

Side-by-Side Summary of House and Senate Versions of the “Tax Cuts and Jobs Act”

Corporate Tax Changes		
Provision	House (H.R. 1, as amended)	Senate (Chairman’s Mark of the “Tax Cuts and Jobs Act”)
Tax rates	Reduced to 20%, beginning in 2018.	Same as House, except delayed to 2019.
Alternative Minimum Tax (AMT)	Repealed.	Same as House.
Net Operating Losses (NOLs)	Limited to 90% of a corporation’s income; indefinite carryforward; value indexed to inflation; carrybacks repealed.	Generally the same as House, except no inflation adjustment.
Dividends Received Deduction	No provision similar to Senate proposal described at right.	Beginning in 2019, the deduction for dividends received by corporate shareholders is reduced from 70% to 50% (in the case of less-than-20%-owned subsidiaries), and from 80% to 65% (in the case of less-than-80% owned subsidiaries).
Increased Expensing/ “Bonus Depreciation”	100% expensing for qualified property placed in service between 9/28/17-12/31/22. Eliminates “original use” requirement, so that used items (if purchased) may qualify.	Generally the same as House.
Interest Deductions	<p>Any taxpayer can deduct <i>net</i> interest (<i>i.e.</i>, business interest expense <u>minus</u> business interest income) up to an amount equal to 30% of adjusted taxable income (for this purpose, taxable income without regard to (1) non-business income, gain, deduction, or loss; (2) business interest income or expense; (3) NOL deduction; and (4) depreciation, amortization or depletion deductions).</p> <p>Disallowed interest expense can be carried forward 5 years and allowed on a FIFO basis.</p> <p>Exceptions: The limitation does not apply to (1) certain small businesses (average annual gross receipts for the 3-year period ending with the prior taxable year does not exceed \$25M); (2) certain real estate businesses.</p> <p>Repeals so-called “earnings stripping” rules which are the U.S.’s version of thin capitalization rules.</p>	<p>Same as House, except generally more restrictive because adjusted taxable income base is reduced by (1) the 17.4% deduction for certain pass-through income; and (2) depreciation, amortization or depletion deductions.</p> <p>Disallowed interest expense can be carried forward indefinitely.</p> <p>Exceptions: The limitation does not apply to (1) certain small businesses (average annual gross receipts for the 3-year period ending with the prior taxable year does not exceed \$15M); (2) certain real estate businesses.</p> <p>Repeals so-called “earnings stripping” rules which are the U.S.’s version of thin capitalization rules.</p>

Pass-throughs (Partnerships, LLCs Taxable as Partnerships and S Corps)		
Provision	House (H.R. 1, as amended)	Senate (Chairman’s Mark of the “Tax Cuts and Jobs Act”)
Pass-through Taxation, Generally	<p>New 25% rate applies to certain income of Pass-throughs. Complicated formulas determine which income the rate applies to (30% default rule for most businesses).</p> <p>Rate would not apply to pass-throughs in certain service businesses (e.g., law firms, accounting firms, medical practices, etc.).</p> <p>Passive investors in pass-throughs eligible for 25% rate on 100% of their income from pass-throughs.</p>	<p>Owners of pass-throughs may deduct 17.4% of their business income from taxable income.</p> <p>Like the House Bill, benefit would not apply to owners of pass-throughs in certain service businesses.</p> <p>No special treatment for passive owners; they get the same 17.4% deduction.</p>
Carried Interest	<p>3-year holding period requirement (up from current law’s 1 year) for gains attributable to partnership interests received in connection with performing services to be eligible for long-term capital gain (LTCG) tax rates (as low as 23.8%); otherwise taxed as short-term capital gains at a top marginal rate of 39.6%.</p>	<p>No changes to current law, yet. Sen. Grassley said the issue would be dealt with in the markup.</p>
Look-through Rule for Gain on Sale of Partnership Interest	<p>No provision similar to Senate proposal described at right.</p>	<p>Gain or loss from the sale or exchange of a partnership interest (or interest in a LLC taxed as a partnership) is effectively connected with a U.S. trade or business (ECI) to the extent that the transferor would have had ECI had the partnership (or LLC) sold all of its assets at fair market value as of the date of the sale or exchange. This would effectively nullify the decision in <i>Grecian Magnesite Mining</i>, where the Tax Court held that a non-U.S. investor in a partnership engaged in a U.S. business was not subject to U.S. tax when the partnership redeemed the investor’s interest. See related coverage.</p>

