpayers who are currently partners or shareholders of electing PTET entities would be negatively impacted by any measure that restricts the use of PTET regimes, even if the SALT cap is increased.

Observation: If the $10,000 SALT cap is not extended, then taxpayers may want to consider deferring the payment of their state and local income and property taxes until 2026, at which time they may receive the full benefit of the tax deduction (subject to the AMT preference).

Miscellaneous itemized deductions

Prior to the TCJA, miscellaneous itemized deductions were deductible to the extent that the total exceeded 2% of a taxpayer's adjusted gross income. The TCJA suspended this deduction for any taxable year beginning after December 31, 2017, and before January 1, 2026. Examples of miscellaneous itemized deductions include investment expenses, legal and accounting fees, custodial fees, convenience fees, and safe deposit box fees. The disallowance of miscellaneous itemized deductions applied not only to deductions incurred by the taxpayer personally, but also to deductions allocated to the taxpayer through their ownership in a flow-through entity (such as management fees in an investment partnership).

Observation: Taxpayers may want to consider deferring the payment of miscellaneous itemized deductions to 2026 since there is a chance that they would receive a federal deduction for these payments if this provision sunsets.
Observation: The IRS has clarified that certain costs paid or incurred by a non-grantor trust or estate in connection with the administration of the trust or estate are not miscellaneous itemized deductions and, therefore, are still deductible under current law. These costs include administration expenses that would not have been incurred if the property were not held in such trust or estate, such as tax preparation fees, legal fees, and fiduciary fees.

Section 199A Deduction

Introduced as part of TCJA, Section 199A provides eligible taxpayers with a deduction for 20% of their 'qualified business income' from unincorporated business and passthrough entities such as sole proprietorships, partnerships, and S-Corporations. Qualified business income is defined to include items of income, gain, deduction, and loss with respect to a qualified trade or business of the taxpayer, with certain carveouts and exceptions (such as guaranteed payments made by a partnership and compensation paid by an S-corporation). Other limitations may apply based on the entity's W-2 wages paid and capital investments. A qualified trade or business does not include a 'specified service trade or business' (SSTB) once a taxpayer's taxable income exceeds certain threshold amounts. An SSTB includes any trade or business involving the performance of services in the fields of health, law, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, investing, investment management, trading, dealing in securities, or any trade or business where the principal asset of the trade or business of the reputation or skill of one or more of its employees or owners. The 20% deduction is also available for qualified REIT dividend income, qualified cooperative dividends, and qualified publicly traded partnership income.

Observation: This provision was intended to provide a tax benefit to non-corporate businesses after the TCJA significantly reduced the top income tax rate for corporations from 35% to 21%, while only reducing the top individual income tax rate from 39.6% to 37%. If taxpayers are eligible to claim the Section 199A deduction, then their top marginal rate decreases from 37% to 29.6% due to the 20% deduction for qualified business income. If the TCJA sunsets, then sole proprietors and other passthrough businesses may need to reevaluate whether they should continue to operate as an unincorporated entity, where their earnings would be taxed at the top marginal rate of 39.6% (compared to only 21% in corporate form).

Other Considerations

Tax Provisions Not Scheduled to Sunset in 2025

Several TCJA provisions were either made permanent or are not scheduled to sunset in 2025. These provisions include the excess business loss limitation (scheduled to sunset in 2029), the net operating loss carryforward rules, and the opportunity zone program (scheduled to expire on December 31, 2026).

Excess business loss limitation – Extended through 2028

The TCJA introduced the excess business loss limitation for non-corporate taxpayers. Prior to TCJA, individuals were able to deduct their active business losses without limitation against other income, regardless of whether that income was from a business or nonbusiness source. This changed when Congress enacted Section 461(l), which disallowed a deduction for the amount of business losses in excess of $250,000 ($500,000 for joint filers), indexed for inflation, attributable to trades or businesses of the taxpayer. An excess business loss is disallowed in the current year and is carried forward as a net operating loss (NOL) to the following tax year. This provision was originally set to expire after 2025, but it has since been extended through 2028 by both the American Rescue Plan Act (P.L. 117-2) and the Inflation Reduction Act (P.L. 117-169).

