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“B” In the Know: How Benefit Corporation Legislation is Changing the Business Landscape

Since 2010, 26 states and the District of Columbia have passed legislation as to the formation and operation of a benefit corporation, a hybrid corporate form that straddles the line between a traditional for-profit corporation and a charitable organization.

Historically, profit has been the primary metric by which corporate officers have been held accountable to their shareholders. Since the late 20th century, however, the world has seen the rise of a new type of business owner: the social entrepreneur. *Profit*, *people*, and *planet* are the metrics used by the social entrepreneur to measure success, commonly referred to as the *triple bottom line*.

The social entrepreneur faces two challenges. First, how does a social entrepreneur differentiate her business from a traditional, profit-centric corporation that is merely appropriating terms like *green* and *sustainable* as a marketing strategy? Second, how can a social entrepreneur employ the triple bottom line approach without running afoul of her duty to maximize shareholder value?

B Lab, a nonprofit organization founded in 2006 to support social entrepreneurs, has provided solutions to both of these challenges: B corporation certification and model benefit corporation legislation.

This article further defines the terms *benefit corporation* and certified *B Corp*, compares benefit corporations to other business entities, and describes some of the pros and cons of running your business as a benefit corporation or certified B Corp.

Terminology

Benefit Corporation versus Certified B Corp

While the terms *benefit corporation* and *B Corp* are sometimes used interchangeably, they are actually two distinct concepts:

- A benefit corporation is a legal status granted by state law that requires the corporation to have a purpose of creating a *general public benefit*: a measurable positive impact on society and the environment. State law further requires that the general public benefit be measured against a third-party standard adopted by the benefit corporation.
- A certified B Corp is a business entity that satisfies the social and environmental performance, accountability, and transparency standards set forth by the nonprofit B Lab. The certification provides an objective standard for socially conscious firms to differentiate their corporate governance practices from traditional corporations. This is similar to the *Fair Trade* and *LEED* designations, which serve as benchmarks for trade practices and building environmental impact, respectively.
- A benefit corporation need not be a certified B Corp in order to obtain benefit corporation status under state law. Conversely, a corporation may obtain B Corp certification from B Lab without being a benefit corporation under state law. However, B Lab's B Corp certification would serve as an independent third-party standard by which a benefit corporation could gauge whether it has satisfied its general public benefit requirement.

B Corp versus C Corporations and S Corporations

While C corporations and S corporations derive their names from subchapter C and subchapter S of chapter 1 of the Internal Revenue Code, certified B Corps derive their name from the benefit they hope to provide to society and the environment. For tax purposes, B Corps and benefit corporations may be classified as either C corporations or S corporations or partnerships, and do not currently receive special tax treatment under state or federal law (although they may receive tax benefits, such as alternative energy credits, incidental to their particular business operations). The difference between these entities and traditional C or S corporations is solely related to how they are governed: B Corps and benefit corporations must consider social and environmental impact in their decision making, whereas traditional corporations need only maximize shareholder value.

Pros and Cons

Benefit corporations and certified B Corps both have the benefit of attracting investors, customers, and employees concerned with corporate social responsibility. A certified B Corp has the added benefit of differentiating itself from other businesses by using a benchmark for sustainable corporate governance.

Becoming a benefit corporation under state law obligates the business to operate in a manner that benefits society and the environment. An officer of a benefit corporation has a much broader, subjective standard to follow than an officer in a traditional corporation. Additionally, the fact that not all states have benefit corporation laws adds complexity to interstate business transactions and changes in ownership.

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Considerations for U.S. Persons Purchasing Foreign Real Estate

There are many reasons why a U.S. person may want to own residential real estate in a foreign country – this article provides an overview of some of the U.S. tax rules that determine what types of disclosures are typically required.

In today's global economy, many U.S. persons find themselves working abroad, involved in "cross-border" marriages (e.g., a U.S. person married to a non-U.S. person), or may wish to have family vacations or spend a portion of their retirement overseas. As such, more U.S. persons are contemplating purchasing real estate overseas. Whatever the reason, once a U.S. person decides to acquire foreign real estate, there are many U.S. tax reporting considerations at stake.

Pre-Acquisition Structuring

Many foreign countries do not allow non-citizens to directly own real estate within their borders. In such jurisdictions, it is not uncommon for a U.S. person to hold the foreign real estate in a trust or through a locally organized corporation. One of the first decisions a prospective buyer will have to make is how to hold the property, whether outright, or through an intermediary holding entity. Foreign entities used to acquire real estate will be reportable annually on Form 8938 to the extent that the holding entities meet the definition of a specified foreign financial asset.

