

A series of overlapping rounded rectangular frames in green and blue, with a grey frame at the bottom left. A blue line connects the bottom left frame to the main title frame.

# Year-end tax policy dynamics and the tax legislative landscape

Dec. 19, 2023

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# With you today



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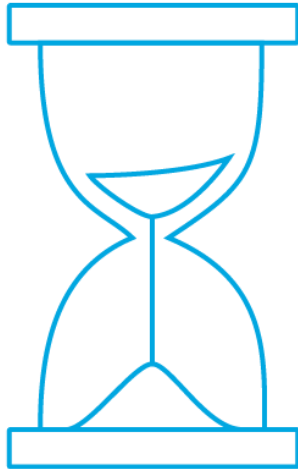
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- Capitol Hill tax policy update
  - Key areas of tax legislative focus for 2024 and 2025
- Implications of Congressional inaction on certain business provisions
  - Requirement to capitalize and amortize R&E costs under Section 174
  - Requirement to utilize an EBIT-type calculation in determining business interest deduction limitation under Section 163(j)
  - Phase-out of bonus depreciation
- Year-end tax planning considerations

# Learning objectives

By the end of this presentation, participants will be able to:

1. Understand the year-end tax policy dynamics
2. Describe the potential implications for 2024 and beyond
3. Gain an appreciation for year-end tax planning considerations in light of the current tax legislative landscape

# Capitol Hill tax policy update

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# Key areas of tax legislative focus for the remainder of 2023/early 2024

## The primary focus:

Restore immediate expensing for R&D

Restore EBITDA instead of EBIT for 30% business interest deduction limitation

Restore immediate expensing for capital equipment

SALT deduction

**versus**

Child tax credit enhancement



# Key areas of tax legislative focus for 2024

## The primary focus

Whatever didn't get done in 2023 and not much else

## Other areas of focus

OECD

IRS funding and performance

TCJA expiring provisions

# Taiwan legislation



Enact legislation to eliminate double taxation on transactions between the U.S. and Taiwan. Similar to a tax treaty.



