

The new tax law, formally known as the 2017 Tax Cuts and Jobs Act, changes the business aviation landscape in myriad ways. This memo seeks to provide a general overview of important issues which will significantly impact aviation clients.

1031 EXCHANGES FOR AIRCRAFT HAVE BEEN ELIMINATED

On the negative side, effective January 1, 2018, 1031 like-kind exchanges of aircraft, and indeed all equipment and personal property, have been eliminated under the new federal tax laws, leaving real estate as the sole asset class still retaining such treatment.

A transition rule provides that a qualifying 1031 exchange commenced on or before December 31, 2017, is still subject to like-kind exchange treatment.

However, with no 1031 exchange treatment available in 2018, aircraft trades will be treated as taxable events with no deferment. Therefore an owner who had previously rolled over or deferred tax liabilities under Section 1031, now must compute gain/loss based upon the difference between the amount realized on the sale of the aircraft sold and the adjusted basis in the asset.

Under the statute "Amount realized" includes any money, as well as the fair market value of property, replacement aircraft, spare parts, etc... received in the transaction.

100% EXPENSING FOR BOTH NEW AND USED AIRCRAFT

On the positive side the new law allows for 100% deduction for both new and used business aircraft in the year the plane was acquired. Under the new statute this tax treatment is scheduled to last until 2023 or 2024.

The full write off is available so long as the aircraft was placed into service after September 27, 2017, and the owner had not entered into a written binding contract for the aircraft prior to that date.

While many will mourn the demise of the 1031 exchange rollover/deferral treatment, and corresponding required recognition of taxable gain on sale of old aircraft in 2018; such lament will be short lived with the ability to expense 100% of the replacement aircraft be it brand new or used. In all but the most extreme cases the 100% write-off under the new law should more than offset any deferred 1031 exchange liabilities.

PRIMARY BUSINESS USE TEST FOR AIRCRAFT

In order to qualify for the 100% expensing of a new or used aircraft, a business must still show that an aircraft meets the primary business use test during the year you intend to take the write-off.

To meet the requirements of the primary business use test, a taxpayer must show that:

- At least 25% of the time flown was for ordinary and necessary business use.
- Any personal use by the business owner/other company personnel must be imputed as income to the owner/employee.

PREDOMINANT USE TEST

Further guidance for taking the 100% write-off is provided under Section 280F of the Internal Revenue Code which states that any “listed property” which the IRS has ruled includes Aircraft, must be used more than 50% in the trade or business of the taxpayer. Business aircraft owners should be very careful to satisfy all use requirements or risk loss of tax treatment, and subsequent recapture of all bonus depreciation.

QUALIFIED PROPERTY ELIGIBLE FOR 100% WRITE-OFF

If an aircraft satisfies the requirements of the primary business use test and predominant use test it is considered “qualified property” eligible for Modified Accelerated Cost Recovery System (MACRS) depreciation under the Tax Code, and therefore eligible for 100% expensing tax treatment.

FET EXEMPTION FOR CERTAIN AIRCRAFT MANAGEMENT SERVICES

As many business aircraft owners have found out the IRS has sought to impose federal excise tax (FET) on fees related to aircraft management services including pilot fees. The new tax law provides relief creating an FET exemption for aircraft management services including:

- Aircraft Support – storage, maintenance, fueling, and other support activities;
- Aircraft Operations – hiring/training of pilots and crew;
- Aircraft Administration services – aircraft scheduling, flight planning, weather forecasting, insurance, establishing/complying with safety standards;
- Other flight support services.

However these exemptions are only available on the business owners aircraft, not leased aircraft.