Additionally, transactions with foreign trusts, and beneficial interests in the property or income of a foreign trust, typically must be disclosed annually to IRS on Form 3520 and/or Form 3520-A. Alternatively, if a corporate-type entity is used to acquire and hold the foreign real estate, absent a *check-the-box* election (which should be timely filed at the outset), the U.S. owner of the foreign corporation could be subject to the *Controlled Foreign Corporation* (CFC) tax rules. Holding a CFC might result in higher U.S. income taxes due upon the disposition of the foreign real estate. This is because income or gain from a CFC, generally does not qualify for long-term capital gains rates, and is typically taxed at the highest ordinary income tax rates at the time it is earned.

Foreign Currency Issues and Tax Basis

In general, a U.S. person's taxable income and resulting tax liability must be calculated and paid in U.S. dollars. This means that when a U.S. taxpayer executes a transaction in foreign currency, these foreign currency amounts must be translated into dollars. If the foreign real estate is purchased with foreign currency, then the tax basis in the property equals the dollar value of the foreign currency on the date of acquisition.

For instance, if a U.S. taxpayer acquires a personal residence in London for £2 million, and on the date of the acquisition the average spot rate was 1.5 to 1, then the U.S. dollar tax basis in the home would be $3 million. This is true, even if the U.S. dollars exchanged for British Pounds a few days prior to the transaction were more than $3 million.

Sale of Property Subject to Mortgage Debt

The tax rules governing mortgage debt denominated in foreign currencies can trigger gain recognition with a simultaneous loss disallowance upon the payoff of the debt by U.S. taxpayers. This is because the financing transaction for personal property is considered to be a separate and discrete event from the purchase of the underlying real estate.

In our previous example, the U.S. taxpayer acquired a personal resident in London for £2 million. Assume instead that only half of the purchase price was executed in the form of a down payment, with the other half financed through a foreign currency denominated mortgage loan (for £1 million, equivalent to $1.5 million on the mortgage origination date).

At the time of the purchase, 1.00 GBP was worth 1.50 USD, but sometime later, when 1.00 GBP has appreciated and is worth 1.60 USD, the residence is sold for £3 million, of which £1 million is used to repay the mortgage debt. According to the relevant tax rules, the borrowing and repayment of the mortgage loan could generate a non-deductible personal loss.

The gain on selling the residence is calculated as the amount realized at time of sale less the adjusted basis at the time of purchase, or $4.8 million in proceeds less the $3 million in tax basis for a taxable gain of $1.8 million (if the residence otherwise qualified under Sec. 121, then up to $500,000 of the gain could be excludable). The mortgage debt, however, would result in a loss calculated as follows:

$1,500,000	USD equivalent of £1 million mortgage debt on the purchase date
$1,600,000	USD equivalent of £1 million on the payoff date
=========	
$100,000	USD loss due to the fluctuation in currency rates

Per the relevant rules under Sec. 165, since the mortgage transaction was not entered into in the normal course of a trade or business, nor for a profit motive, then the currency/translation loss is non-deductible and cannot be used to offset the gain realized on the sale of the property at the higher local currency value.

Other Issues

As this article touches upon, there are numerous reporting requirements that come into play when a U.S. taxpayer decides to acquire, hold, or sell, foreign real estate. Although beyond the scope of this article, it is worth noting that some countries may also impose transfer taxes fees (i.e., Stamp Duties in the U.K.) on the sale or exchange of residential real estate. There may also be estate or inheritance tax exposures in the foreign country; these are issues that should be vetted by local tax counsel prior to the execution of any transaction.

To the extent that you are considering acquiring foreign real estate, your Andersen Tax advisor is equipped to assist you through the various considerations that might be relevant to your situation

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Crowdfunding: an Alternative to “Traditional” Fundraising

In the past five years, there has been tremendous growth in the crowdfunding industry, with over $5.1 billion raised in 2013. More and more early-stage companies are turning to crowdfunding as an alternative means to raise capital for their businesses.

Sites such as Kickstarter have become household names. The most successful crowdfunding project, Star Citizen, an online space trading and combat videogame, raised $61 million through crowdfunding in 2014. The question is: does crowdfunding make sense for your business?

What is Crowdfunding?