# Key areas of tax legislative focus for 2025



TCJA



OECD

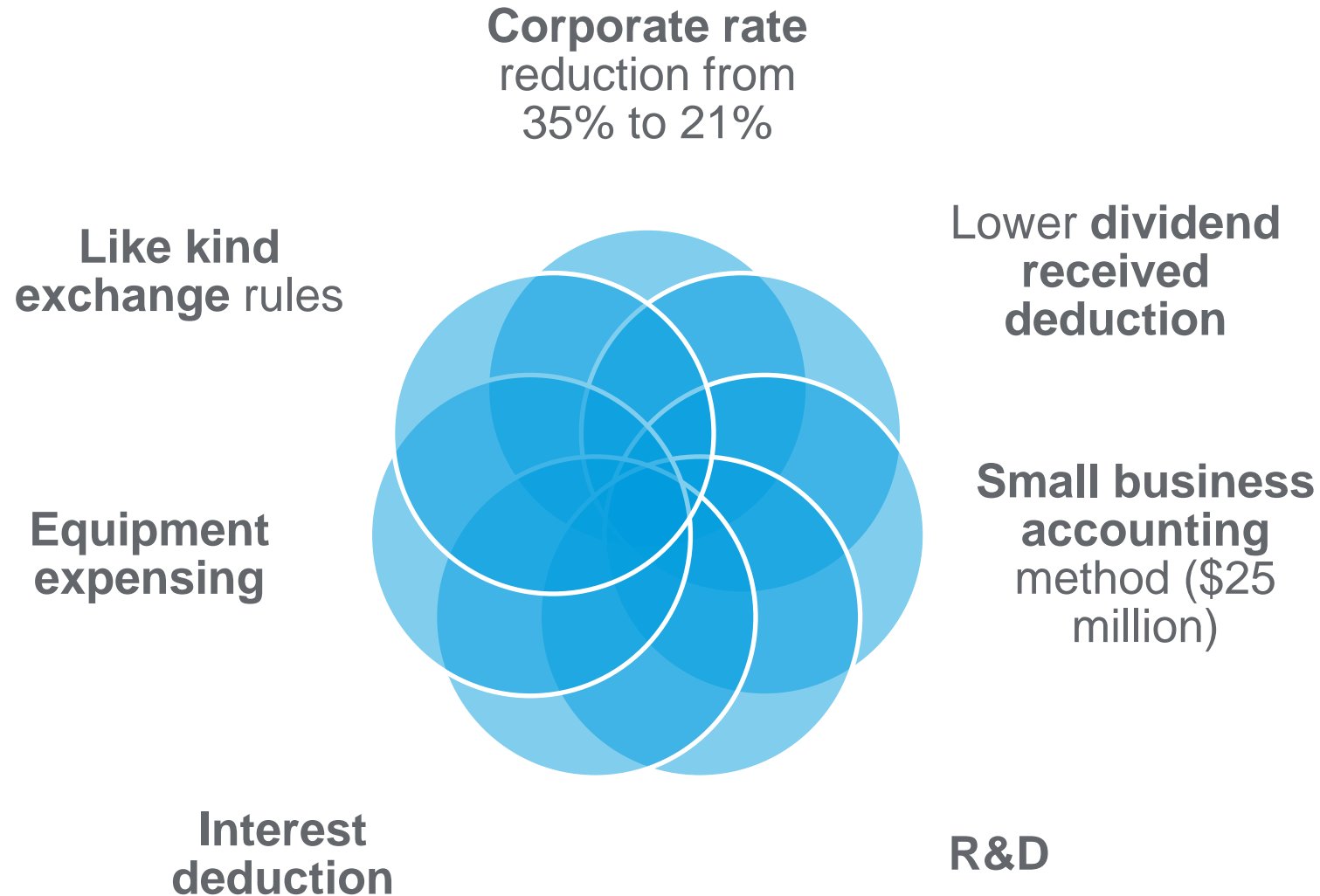
# TCJA: the headlines

- 35 of 124 TCJA provisions *expire* at the end of 2025
- In addition, some TCJA provisions have deferred effective dates and were slated to become effective in later years
- Some key international tax provisions that were enacted into law but contained deferred effective dates as to applicable rate percentages are:
  - GILTI
  - BEAT
  - FDII

and these international provisions are a critical part of the OECD debate

# TCJA: what does *not* expire?

Key provisions:



Increase in  
estate and  
gift tax  
exemption

Qualified  
business  
income  
deduction of  
20%  
(Section  
199A)

- Rates
- Standard deduction
- Personal exemptions
- Itemized deductions
- AMT
- Child tax credit

TCJA: what is on the table?



# TCJA: what is on the table?



What happens in 2025?

A photograph of the United States Capitol building, showing its ornate classical architecture with columns and arches. An American flag is flying on a tall pole in the foreground. The sky is clear and blue.

It all depends on the 2024 election

# Implications of congressional inaction on the “Big 3” business provisions

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# Implications of congressional inaction

**Section 174.** Loss of immediate deductions leads to an increase in capital income and larger than expected tax liabilities, which can impact cash flow and liquidity projections. Top of mind issues for businesses include:

- Continued uncertainty post-Notice 2023-63 (e.g., allocation of indirect costs; software development; contract research agreements)
- Added burden to design and implement a section 174 cost identification and tracking methodology upfront and early in the compliance process
- Onshore/offshore development; business model considerations
- Review of software spend; maximization of R&D tax credit (digital transformation journey)
- Determination of rights & risks under intercompany service or development agreements (rights & risk)
- CFC implications w/ GILTI; FTC apportionment methods
- Conversion of historical losses to income (or projected income) shifts importance to section 382 analysis re and/or R&D credit study
- Accounting method changes to offset other timing items
- State conformity



# Implications of Congressional Inaction

**Section 163(j).** Addback for depreciation and amortization no longer permitted for calendar year 2022 and after – coupled with rising interest rates means more businesses than ever before face interest deduction limits

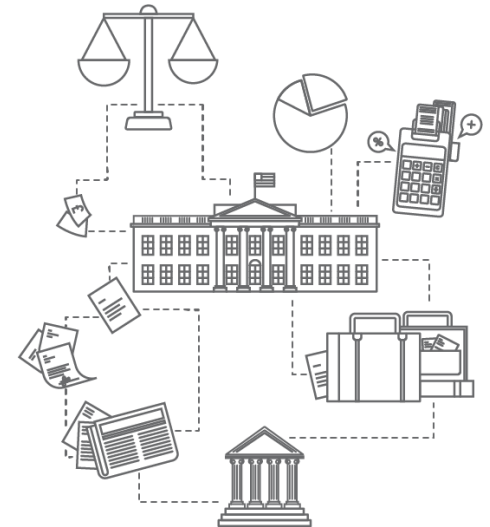
- Options exist, such as converting financing into instruments treated as equity for tax purposes, but be sensitive to non-tax considerations
- Other options
  - Sale-leaseback structures treated as a sale for tax purposes
  - Acquire partnership interests rather than directly acquire business assets
  - Elections for real property and farming businesses – elective exceptions that may be utilized for applicable businesses
  - Depreciation method elections
  - Accounting methods planning to capitalize business interest expense



# Implications of congressional inaction

**Phase out of bonus depreciation.** Beginning in 2023, immediate expensing phase down by 20% per year

- Ensure that property is “placed in service” within applicable year-end timeframes to avail of that year’s bonus percentage amount
- Consider cost segregation studies to accurately categorize building components with a recovery period of 20 years or less
- Section 179 small business expensing
- Electing real property trades or businesses under Section 163(j) (ADS)



# Top 10 tax considerations

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# Top 10 tax considerations

1. Year-end reminders
2. Accounting methods
3. Capital expenditures
4. Expiring TCJA provisions
5. Estate tax planning
6. International tax provisions
7. Credits and incentives
8. Fiscal conditions and interest rates
9. Controversy
10. Data and technology

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THANK YOU FOR  
YOUR TIME AND  
ATTENTION



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