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NEW TAX LAW PROVIDES RELIEF FOR RETAILERS, WHO SUCCESSFULLY LOBBIED FOR REFORM

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The new tax law signed by President Trump today is the broadest rewrite of federal tax law in three decades and will have a widespread impact for retailers. The legislation is generally effective for taxable years beginning on or after January 1, 2018, but certain provisions could have a retroactive impact.

The final bill, which has been submitted to President Trump for signature, eliminates a wide range of corporate tax breaks and uses the money to lower rates for all businesses, large and small alike. The corporate tax rate is reduced from 35 percent to 21 percent, and owners of pass-throughs receive a deduction with respect to certain qualified income from pass-throughs.

The National Retail Federation had lobbied for tax reform and called passage of the tax bill "a major victory for retailers, who currently benefit from few of the deductions and credits that lower tax bills for other industries and consequently pay among the highest effective tax rates of any industry. NRF had pushed for the tax relief to apply to small businesses as well because 98 percent of retailers are small businesses and provide 40 percent of retail employment.

Following is a summary of certain highlights of the Tax Act. The provisions discussed below are subject to numerous exceptions and special rules, including transition rules, which are not described here. This summary does not describe all aspects of the Tax Act, including provisions related to Employee Benefits and Executive Compensation.

Highlights of the Tax Act include:

- Reduction in Corporate Rates from 35% to 21%
- Elimination of Corporate Alternative Minimum Tax
- Temporary Business Expensing Provisions
  - 100% deduction allowed for "qualified property" acquired and placed in service after September 27, 2017. The allowable deduction is phased out for property placed in service after 2022.

    - Subject to certain exceptions, qualified property includes new and used property, other than property acquired from related parties.

- Limitations on the Deductibility of Interest Expense
    - The deduction for net interest expense incurred by a business is generally limited to the sum of (a) business interest income (b) 30% of “adjusted taxable income” and (c) floor plan financing interest.
    - Disallowed interest may be carried forward indefinitely.
    - Businesses with average annual gross receipts of $25 million or less would be exempt from these limitations.

- Repeal of Deduction for Domestic Production Activities
- Limitation on Deduction for Net Operating Losses (NOLs)
    - The deduction for NOLs is limited to 80% of taxable income.
    - Subject to certain exceptions, the carryback of NOLs is eliminated, but NOLs may be carried forward indefinitely.

- Adoption of a Territorial Regime for Taxation of Foreign Corporate Earnings
    - Subject to certain limitations, a 100% dividend received deduction is allowable for foreign-source dividends paid by foreign corporations to 10% U.S. corporate shareholders. The indirect foreign tax credit under section 902 is repealed.
    - Accumulated untaxed foreign earnings are deemed repatriated and taxed at reduced rates of 15.5% for cash and cash equivalents and 8% for illiquid assets. Taxpayers may elect to pay such tax in installments over an 8-year period.
    - Base erosion measures are enacted, including limitations on deductions for interest expenses and with respect to certain hybrid transactions, as well as taxation of certain global intangible income.
    - The Subpart F rules and the foreign tax credit under section 960 continue to apply in modified form.

- Reduction of Tax on Certain Income Earned By Pass-Through Entities

    - A deduction of 20% is allowed by taxpayers who have domestic “qualified business income” from a partnership, S corporation, or sole proprietorship, subject to certain limitations.
    - Qualified business income generally excludes income from “specified service businesses,” which includes businesses involving the performance of services in certain fields, such as health, law and accounting. This exclusion does not apply to income below certain thresholds.

- Provisions Affecting the Taxation of Carried Interests
    - Capital gain with respect to the transfer of any applicable partnership interest would be treated as short-term capital gain unless the holding period for such interest is more than three years.

Over the coming weeks, we plan to provide a focused analysis on various aspects of the Tax Act as it applies to certain industries, as well as its impact on domestic and cross-border Mergers & Acquisitions, and the structuring and financing of such transactions

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