Crowdfunding is the practice of funding a project or venture by raising monetary contributions from a large number of people, typically through internet-based means. The two primary types of crowdfunding are:

1. Rewards-based crowdfunding: entrepreneurs propose a product to consumers, and in exchange for different levels of funding, the consumer receives the product on a later date, generally determined prior to starting the campaign; or
2. Equity-based crowdfunding: the backer, or crowd, receives some form of equity in the company in return for the capital infusion.

In addition, there are platforms available for companies looking to take on debt, as well as sites geared towards charitable endeavors. This article will focus on the tax and business implications in the primary crowdfunding solutions – rewards-based and equity-based platforms.

Rewards-Based Crowdfunding

Rewards-based crowdfunding, the classic example of crowdfunding, involves the entrepreneur pitching a product or service to the crowd. If the backers decide the proposed product is worthwhile, the crowd essentially pre-pays for the product or service. There are two subsets of rewards-based funding: *all-or-nothing*, where there is a minimum funding goal that must be reached before the business sees any money; or *keep-it-all*, where the business receives the cash, regardless of whether the stated goal is reached.

From a business perspective, the rewards-based model can be attractive for a couple of reasons. First, the entrepreneur does not need to share equity with others. Additionally, it minimizes the use of debt in beginning production. For companies ultimately looking to be acquired or go public, all acquisition proceeds will go to the founders. Second, using this type of platform allows the business to test the market for their product before incurring significant expenses.

From a tax perspective, cash received from a rewards based model is considered revenue. This revenue will be taxed, after taking into account expenses incurred in completing the crowdfunding project. For accrual basis taxpayers, revenue is recognized when the orders, or rewards, are finally shipped to the end consumer, thus allowing expenses to offset income. Cash-basis taxpayers must be wary, as the timing of cash receipts may not correspond with the tax year in which expenses are incurred, generating a larger tax bill than if using the accrual basis method of accounting. As always, consult your Andersen Tax advisor for a more comprehensive dialogue about the tax implications of choosing a cash versus an accrual method of accounting.

Equity-Based Crowdfunding

As a result of the 2012 Jumpstart Our Business Startups Act (JOBS Act), the U.S. Securities and Exchange Commission (SEC) lifted the ban on general solicitation and general advertising of certain offerings. Effective September 23, 2013, the JOBS Act opened the door for companies to seek equity investors using crowdfunding platforms. For companies seeking to grow their business, this is a viable alternative to more traditional means, such as angel and venture capital. Equity funding allows the company to minimize utilizing debt as a means to starting or growing the business. In addition, unlike rewards-based crowdfunding, no product or service must be delivered as a result of a successful capital raise.

The tax implications of employing equity-based crowdfunding are in sharp contrast to a rewards-based platform. A contribution of cash in exchange for equity is a tax-free transaction. This results in an increase in cash flow for the company earlier, since there is no corresponding tax bill associated with the receipt of the money contributed. With early-stage companies, this could prove invaluable to the life-span of the company. That said, earnings from the company are shared with the backers or investors, and ultimately, dilution of the founder's equity could lead to a smaller return in a sale transaction.

The rules surrounding equity crowdfunding continue to evolve and the SEC may finally issue long-awaited Title III and Title IV regulations in late 2015. Two key changes anticipated are an increase in the maximum on capital raises to $50 million and a widening of the definition of *accredited investor* to include those with academic and professional credentials. Another area for equity crowdfunders to keep their eye on is action from the states with their own regulations regarding crowdfunding.

Other Considerations

Other than cash receipts, there are additional benefits to using a crowdfunding platform. Successful projects often lead to a boost in reputation and can raise the public profile of the entrepreneur. Furthermore, most crowdfunding websites require a certain level of communication between the producer and the backers, leading to increased engagement with consumers. Of course the good comes with the bad, as businesses that do not meet their goals can take serious hits to their reputation in large, public forums. Sometimes it is easier to raise money for a project than to make a project a success, and having to continually communicate can be time consuming for the entrepreneur.

Ultimately, while crowdfunding is not for everyone, it is an alternative way to fundraise that can provide additional benefits beyond just an influx of cash. If you are interested in learning more about how to incorporate crowdfunding into your capital raise, speak to your Andersen Tax advisor about whether it makes sense for your business.

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New Accounting Method Change Procedures Effective Immediately

The IRS issued two new revenue procedures, Rev. Proc. 2015-13 and Rev. Proc. 2015-14 on January 15, 2015, that update the procedural rules to change a method of accounting for federal income tax purposes, effective immediately.