Executive/Employee Compensation and Benefits		
Provision	House (H.R. 1, as amended)	Senate (Chairman's Mark of the "Tax Cuts and Jobs Act")
Nonqualified Deferred Compensation (Section 409A)	No change (earlier versions included provisions currently included in Senate proposal described at right).	<p>Section 409A is repealed beginning January 1, 2018, and replaced with a new Section 409B.</p> <p>Would eliminate ability to defer taxable income for compensatory arrangements beyond the lapse of time-based vesting restrictions.</p> <p>Deferred compensation for this purpose includes stock options, RSUs, severance and other contractual compensation arrangements (but not restricted stock or profits interests in LLCs).</p> <p>Does not make any changes to the tax code sections governing incentive stock options (ISOs) and employee stock purchase plans (ESPPs) and so ISOs and ESPPs may continue to offer preferential tax treatment.</p>
Income Tax Deferral Election for Private Company Equity Awards	<p>Creates a new election under Section 83 to permit "rank-and-file" employees of an eligible private corporation to delay income tax event on an option exercise or RSU settlement for <i>up to 5 years</i>, subject to certain earlier triggering events.</p> <p>Election not available to current/former senior executives and major stockholder-employees. Equity award must have been granted by a privately held corporation that grants equity awards to at least 80% of its U.S. employees with the same rights and privileges.</p>	<p>No provision currently included in Senate proposal.</p> <p><i>Note, a similar proposal to the House proposal was introduced by Senator Mark Warner to the Senate Finance Committee on June 27, 2017 as the Empowering Employees through Stock Ownership Act of 2017 (S. 1444).</i></p>
Compensation Over \$1 Million per Year Paid to Covered Employees (Section 162(m))	<p>Repeals existing exemptions for qualifying performance-based compensation and commissions from \$1 million deductibility limit on compensation paid to "covered employees," beginning January 1, 2018.</p> <p>Expands definition of "covered employee" to include company's CFO and former covered employees.</p>	Same as House.

	For tax-exempt organizations only, imposes new 20% excise tax on compensation over \$1 million per year paid to covered employees.	
Worker Classification Safe Harbor	No provision similar to Senate proposal described at right.	<p>Provides objective safe harbor test to classify a service provider as an independent contractor (in lieu of existing facts-and-circumstances tests).</p> <p>For “gig economy” arrangements involving an internet or mobile application “marketplace platform,” the third party platform provider would not be treated as the employer.</p> <p>Amounts paid to contractor in reliance on safe harbor must be reported. In addition, for gig economy arrangements, the third party payor must withhold and remit 5% of the first \$20,000 paid to the contractor (e.g., up to \$1,000).</p> <p><i>Note, this is based on the proposal originally introduced by Senator John Thune to the Senate Finance Committee on July 17, 2017 as the New Economy Works to Guarantee Independence and Growth (NEW GIG) Act of 2017 (S. 1549).</i></p>
Retirement Accounts	<p>No changes to current law regarding ability to make pre-tax contributions to qualified retirement accounts.</p> <p>Includes proposals to promote flexibility regarding hardship distributions, loans and cross-plan nondiscrimination testing.</p>	<p>No changes to current law regarding ability to make pre-tax contributions to qualified retirement accounts.</p> <p>Eliminates catch-up contributions for high-wage employees.</p>