Observation: Although the Section 461(l) excess business loss limitation is not scheduled to sunset until 2029, it is possible that any new tax package extends the provision a third time beyond its current expiration date.

Net operating loss deduction

Historically, NOLs were eligible to be carried back two years and carried forward 20 years, without any limitation on the amount of NOL able to be utilized in a carryback or carryover year. The TCJA modified this rule to provide for an indefinite carryforward period, with no allowance for NOL carrybacks. In addition, the NOL deduction allowed in

any given carryforward year is now limited to 80% of taxable income computed without regard to the NOL carryover, the Section 199A qualified business income deduction, or the deduction under Section 250 for global intangible low-taxed income. Unless Congress decides to modify this provision as part of any new tax legislation, the NOL carryforward rules (including the 80% taxable income limitation) will continue to remain in place after 2025.

Opportunity zones - Deferral through 2026

Another provision that is not scheduled to sunset in 2025 is the opportunity zone investment program. Enacted as part of the TCJA, the opportunity zone program was designed to promote long-term private sector investments in low-income communities nationwide by providing investors with potentially significant tax benefits. These tax incentives include the temporary deferral of capital gains reinvested into a qualified opportunity zone fund, the partial exclusion of the original amount of capital gain from gross income to the extent invested in the qualified opportunity zone fund for a certain length of time, and the permanent exclusion of any capital gains realized on an opportunity zone investment held for at least 10 years.

As of this writing, the opportunity zone program will expire on December 31, 2026, at which time no further investments can be made and any previously deferred capital gains must be recognized (with the corresponding tax liability due in April 2027).

Observation: Despite the looming expiration date, taxpayers can still temporarily defer tax on any capital gains (until December 31, 2026) by rolling them into an opportunity zone fund.

Other Trump campaign proposals and measures

In addition to the expiring TCJA provisions, President-elect Trump has also called for numerous additional individual tax cuts during his campaign, including eliminating taxes on tip income, overtime work, and Social Security benefits.

Observation: Budget reconciliation procedures cannot be used to modify the Social Security program. Therefore, eliminating Federal income taxes on Social Security benefits may not be possible because the revenue from those taxes is dedicated to the Social Security trust fund. Similarly, any proposal that eliminates taxes on tip income and overtime pay could be limited to income and Medicare taxes only (and not Social Security taxes).

Certain business tax provisions could also be addressed in any new tax legislation, which would have a ripple effect on individuals with flowthrough businesses. These provisions include Section 174 expensing for US-based R&D investments, the EBITDA-based business interest limitation under Section 163(j), and 100% 'bonus' depreciation under Section 168(k). TCJA had temporarily modified each of these provisions to help small businesses and spur economic growth, but each provision has since sunset in one capacity or another. For example, prior to tax year 2022, taxpayers were able to deduct their Section 174 research expenditures in full; such expenses are now required to be capitalized and amortized over a 5-year period if domestic and 15 years if foreign. Similarly, the Section 163(j) deduction for business interest expense was previously based on 30% of adjusted taxable income, which was defined as earnings before interest, taxes, depreciation, and amortization (EBITDA). But effective January 1, 2022, the definition of adjusted taxable income was changed to earnings before interest and taxes (EBIT), including the deduction for depreciation and amortization, which reduces the taxpayer’s maximum allowable Section 163(j) business interest expense deduction. Finally, for tax years prior to 2023, taxpayers were able to capitalize and depreciate 100% of qualified depreciable assets or other qualified property. Effective in tax years beginning in 2023, the 100% bonus depreciation allowance is phased out systematically over a period of five years, decreasing from 100% in tax year 2022 to 80% (2023), 60% (2024), 40% (2025), 20% (2026), and finally 0% (2027).

Observation: The "Tax Relief for American Families and Workers Act of 2024" (H.R. 7024) would have restored each of these provisions on a retroactive basis for tax years 2023, 2024, and 2025. However, despite receiving support in the House, the measure failed to reach the required 60 votes needed in the Senate to move forward.

Let's talk

For a deeper discussion of how these issues might affect you, please contact:

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