Rev. Proc. 2015-13 significantly modifies the rules for making a method change while under IRS examination and presents new considerations for taxpayers engaging in certain transactions. The guidance also includes various other changes to the rules. Any taxpayer planning to file any change in method of accounting will need to evaluate the effect of the revised procedures. Rev. Proc. 2015-14 provides the list of changes taxpayers can make automatically under the rules described in Rev. Proc. 2015-13. The transition rule allows taxpayers to continue to file automatic method changes under Rev. Proc. 2011-14 for tax years ending before February 1, 2015.

Background

Methods of accounting determine when a taxpayer takes into account an item of income or deduction. Taxpayers commonly use accounting method planning techniques to defer or accelerate income, depending on the particular tax situation. Under the previous accounting method change procedures, taxpayers were able to manage risk by changing from erroneous to proper methods of accounting by filing Form 3115 and obtaining back-year audit protection with respect to the erroneous method of accounting. Taxpayers who were under IRS examination could file Form 3115 in a 90-day or 120-day window period, or with district director consent (generally consent of the IRS examining agent). Taxpayers were required to spread the Sec. 481(a) cumulative catch-up adjustment over four years if it was an increase to income, or make the adjustment entirely in the year of change if it was a decrease to income. Specified changes listed in the appendix to the previous revenue procedure were filed under the automatic consent procedure, due when the tax return was filed. Other changes were filed under the advance consent procedure, due by the end of the taxable year with a user fee.

Highlights of the New Procedures

The new procedures address the general procedures to obtain either advance or automatic consent of IRS, superseding the advance consent procedures of Rev. Proc. 97-27 and the automatic procedures of Rev. Proc. 2011-14. The new procedures apply to Forms 3115 filed on or after Jan. 16, 2015, for a year of change ending on or after May 31, 2014.

The new procedures significantly change the approach for taxpayers under IRS examination. Rev. Proc. 2015-13 removes the restriction of requiring consent of the district director for filing Form 3115 outside a window period. A taxpayer under IRS examination can now file Form 3115 at any time. This streamlines the accounting method change process for taxpayers who want to make a favorable change in method of accounting as there is no longer a need to obtain district director consent. While taxpayers were generally able to obtain such consent in the past, it was often a lengthy process because some IRS agents were unfamiliar with the accounting method procedural rules. This new procedure eliminates this additional paperwork. However, the procedure modifies the terms and conditions for taxpayers filing Form 3115 to correct an erroneous method outside of a window period: (1) no back year audit protection is provided for the change, and (2) the spread period for an unfavorable adjustment is shortened to two years (from four years). Under previous guidance, taxpayers with an unfavorable method change generally filed such changes in a window period rather than requesting district director consent to avoid raising an issue in the examination. Under the revised guidance, taxpayers will likely want to continue to file in the window period to obtain back year audit protection and a four-year spread of the adjustment.

The procedure also replaces the 90-day window period that began on the first day of the taxable year with a 3-month window period that runs from the fifteenth day of the seventh month to the fifteenth day of the tenth month for taxpayers that have been under continuous audit at least 12 months. This new 3-month window coincides with the timing that most taxpayers are preparing their tax returns and will be more convenient for taxpayers who want to file a change for the current year tax return. Taxpayers who were planning to file in the 90-day window of 2015 should carefully evaluate their options and any effect the new guidance has on their year-end tax provisions.

Taxpayers engaging in transactions where methods of accounting are a factor should also carefully consider the new rules. The new procedure provides the seller with an optional acceleration of an unfavorable adjustment in certain transactions where an acceleration of the adjustment is not mandatory. Such transactions include the acquisition of a partnership interest that does not cause a technical termination of the partnership, an acquisition of a stock ownership interest in a corporation or CFC that results in a change in control or causes the taxpayer’s taxable year to end, or certain asset acquisitions. This will provide an opportunity to simplify the tax treatment of such transactions when the buyer is obligated to pay the tax related to an adjustment that was spread into a taxable year following the transaction.

The new revenue procedures make significant changes to the procedures for filing for a change in method of accounting, particular with respect to taxpayers under IRS examination. Any taxpayer planning on filing Form 3115 should carefully review the new guidance. Andersen Tax can provide assistance in evaluating the new rules and implementing changes in methods of accounting.

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The Impact of Cheap Oil

The sharp decline in oil prices has quickly become one of the most powerful factors reshaping the global economy. The price of Brent crude oil has fallen from over $110 a barrel in June to $56 at the time of this writing.

It is difficult to discern whether supply or demand factors contributed more to the drop, and impossible to predict when prices will mean revert. However, understanding some of the forces driving this fall and the significant impact that cheap oil will have on the economy will help investors navigate current market conditions.