International Tax Reform		
Provision	House (H.R. 1, as amended)	Senate (Chairman’s Mark of the “Tax Cuts and Jobs Act”)
Participation Exemption System – 100% Dividends Received Deduction (DRD)	<p>100% of the foreign-source portion of dividends received by a U.S. corporate shareholder that owns 10% or more of a foreign corporation would be exempt from U.S. tax. No foreign tax credit (FTC) or deduction for foreign taxes (including withholding taxes) is allowed respect to any exempt dividend.</p> <p>The participation exemption concept is common in many other developed countries’ tax systems.</p>	<p>Generally same as House, except the Senate proposal (1) is subject to a 12-month (rather than 6-month) holding period requirement; and (2) has an exception for “hybrid dividends,” generally dividends otherwise eligible for the DRD where the foreign subsidiary received a deduction (or other tax benefit) from taxes imposed by a foreign country.</p> <p>An example of such a hybrid instrument would be a profit participating loan issued by a Luxembourg financing company that is treated as debt for Luxembourg tax purposes but equity for U.S. federal income tax purposes.</p>
Participation Exemption System – Investments in U.S. Property	Repeals tax on undistributed earnings of certain foreign subsidiaries, where those earnings are reinvested in “United States property,” which includes debt or equity interests in U.S. affiliates.	No similar provision.
Participation Exemption System – One-time Tax on Deemed-repatriated Foreign Income	A transition rule imposes a one-time tax on existing foreign earnings of foreign subsidiaries. A 14% tax rate applies to accumulated foreign earnings held in cash and cash equivalents, and a 7% rate applies to accumulated foreign earnings held in other assets. The tax is payable over eight years in equal installments.	A similar transitional tax would apply at the rate of 10% for cash assets and 5% for non-cash assets. U.S. shareholders can pay the tax over 8 years in graduated installments (8% of tax is owed in years 1-5; 15% in year 6; 20% in year 7; and 25% in year 8).
Minimum Tax on Passive/Mobile Undistributed Income of CFCs	Similar to current law’s “subpart F” regime, under a new provision, U.S. shareholders of a controlled foreign corporation (CFC) will be taxed currently on 50% of the CFC’s undistributed foreign high return amount (FHRA). Very generally, the FHRA is the aggregate net income of the CFC that exceeds a return of 7% plus short-term AFR on the CFC’s aggregate basis in depreciable tangible property, adjusted downward for interest expense. Certain income (e.g., ECI, subpart F income, active financing income) is excluded from the FHRA. The proposal is intended to curb the practice of migrating IP (and related income) offshore through transfer pricing arrangements.	Similar to current law’s “subpart F” regime, under a new provision, U.S. shareholders of a CFC will be taxed currently on its share of global intangible low-taxed income (GILTI). Very generally, GILTI is the aggregate net income of the CFC that exceeds a return of 10% on the CFC’s aggregate basis in depreciable tangible property (without any adjustment for interest expense). Certain income (e.g., ECI, subpart F income, but not active financing income) is excluded from GILTI.

International Tax Reform		
Provision	House (H.R. 1, as amended)	Senate (Chairman's Mark of the "Tax Cuts and Jobs Act")
Base Erosion – Interest Deduction Denied for Certain Groups	Limits the deductible amount of interest expense paid by a U.S. corporation that is a member of an "international financial reporting group" based on a formula that compares the payor's share of the group's net interest expense with its share of the group's EBITDA. An international financial reporting group is a group that, among other things, reports over \$100 million in average annual gross receipts (based on a 3-year look-back period). Disallowed interest can be carried forward for up to 5 years.	Imposes a similar limitation on deductibility of interest by U.S. corporations, but under a different formula, the Senate's proposal is broader in its application as it applies to members of a "worldwide affiliate group," the definition of which does not have a gross receipts requirement. Disallowed interest can be carried forward indefinitely.
Changes to Subpart F – Who is a U.S. Shareholder	No provision similar to Senate proposal described at right.	Expands the definition of U.S. shareholder to include any U.S. person who owns 10% or more of the total value (instead of only voting power) of shares of all classes of stock of a foreign corporation. This change may make it more difficult for U.S. taxpayers and investment funds to plan around CFC status for foreign portfolio companies.

