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2017 TAX LEGISLATION HIGHLIGHTS FOR INDIVIDUALS

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2017 Tax Reform Highlights for Businesses

Major tax reform legislation may be passed this year and could mean sweeping changes to the tax code for the first time in about 30 years. Although the conference committee agreement has recently been released and voting is expected soon, the timing of the passage is still uncertain, but businesses should be aware of the proposed provisions affecting businesses in the event of its passage.

The corporate rate cuts would be significant. The conference committee proposes a 21% flat corporate tax rate.

Businesses conducted as sole proprietorships, partnerships, or S corporations would be subject to a special deduction (similar to the Senate proposal) under the conference committee's agreement.

The agreement would significantly reform international rules. This has made planning difficult, particularly for businesses that must consider the impact of international tax rules.

Below are highlights of the conference committee agreement followed by the initial corresponding House and Senate tax bill proposals. [Editor's Note: Consult the Tax Reform Roadmap (Bloomberg Tax) for a discussion of the provisions below]:

Business Deductions and Credits

• ***Section 179 Expensing:***
o Conference Committee Agreement: The expensing limitation would increase to $1 million and the phase out amount to $2.5 million. The new limitations would be adjusted for inflation. The bill would further expand the definition of §179 property and the definition of qualified real property for improvements made to nonresidential real property.
- House: For years 2018 through 2022, the expensing limitation would increase to $5 million and the phase out amount to $20 million. The new limitations would be adjusted for inflation.
- Senate: The expensing limitation would increase to $1 million and the phase out amount to $2.5 million. The new limitations would be adjusted for inflation. The bill would further expand the definition of §179 property and the definition of qualified real property for improvements made to nonresidential real property.

• ***Research and Development Credit:***
o Conference Committee Agreement: Preserved.
- House: Preserved.
- Senate: Preserved.

• ***Deductions for Income Attributable to Domestic Production Activities:***
o Conference Committee Agreement: Beginning in 2018, would be repealed.
- House: Beginning in 2018, would be repealed.
- Senate: Beginning in 2018, would repeal the deduction for domestic production activities for taxpayers other than C corporations, including for agricultural or horticultural cooperatives and their patrons. Beginning in 2019, would repeal the deduction for domestic production activities for all taxpayers.

• ***Entertainments Expenses Deductions****:*
o Conference Committee Agreement: Beginning in 2018, no deduction allowed generally for entertainment, amusement, or recreation; membership dues for a club organized for business, pleasure, recreation, or other social purposes; or a facility used in connection with any of the above.
- House: Beginning in 2018, would disallow deductions for entertainment, amusement or recreation activities, facilities, or membership dues relating to such activities or other social purposes.
- Senate: Beginning in 2018, no deduction allowed generally for entertainment, amusement, or recreation; membership dues for a club organized for business, pleasure, recreation, or other social purposes; or a facility used in connection with any of the above.

• ***NOL Deduction:***
o Conference Committee Agreement: Beginning in 2018, would limit the NOL deduction to 80% of the taxpayer's taxable income and provide that amounts carried to other years be adjusted to account for the limitation. Amounts may be carried forward indefinitely.
- House: Beginning in 2018, would allow a taxpayer to deduct an NOL carryover or carryback of up to 90% of the taxpayer's taxable income. The provision generally would be effective for losses arising in tax years beginning in 2018.
- Senate: Beginning in 2018, would limit the NOL deduction to 90% of the taxpayer's taxable income and provide that amounts carried to other years be adjusted to account for the limitation. Amounts may be carried forward indefinitely. Beginning in 2023, the 90% limitation would be replaced with an 80% limitation.

Corporations
• ***Corporate Tax Rate:***
o Conference Committee Agreement: Beginning in 2018, 21% flat corporate tax rate; no special tax rate for personal service corporations.
- House: Beginning in 2018, 20% flat corporate tax rate; 25% flat rate for personal service corporations.
- Senate: Beginning in 2019, 20% flat corporate tax rate; eliminate the special tax for personal service corporations.

