

Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors

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Excess Business Losses: How Will This Affect You?

The Tax Cuts and Jobs Act (TCJA) modified the existing tax law on excess business losses, which previously specifically limited only “Excess farm losses.” The TCJA expanded the law to limit losses from all types of business for taxpayers other than corporations. In other words, tax payers may not be able to fully offset business losses against other types of income, as in the past. The provision, which went into effect January 1, 2018 and sunsets on December 31, 2025, limits the excess business losses of non-corporate taxpayers. To the extent that a taxpayer has net business losses originating from multiple trade or businesses, the limitation applies after aggregating all of them. This limitation is applied at the individual or trust level.

The maximum net loss a taxpayer filing Married Filing Joint may deduct is \$500,000 and is \$250,000 for a taxpayer claiming Single status. The disallowed excess business losses incurred by a taxpayer are treated as part of the taxpayer’s net operating loss carryover to the subsequent tax year available to offset all types of income. The NOL rules have been modified under The TJCA and are explained in a separate [Anchin alert](#). According to the new law, the excess business loss threshold amounts will be indexed for inflation on an annual basis.

The interplay of the new excess loss rules and other existing rules such as the passive activity rules will be sure to cause taxpayers heartburn. Prior to the enactment of the excess business loss limitation, passive activity losses generated by the taxpayer were limited to the extent of passive income. The passive activity loss limitation remains in effect, however the excess business loss limitation imposes an additional restriction after the passive activity rules are applied. For examples and illustrations on how these rules work and how they affect other limitations, please visit our tax content page: <http://www.anchin.com/news/how-does-tax-reform-impact-you>

Application to Hedge Fund Investments:

For 2018 tax returns, various hedge-fund partnership interests warrant special attention, particularly in years that a taxpayer sustains business losses. There are special rules pertaining to whether a hedge-fund is considered a “trader” or “investor”, which in the case of a trader fund could benefit a taxpayer, when calculating the excess business loss limitation. Trader funds are deemed to be engaged in a trade or business and a limited partner in such fund, maybe able to treat this income as trade or business income or loss when calculating their excess business loss. Income and loss items from a trader hedge-fund include all items derived from trading activities. Even though some of these items, such as interest and dividends are separately stated in terms of their reporting on Form 1040; for the purpose of the excess business loss limitation, it appears they would be properly included as trade or business income.

Impact

We are evaluating how this will impact you and your business. If you have questions, contact your Anchin Relationship Partner or Clarence Kehoe, Leader of Anchin’s Tax Department for more insight around these changes.



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