Comparing the House and Senate Tax Reform Proposals in Tax Cuts and Jobs Act

On November 9, 2017, the House Ways and Means Committee voted on the final amendments to its tax reform bill, the Tax Cuts and Jobs Act (H.R. 1). On the same day, Senate Finance Committee Chairman Orrin Hatch (R-UT) released a summary of the Senate GOP's version of the Tax Cuts and Jobs Act. On November 15, 2017, the Senate Committee on Finance released a list of proposed changes to the original Senate Tax Reform Proposal. The tweaks by Senate Finance Committee Chairman Orrin Hatch, R-Utah, largely move to make the bill comply with Senate budget rules. One change of note is the insertion of a provision to eliminate the Affordable Care Act individual shared responsibility payment (personal insurance mandate) for post-December 31, 2018.

The House and Senate versions of the bill have several similar provisions, but there are some significant differences. Both versions would move the United States from a worldwide tax regime to a territorial system, reduce corporate income tax rates, eliminate the corporate and individual alternative minimum taxes, increase the standard deduction, and expand child tax credits. Differences include the rules relating to the mortgage interest deduction, IRC Section 179 deduction, and the Estate Tax. The following charts, while not exhaustive, provide an overview and comparison of current law, the House tax reform bill, and the Senate tax reform bill as it stands currently.

INDIVIDUAL TAXES

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
Ordinary Income Tax Brackets **(Married Filing Joint Tax Brackets Shown)**	7 Tax Brackets: 10%: \$0 - \$18,650 15%: \$18,651 - \$75,900 25%: \$75,901 - \$153,100 28%: \$153,101 - \$233,350 33%: \$233,351 - \$416,700 35%: \$416,701 - \$470,700 39.6%: \$470,701+	4 Tax Brackets: 12%: \$0 - \$90,000 25%: \$90,001 - \$260,000 35%: \$260,001 - \$1,000,000 39.6%: \$1,000,001+	7 Tax Brackets: 10%J: \$0 - \$19,050 12%: \$19,051 - \$77,400 22.5%: \$77,401 - \$120,000 25%: \$120,001 - \$290,000 32.5%: \$290,001 - \$390,000 35%: \$390,001 - \$1,000,000 38.5%: \$1,000,001+
Standard Deduction	\$6,350 – Single \$12,700 – Married	\$12,200 – Single \$24,400 – Married	\$12,000 – Single \$24,000 – Married
Itemized Deductions	Phase-out begins at: \$261,500 – Single \$313,800 – Married Mortgage interest deduction limitation is \$1,000,000 of acquisition indebtedness plus \$100,000 home equity indebtedness on principal residence and one secondary residence Allows an itemized deduction for state and local taxes	Repeals overall limitation of itemized deductions Reduces mortgage interest limitation to \$500,000 for post 11/2 acquisitions, eliminates secondary residence and home equity indebtedness deductibility Limits the state and local tax deduction to \$10,000 of property taxes No deduction allowed for tax preparation, personal casualty losses, alimony payments, moving expenses, gambling losses, medical expenses, contribution to medical savings accounts	Same as House proposal Retains the mortgage interest limitation as set forth in the current law, but eliminates the deduction for home equity indebtedness Repeals state and local tax deduction Retains many credits and deductions currently targeted for repeal

