



2017 TAX ACT - TAX BENEFITS FOR REAL ESTATE INVESTORS (*PART 1 INCOME TAX PLANNING*)

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Since 2015 Gary have been the recipient of 29 separate international tax awards from 10 different global expert societies in London/UK including:

International Tax Planning Law Firm of the Year Award (2017) – International Advisory Experts.

International Tax Advisor of the Year (2017) - Global Business Magazine/Prof. Sector Network.

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To date Gary has published or been interviewed in 100+ separate articles published by 15 different US and International magazines. [Click here for complete list.](#)

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In December 2016 Gary was interviewed by California CEO Magazine and RCBNNNews.org on the subject of Criminal Tax Evasion and IRS Tax Audits: Civil and Criminal Issues. This 4 part series, which has been published by [Lorman Education](#), can be viewed below:

[Criminal Tax Evasion - Part 1](#)

[Criminal Tax Evasion – Part 2](#)

[Criminal Tax Evasion – Part 3](#)

[Criminal Tax Evasion – Part 4](#)

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2017 Tax Act - Tax Benefits for Real Estate Investors (Part 1 Income Tax Planning)

The 2017 Tax Act (the ACT) was signed into law on Dec. 22, 2017 and is effective as law as of January 1, 2018 (though certain provisions will take effect at a later date).

Under the ACT there are key real estate tax related tax issues which are at first view not linked but are the keys to an income, estate and gift tax bonanza for Real Estate Developers, Real Investor Investors (who invest thru Pass-Thru Entities) and a special class of real estate related service providers: Architects and Engineers.

The new law provides a 20% tax deduction on distributions to US taxpayers from Pass Thru Cos. So if the US taxpayer receives \$1m, they only must declare \$800k as their net taxable income from the pass-thru distribution on their Form 1040 tax returns. Effectively they only must declare 80% of the pass thru distribution as federal income subject to tax. They receive a 20% tax reduction on this income compared to prior tax years when there was not a 20% pass thru tax deduction which was made effective in 2018 (by the 2017 Tax Act).

The 2017 Tax Act differentiates two independent tax planning" models"; i.e. those who may not receive the full 20% tax deduction versus those who receive the full 20% tax deduction.

1) Service Providers (lawyers, doctors, et al.) have tax benefits which are limited under the 2017 TAX ACT based on income thresholds (for their total reportable Form 1040 federal income) and related wage restriction limitations (for wages paid them by the Pass Thru Co.)

which may preclude them from receiving the full 20% tax deduction (or any of it at all).

Versus

2) Trade or Business Investors whose Income is generated by depreciable assets held by the trade or business.

These taxpayers receive the full 20% tax benefit for pass thru distributions. These taxpayers have no wage restrictions imposed.

Depreciable assets qualify (e.g. commercial real estate) for pass thru distributions to their investors without the wage restrictions imposed on service providers.

The distributions received by US taxpayers from the Pass-Thru Co. (whether a Partnership, Limited Liability Company, S-Corporation, and Sole Proprietorship) qualify for the full 20% pass thru tax deduction (not linked to the W-2 threshold limits: imposed on the taxpayer at different levels for single and married taxpayers:

(Single: \$157,500; Married: \$315,000) with respective phase-outs at \$207,500 and \$415,000 respectively.

So a \$1m pass-thru distribution is reported by the taxpayer as \$800k, taxable net income, declared for tax purposes as the pass thru income reported on Form 1040 tax return (not the \$1m pass thru distribution received).

If the Pass-Thru Co. is a trade or business whose income is generated by depreciable assets, used in the business (e.g. Real Estate), there are no restrictions on the 20% tax deduction for those affected taxpayers.

This new law reduces their federal taxable income for the pass-thru distribution by the 20% tax deduction (declared as below the line, non-AGI expense on Form 1040/effective Tax Filing Year 2018).

The same tax rules are applied to Architects and Engineers.

If the taxpayer provides services thru the Pass Thru Co, and receives distributions from the Pass Thru Co. the 20% tax deduction is allowed in full for Taxpayers with income under certain thresholds:

- 1) \$157,500 (single); \$315,000 (married couple) with phase-out's at \$207,500 (Single) and \$415,000 (Couple).
- 2) Above those limits (at the phase-out amounts) the 20% tax deduction is not allowed.

Instead the taxpayer is subject to a W-2 Limitation Test which limits the income tax deduction to the greater of:

- 1) 50% of the W-2 wages paid to the taxpayer with respect to the Trade or Business which paid the pass-thru distribution; or
- 2) The sum of 25% of the W-2 wages paid plus 2.5% of the unadjusted basis, immediately after acquisition of all depreciable property used in the qualified trade or business.

Several caveats

- 1) For purposes of future tax planning, the 20% deduction is scheduled to expire as of 12/31/2015 unless extended.
- 2) Taxpayers who do not receive Wages from the Pass-Thru Co. may ultimately receive no tax deductions or minimal deductions if they do not

qualify for the deduction as a non-service provider (not unless they are Architects or engineers.

However, as can be confirmed by these examples the Real Estate Developer, Real Investor (or Architect or Engineer) may receive a 20% reduction in reportable taxable income on their distributions from Pass Thru Comp.

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