

Anchin Alert

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February 14, 2018

Tax Cuts and Jobs Act Substantially Limits Meals and Entertainment Deduction

The 2017 Tax Cuts and Jobs Act introduced some significant limitations to the meals and entertainment deduction. The new law makes two major changes to the meals and entertainment rules, which can impact your business.

The first change relates to the deductibility of entertainment expenses. Under prior law, expenses incurred for entertainment (and entertainment facilities) were deductible to the extent they were directly related to the active conduct of a trade or business at 50% of the total expense. The new law completely eliminates the deductibility of this type of entertainment expense. The Regulations define entertainment as any activity of a type that is generally considered to constitute entertainment, amusement or recreation such as entertaining at night clubs, cocktail lounges, theaters, country clubs, golf athletic clubs and sporting events, and on hunting, fishing, vacation and similar trips. The distinction between business entertainment and business meals is now crucial as the former is non-deductible and the latter is 50% deductible. Any expenses incurred in taking a customer or other business related affiliations for a business meal remains 50% deductible under the new law as long as it is directly related to an active trade or business. This provision is effective for expenses incurred starting January 1, 2018.

As an example, it is clear based on the new law that tickets to sporting events (i.e. baseball tickets, basketball tickets, etc.), tickets to Broadway shows, and rounds of golf are no longer deductible. However, what continues to be 50% deductible are taking out customers or other business related affiliations for meals (breakfast, lunch, dinner, drinks, etc.) as long as business is discussed during the meals. What still remains unclear is whether or not meals purchased at an entertainment venue (i.e. restaurant at Citi Field; lunch at golf clubhouse) are attributable to the entertainment, and as such nondeductible, or no different than meals at other restaurants and therefore are 50% deductible.

Additionally, the regulations provide for an objective test which reads in part: “this objective test precludes arguments such as that entertainment means only entertainment of others or that an expenditure for entertainment should be characterized as an expenditure for advertising or public relations”.

The second change targets employer provided meals that are excludable from an employee’s income because they are provided to the employee for the employer’s convenience and on the employer’s premises. An example of this is dinner provided to employees working overtime. Under the old law, this type of expense was 100% deductible. Starting in 2018 through the end of 2025, the deduction is limited to 50%. After 2025, the entire deduction is eliminated.

Under the new law, expenses incurred for meals consumed by employees on work travel continue to be 50% deductible. Likewise, food and beverages served at employee business meetings are 50% deductible.

The following meal and entertainment expenses continue to be 100% deductible:

- Expenses for recreational, social or similar activities incurred primarily for non-management employees such as a holiday party or other company wide events.

- Expenses for food and beverages made available to the general public (i.e. snacks at a car dealership)
- Meals and entertainment expenses of non-employees taxed as compensation (included on form 1099)
- Meals and entertainment expenses of employees taxed as compensation (included in employee's W-2)
- Meals and entertainment expenses incurred in connection with the performance of services for another person under a reimbursement arrangement with the other person (you must account to reimbursing party)

Based on the above, it is very important to keep proper records to distinguish between types of meals and entertainment expenses and whether they are nondeductible, 50% deductible or 100% deductible. A good way to keep track of the differences is to setup different accounts in the general ledger for different types of meals and entertainment expenses.

Anchin is monitoring this topic as more guidance is released and will be working proactively with clients and friends of the firm to analyze how these changes impact them. For more information, feel free to contact your Anchin Relationship Partner.



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