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
Child Tax Credit	$1,000 per child	Increases child tax credit to $1,600 and creates a new $300 per person family tax credit	Increases child tax credit to $2,000
Personal Exemptions	$4,050 per person	Repeals personal exemptions	Same as House proposal
Education Incentives	American Opportunity Tax Credit (AOTC) Hope Scholarship Credit (HSC) Lifetime Learning Credit (LLC)	Consolidates AOTC, HSC and LLC into a single, enhanced AOTC credit	Not mentioned
Estate, Gift and Generation Skipping Transfer Taxes	$5 million Basic Combined Exclusion from Estate & Gift Taxes, indexed for inflation to $5.6 million in 2018 $5 million exclusion from Generation Skipping Transfer (GST) Tax, indexed for inflation to $5.6 million in 2018	Basic Exclusion amount increased to $10 million, with indexing for inflation the total exclusion from Estate & Gift Tax will be $11.2 million (same for the GST Tax) Both the Estate Tax and the Generation Skipping Tax to be repealed in 6 years Gift Tax capped at 35% on transfers over $500,000 Basis of assets will still be stepped up to value as of date of death	Exclusion amount increased to $10 million, estate tax retained
Electing Small Business Trusts	An Electing Small Business Trust (an "ESBT") is a valid shareholder of an S corporation. A Non-Resident Alien may not be a shareholder of an S corporation and may not be a potential current beneficiary of an ESBT.	No change.	A Non-Resident Alien may be a potential current beneficiary of an ESBT. An ESBT will be subject to the same rules governing deductibility of charitable contributions that individuals must follow. Generally, contribution deductions are limited to certain percentages of adjusted gross income. Amounts in excess of the limitation may be carried forward for five-years.
Alternative Minimum Tax	If applicable, flat 28%	Repeals the individual alternative minimum tax	Same as House proposal
Business Income of Individuals	Business income passed through to partners or shareholders and taxed at ordinary income rates	100% of passive and 30% of active flow-through income taxed at 25% for certain activities	Creates a 17.4% deduction for business income. Deduction does not apply to personal service businesses. The 17.4% deduction would be limited to 50% of the taxpayer's allocable share of the company's W-2 wages.

BUSINESS TAXES

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
Corporate Tax Rates	Maximum tax rate of 35%	Maximum tax rate of 20%; 25% for personal service corporations	Maximum rate of 20% beginning in calendar year 2019. Would reduce the corporate dividends received deduction percentages.
Alternative Minimum Tax	Applicable to corporations	Repeals corporate alternative minimum tax	Same as House proposal
Increased Expensing	Taxpayers must capitalize the cost of property, recovering the cost over time through annual deductions for depreciation or amortization.	100% expensing of qualified property. Qualified property includes used property, but not property owned by real estate businesses or public utilities	100% expensing of qualified property. Qualified property does not include used property or public utility property. Real estate property may be qualified under the Senate proposal. Added 100% expensing for qualified production of TV, film, and live theatrical productions.
Section 179	$500k limit/$2 million phase-out	$5 million limit/$20 million phase-out	$1 million limit/$2.5 million phase-out
Depreciation	Non-residential property is depreciated over 39 years and residential rental property is depreciated over 27.5 years. Qualified lease hold improvement property (QLIP), qualified restaurant property (QRP) and qualified retail improvement property (QRIP) are depreciated over 15 years.	Not mentioned	Reduces recovery period for non-residential real and residential rental property to 25 years. Eliminates QLIP, QRP, and QRIP designations (as 15-year property); creates new 10-year recovery period for qualified improvement property
Interest Expense Deduction	Business interest paid or accrued deductible, subject to limitations	Deduction for interest expense limited to business interest plus 30% of the business' adjusted taxable income (pre-depreciation earnings). Small businesses and real estate companies not limited.	Deduction for interest expense limited to the sum of business interest income plus 30% of the business' adjusted taxable income. In the Senate version, earnings are post-depreciation.
NOL Deductions	NOLs may be carried back two years and carried over 20 years to offset taxable income.	Eliminates most NOL carrybacks and limits NOL deduction to 90% of current year taxable income	Similar to House proposal, but limited to 80%. Effective in years beginning after 2023
Like-Kind Exchanges	Allows deferral of gain for like-kind property exchanges	Deferral of gain limited to real property exchanges	Same as House proposal
Section 199	Allows deduction equal to 9% of qualified income	Repeals Section 199	Same as House proposal