Despite some disagreement among economists about the root cause, supply and demand factors have arguably played a significant role in oil's fall. Economic weakness around the world, particularly in Europe and China, has dampened global demand for oil. A strengthening dollar, buoyed by expectations of rising U.S. interest rates and an expanding American economy while growth in Europe and Asia has slowed, places downward pressure on demand for dollar-priced commodities as they become more expensive to holders of other currencies. Downward pressure on commodities then imports lower prices to the U.S. However, this cannot tell the whole story, as demand for oil in the U.S. – the world's largest consumer of oil – has been flat while its economic growth has not, suggesting that this is also a supply-side issue.

An increase in global production of oil has created a paradigm shift leaving OPEC to decide between maintaining pricing power or market share. Many non-OPEC oil producers have seen a dramatic rise in oil production fueled by technological advances in fracking. For example, the United States has nearly doubled its domestic production of oil since 2008. Historically, OPEC had set a floor on the price of oil, but now has created a floor on production levels, refusing to produce less than 30 million barrels a day. This decision has created global oversupply and forced the price of oil down. Most major oil producers are still marginally profitable at $40 a barrel based on current levels, so given the competition for market share there is no reason to expect them to cut production at current prices. Conversely, as oil companies pare back on marginal projects and production levels begin to fall in the future as a function of natural depletion, prices may edge higher to meet the costs to incentivize the reinvestment necessary to offset declining rates. Thus, even in a low demand growth environment the industry may re-price in a future need to reinvest. While nobody can be certain where the price of oil will be in a year, production is expected to run high for the foreseeable future and investors should prepare for and understand the positive and negative effects that cheap oil will have on the global economy.

The Positives

Falling oil prices typically benefit consumers, similar to a tax cut, as consumers have more discretionary income to spend on other goods and services. After all, the average U.S. family spends 4% of their income on gasoline. Cheap oil disproportionately benefits middle and lower-income groups since energy costs command a larger share of their total earnings. This demographic has missed out on most positive economic trends in recent memory – higher corporate profits, lower borrowing rates, and increased demand for workers with advanced degrees have mostly benefited businesses and wealthier individuals. A boost in demand from this demographic should bolster earnings for companies in the consumer discretionary sector such as the hospitality industry, apparel makers, and general retail. Consumer staples also tend to outperform when energy prices are low, benefiting producers of food, beverages, and tobacco. While falling oil prices will certainly increase demand in these industries, the transportation sector has the greatest potential benefit.

Airlines, railroads, and shipping companies have just seen a primary cost input reduced by over 50%. All else equal, this translates to higher profit margins and higher-than-expected earnings. According to its most recent projection, the International Air Transport Association (IATA) expects the global airline industry to profit an additional 10% in 2015 compared to previous estimates. The final effect may be even greater, as oil prices have continued to fall since the IATA's December projection. However, despite the benefit to the transportation, consumer staples, and consumer discretionary industries, many industries will see cheap oil as a headwind to their earnings.

The Negatives

Aside from the direct impact on energy companies' earnings, cheap oil will also have a major impact on capital spending. According to a November estimate from Deutsche Bank, energy producers accounted for a third of all capital spending in the S&P 500 last year. A drop in capital spending from energy companies will flow through to a number of industries, including but not limited to drillers, oil servicing companies, and industrial equipment and materials. Schlumberger, Halliburton, and U.S. Steel are just a few of the many companies in this market segment that have already announced layoffs because of the crash in oil prices.

Forecasts for first quarter profits in the S&P 500 have fallen 6.4% in the last three months according to over 6,000 analyst estimates compiled by Bloomberg, though they are still projecting growth. This number reflects the uncertainty involved in consumer spending; while energy companies are forced to cut back on their spending, there is no guarantee that money saved at the pump will circulate back into the corporate economy. A significant amount may instead be saved for retirement or used to pay down debt. Additionally, many analysts are concerned that the strengthening dollar will make U.S. exports less desirable, creating an additional headwind for domestic corporate earnings.