Individuals		
Provision	House (H.R. 1, as amended)	Senate (Chairman's Mark of the "Tax Cuts and Jobs Act")
Tax Rates	4 income brackets with graduated rates. Generally intended to lower rates with a top rate of 35% (which is undone for individuals with income above \$500K for singles and \$1M for marrieds).	Retains current law's 7-bracket, graduated rate structure. Top marginal rate reduced from 39.6% to 38.5%. The Senate approach generally would result in a lower tax bill for high earners than the House bill.
Deduction for State & Local Taxes (SALT)	Itemized deduction for SALT would be generally repealed, except for real property taxes up to \$10k. Treatment of SALT paid or accrued in carrying on a trade or business or certain profit-oriented activities somewhat unclear.	Same as House, expect also repeals deduction for real property taxes.

Individuals		
Provision	House (H.R. 1, as amended)	Senate (Chairman's Mark of the "Tax Cuts and Jobs Act")
Repeal AMT; Refundable AMT Credit	<p>Repeals the AMT, which imposes an alternative tax system under which individuals pay the greater of their regular tax and their AMT (the main impact is taxpayers who have high SALT and mortgage interest deductions pay more tax under the AMT).</p> <p>AMT credit carryforwards will be partially (50% in 2019-2021) or fully (2022) refundable to the extent they exceed regular tax for the year.</p> <p>Note that the gap between regular tax liability and AMT liability would have been narrowed in many circumstances due to the repeal of itemized deductions for SALT.</p>	<p>Same as House.</p> <p>AMT credit carryforwards will be partially (50% in 2018-2020) or fully (2021) refundable to the extent they exceed regular tax for the year.</p>
Mortgage Interest Deduction	<p>Limits deduction for debt incurred after 11/2/17 to interest paid/accrued on \$500k principal amount of acquisition indebtedness (down from current law's \$1M). Interest would be deductible only on a principal residence. Interest on home equity indebtedness incurred after 11/2/17 would not be deductible. In the case of refinancings of debt incurred prior to 11/2/17, the refinanced debt generally would be treated as incurred on the same date that the original debt was incurred for purposes of determining the limitation amount applicable to the refinanced debt.</p>	<p>Taxpayers may deduct interest on up to \$1M principal of acquisition indebtedness (<i>i.e.</i>, same as current law).</p> <p>Repeals deduction for interest on home equity indebtedness.</p>
Miscellaneous Itemized Deductions (<i>i.e.</i> , "Section 212 Deductions" Subject to Floor Equal to 2% of Adjusted Gross Income)	Not currently addressed.	Repeals miscellaneous itemized deductions. This would preclude investors of private investment funds from deducting management fees paid to an investment manager (even if in excess of the 2% floor).
Estate Tax	<p>Doubles the basic exclusion amount (<i>i.e.</i>, the amount that isn't subject to estate tax) from \$5M to \$10M (indexed for inflation occurring after 2011).</p> <p>The estate tax is repealed for estates of decedents dying after 12/31/23.</p>	Same as House, except does not provide for repeal.

Individuals		
Provision	House (H.R. 1, as amended)	Senate (Chairman's Mark of the "Tax Cuts and Jobs Act")
	As under current law, when property is transferred at death, the beneficiary takes a stepped-up basis in the property (<i>i.e.</i> , equal to FMV at the time the decedent dies).	
Like-kind Exchanges of Real Property	Limits the scope of a special rule under current law, which exempts from tax the exchange of certain business or investment property for similar property, to exchanges of non-inventory real property.	Same as House.