BUSINESS TAXES *(cont'd)*

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
Corporate Tax Deductions/ Credits	Employer-provided child care credit Work Opportunity Tax Credit New Markets Tax Credit Rehabilitation Tax Credit	Repeals the following credits/ deductions: Employer-provided child care credit Work Opportunity Tax Credit New Markets Tax Credit Rehabilitation Tax Credit	Retains many credits and deductions currently targeted for repeal in the House proposal and makes several modifications to the Low Income Housing Tax Credit. Amortization of Research and Development expenses over 5 years – effective for amounts paid or incurred after 2025.
Carried Interest	Fund managers must hold the partnership interest for a year for the 20% carried interest tax treatment to apply.	Would impose a three-year holding period requirement for partnership interests received in connection with performing services to be eligible for long-term capital gains tax rates	Not mentioned
Partnership Technical Termination Rule	A partnership terminates if no part of business continues to be conducted, or if within a 12-month period there is a sale/exchange of 50% or more of total interest in partnership capital or profits.	Would repeal the technical termination rules	Not mentioned
Accounting Methods		Not mentioned	Changes to revenue recognition rules – allowing taxpayer to follow financial statement method. Codifies Rev. Proc. 2004-34 allowing limited deferral
Small Business Provisions (Cash method of accounting; inventory accounting; UNICAP; and Percentage of Completion Method)		Special provision for businesses with average annual gross receipts under $25 million, including: Expanded ability to use the cash method of accounting; exception from inventory accounting, UNICAP, and percentage of completion method	Similar to House version – applies to businesses with gross receipts under $15 million

COMPENSATION AND BENEFITS

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
Excessive Employee Remuneration	There are exceptions from the $1 million public company covered employee remuneration deduction limitation for performance-based compensation and for commission compensation.	Would generally eliminate the performance-based compensation and commissions exceptions	Same
Employer Credit For Paid Family And Medical Leave		Not mentioned	For 2018 and 2019 only, would allow eligible employers (as defined in the Bill) a general business credit of 12.5% of the wages paid for family and medical leave (with certain adjustments).
Repeal of Special Rule Permitting Recharacterization of IRA Contributions	It is possible to recharacterize ROTH IRA contributions as traditional IRA contributions and vice versa.	These recharacterizations would no longer be permitted.	Same
Extended Roll-Over Period For Rollover of Plan Loan Offset Amounts in Certain Cases	A tax-free rollover must be effected within 60 days.	Would permit a tax-qualified retirement plan benefit treated as distributed from the plan on account of an unpaid plan loan to be rolled over after 60 days if the rollover occurs on or prior to the due date (including extensions) for filing the income tax return for the plan participant's tax year of the distribution.	Same
Treatment Of Qualified Entity		Not mentioned	With respect to private company stock attributable to stock option exercises or the settlement of restricted stock units, would permit certain employees to elect within 30 days of the vesting of the option or restricted stock unit to defer the inclusion of the related compensation income for up to 5 years.

	CURRENT LAW	HOUSE PROPOSAL	SENATE PROPOSAL
International Tax System	Corporations taxed on worldwide income No rules addressing repatriation from foreign corporations	Shifts U.S. tax system to a territorial system Implements a 100% dividend exemption from foreign corporations paid to corporate shareholders owning 10% Creates a deemed repatriation of all foreign corporate earnings at 2 rates – 14% for cash and cash equivalents, 7% for illiquid assets Imposes 10% tax on high foreign earnings, 20% excise tax on the payments U.S. companies make to foreign affiliates Limited foreign tax credits would be available	Similar to House proposal Creates a 10% deemed repatriation rate for cash assets and 5% for noncash assets. Imposes a 10% tax on foreign earnings – some base erosion provisions are computed differently.

What Does CohnReznick Think?

As of the writing of this document, the Joint Committee on Taxation released its summary of the most recent version of the Senate proposal. There are many steps that need to happen between now and when any version of tax reform becomes law. Taxpayers should continue to monitor the progress in both the House and the Senate to ensure they understand how the proposed rules would impact their position.

CohnReznick will continue to monitor the tax reform process and release timely updates as more information becomes available.

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