• ***Alternative Minimum Tax:***
o Conference Committee Agreement: Beginning in 2018, would repeal the alternative minimum tax. In 2018, 2019 and 2020, if taxpayer would have AMT credit carryforward, taxpayer would be able to claim a refund of 50% of remaining credits (to extent credits exceed regular tax for year). For 2021, taxpayer would be able to claim a refund of all remaining credits.
- House: Beginning in 2018, would repeal alternative minimum tax. In 2019, 2020, and 2021, if taxpayer would have AMT credit carryforward, taxpayer would be able to claim a refund of 50% of remaining credits (to extent credits exceed regular tax for year). For 2022, taxpayer would be able to claim a refund of all remaining credits.
- Senate: Preserved.

Pass-Through Entities

• ***Pass-Through Tax Rate:***

o Conference Committee Agreement: Beginning in 2018, generally a 20% deduction for qualified business income would be provided in lieu of tax rate changes. Special rules apply when computing the deduction. The deduction would expire after December 31, 2025.

- House: Beginning in 2018, 25% maximum tax rate on portion of pass-through entity distributions treated as business income (remaining portion of distributions treated as wage income subject to individual income tax rates). Owners or shareholders receiving distributions from active business activities would be able to elect to: (1) treat 30% as business income and 70% as wage income, or (2) determine ratio of business income to wage income based on capital investment. Owners or shareholders receiving distributions from passive business activities would be able to treat 100% as business income. Transition rules would apply.

- Senate: Beginning in 2018, generally a 23% deduction for qualified business income would be provided in lieu of tax rate changes. Special rules apply when computing the deduction. The deduction would expire after December 31, 2025.

International

• ***Base Erosion Controlled foreign corporations:***

o Conference Committee Agreement: U.S. shareholders of CFCs subject to current U.S. taxation on “global intangible low-taxed income” (GILTI) with a 37.5% deduction for foreign-derived intangible income. Revised definition of intangible property for purposes of §367(d) and §482. Clarification of Commissioner's authority to specify method used to determine value of intangible property. Denial of deduction for certain related-party amounts paid or accrued in hybrid transactions or with hybrid entities. Dividends received by an individual shareholder of a surrogate foreign corporation not eligible for reduced rate on dividends in §1(h).

- House: U.S. shareholders of CFCs subject to current U.S. taxation on 50% of “foreign high return amounts.” Deductible net interest expense of a U.S. corporation that is a member of an “international financial reporting group” limited based on U.S. corporation's share of group's Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). Excise tax of 20% imposed on certain payments made by a U.S. corporation to a related foreign corporation, unless U.S. corporation elects to treat the payments as effectively connected income. Payments (other than interest) that are deductible, includible in costs of goods sold, or includible in the basis of a depreciable or amortizable asset subject to the 20% excise tax.

- Senate: U.S. shareholders of CFCs subject to current U.S. taxation on “global intangible low-taxed income” (GILTI) with a 37.5% deduction for foreign-derived intangible income. Basis adjustment rules for transfers of intangible property from CFCs to U.S. shareholders. Deductible net interest expense of a U.S. corporation that is a member of a “worldwide affiliated group” reduced based on the U.S. corporation's net interest expense and the group's “debt-to-equity differential percentage.” Revised definition of intangible property for purposes of §367(d) and §482. Clarification of Commissioner's authority to specify method used to determine value of intangible property. Denial of deduction for certain related-party amounts paid or accrued in hybrid transactions or with hybrid entities. Dividends received by an individual shareholder of a surrogate foreign corporation not eligible for reduced rate on dividends in §1(h). Tax imposed on certain banks and securities dealers that make deductible payments to related foreign persons, the purchase of depreciable property from foreign related parties, and certain payments to expatriated entities; exceptions are provided when taxes are withheld on the payments.

Please review this information and your situation and we can discuss when you are ready. Please note that these are highlights only, the summary is 112 pages long, and the actual law is in the thousands of pages.