The significance of cheap oil will largely depend on how long prices stay at current levels before markets rebalance. Some of the factors contributing to cheaper oil may be offset by policy decisions around the world. Weakness in Europe and China has reduced demand for oil but has also led to accommodative monetary policy, which historically boosts commodity prices. The European Central Bank recently announced a new Quantitative Easing program that will involve €60 billion of bond purchases a month, and the People's Bank of China began cutting interest rates at the end of November for the first time in over two years. Regardless of whether and to what extent these decisions will reflate the price of oil, cheap oil should ultimately be neutral for the global economy; money lost by its producers should be gained by its consumers, whether they are individuals, corporations, or countries. However, oil producing countries are much more concentrated than oil consuming countries, with Saudi Arabia and Russia providing almost 30% of global exports. Unfortunately, this means that the losses suffered by major exporters of oil will be far more dramatic than the gains experienced by net importers. Falling oil prices are a double-edged sword, creating winners and losers which may result in heightened volatility in financial markets in the short term, but should not concern investors focused on a long-term approach.

If you have any questions relating to this newsletter article or your investment portfolio, please contact an Andersen Tax investment consultant.

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Retroactive Adjustment for Late Partial Dispositions Election Permitted for 2014

On August 14, 2014, IRS issued long-awaited final regulations for dispositions of tangible property applicable to tax years beginning on or after January 1, 2014. The final regulations generally retain all the provisions of the proposed disposition regulations issued in 2013 with certain clarifications.

One of the most favorable aspects of the new regulations is the partial disposition election. A late partial disposition election can be treated as a change in method of accounting, with a retroactive Sec. 481(a) adjustment, but only for tax years beginning before January 1, 2015. The late partial disposition accounting method change allows taxpayers to reach back to prior tax years—even closed tax years—and take immediate deductions on disposed property still being depreciated.

Background

Dispositions of depreciable property occur when an asset is sold, exchanged, retired, abandoned, or destroyed, effectively removing the asset from business use. If an asset has an adjusted basis of more than zero, the taxpayer is allowed to elect to treat the disposition as a loss for computing taxable income. This is a timely-filed election that generally must be made in the year of disposition by treating the disposition as a loss in the tax return. No separate election statement is required. Because the partial disposition election is an election and not a method of accounting, taxpayers were seemingly precluded from taking a loss on property physically disposed in prior years that the taxpayer continues to depreciate.

When a taxpayer determines that an expenditure is an improvement rather than a repair, the cost of the improvement must be capitalized. The partial disposition election allows the taxpayer to recover the tax basis in the property that is being replaced and disposed, even if it is only a portion of an asset. There is generally little difficulty in identifying the adjusted bases for certain assets, such as a computer or automobile. Often, however, the taxpayer will not have records to support the cost of a portion of an asset. Assets such as buildings, for example, comprised of many components and systems are commonly booked as a single asset, whether it be newly constructed or acquired. Years later, when a portion of that asset is repaired or otherwise disposed, the taxpayer not only depreciates the repair but also continues to depreciate the disposed asset.

Application

For example, a taxpayer that replaced the roof on its 20 year old manufacturing facility for a cost of $1,000,000 and capitalized the cost of the replacement roof as an improvement under Sec. 263(a), is likely depreciating the cost of the new roof, as well as the old roof, for tax purposes. The partial disposition election allows the taxpayer to deduct the remaining tax basis in the old roof. The final regulations also provide that reasonable methods can be used to estimate the cost of the tax basis in the disposed asset, given that most taxpayers have not calculated or tracked the tax basis of a portion of an asset in many cases. Thus, the taxpayer does not need to have detailed historical records to make a reasonable allocation. For example, the regulation provides that back-trending a current replacement cost to the date the disposed asset was placed in service using producer price indices is a reasonable method. Accumulated depreciation then can be recalculated specific to the disposed asset to arrive at the adjusted basis that can be deducted as the current year loss.

Taxpayers should analyze the benefit of making a late partial dispositions election at the same time that they are analyzing the impact of the tangible property regulations under Sec. 263(a). Both sets of rules provide many taxpayers with opportunities to significantly accelerate tax deductions. The late partial disposition election is made by filing Form 3115 for tax years beginning on or after January 1, 2012, and before January 1, 2015. For tax years beginning on or after January 1, 2015, taxpayers will only be allowed to make the partial disposition loss election for the tax year in which the disposition occurs (or in connection with certain IRS audit adjustments). This accounting method change presents a one-time opportunity to take a retroactive adjustment for disposed property in connection with the review of repair and maintenance activity required to implement the final regulations for repairs under Regs. 1.263(a)-3. A partial disposition election can also generate a negative AMT adjustment, providing some relief for taxpayers subject to AMT.

Andersen Tax can help taxable companies increase their cash flows by taking advantage of this quickly expiring opportunity. If you have capitalized improvements related to depreciable property, let us help you determine deductible costs eligible for the late partial disposition election or deductible as repairs.

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