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Draft Tax Bill Would Have Serious Impacts for Real Estate Financing Tools

On November 2, 2017, the House Ways and Means Committee released draft text of H.R. 1, the Tax Cuts and Jobs Act, proposing significant changes to the Internal Revenue Code. Several proposed changes are of particular concern to the real estate, development and construction industries, including the termination of the historic tax credit and New Markets Tax Credit programs, the elimination of tax-exempt treatment for “private activity” bonds and the prohibition against using tax-exempt bonds to finance construction of professional sports stadiums.

The current draft of H.R. 1 proposed the following modifications to key incentives frequently utilized in real estate development:

Historic tax credits – The 10 percent and 20 percent federal historic tax credits would be repealed. A transition rule would continue to apply the credit to expenditures incurred through the end of a 24-month period of qualified expenditures, but only if that period begins within 180 days of enactment of the legislation.

New Markets Tax Credits – No additional New Markets Tax Credits would be allocated after December 31, 2017.

Tax credit bonds – No new tax credit bonds (bonds in which the holder receives a federal tax credit in lieu of interest payments) would be issued after December 31, 2017.

Tax-exempt bonds

Private activity bonds – Beginning January 1, 2018, qualified “private activity” bonds (e.g., bonds issued to finance facilities owned by 501(c)(3) entities, affordable housing, schools or redevelopment projects) would no longer be entitled to tax-exempt status, substantially increasing interest costs to borrowers in these projects.

Advance refunding bonds – Effective January 1, 2018, tax-exempt bonds could no longer be issued to “advance refund” prior exempt issuances. Advance refunding bonds have historically enabled nonprofit borrowers to achieve potential interest savings by refunding bonds that are outside of their optional redemption period.

Professional stadiums – Beginning November 2, 2017, tax-exempt bonds could not be issued to finance the construction of, or capital expenditures for, any facility that is used as a stadium or arena for professional sports exhibitions, games or training for at least five days in any calendar year.

What This Means to You

Passage of the Tax Cuts and Jobs Act would carry significant consequences for many actors in the real estate development industry – both public and private. If the proposed legislation is enacted in its current form, it would substantially increase borrowing costs on certain transactions and eliminate valuable incentives for numerous types of projects.

While further debate and discussion on the draft legislation are expected, impacted businesses are encouraged to share their concerns with elected officials and to begin developing contingency strategies for raising capital and financing future development in the event the legislation is passed as proposed.

Contact Us

For more information on how the proposed legislation may affect your organization, please contact Jonathan W. Giokas or another member of Husch Blackwell’s Real Estate, Development & Construction team.