House and Senate Conference Committee Agree on Tax Bill

By Kenneth S. Wear, Christine M. Green / Dec 18, 2017

On December 15, 2017, the House and Senate conferees released a final version of the Tax Cuts & Jobs Act.[1] Votes for passage of the bill are intended to take place in the House on Tuesday, December 19, 2017 and in the Senate on Wednesday, December 20, 2017. If the bill becomes law, it will mark the most significant change to the tax code in thirty years. The bill generally would apply to taxable years beginning after December 31, 2017.

As anticipated, the bill features a significant rate reduction for corporations, as well as for most pass-through businesses, and major changes to business deductions. Rate changes on the individual side are more modest, but a doubling of the standard deduction for individuals and a reshuffling of many existing credits, deductions and exclusions will leave many taxpayers significantly affected. Overall, the scope of the proposed changes in the bill is very broad. Here is an overview of key provisions:

Individuals

- To comply with Senate rules, most individual provisions will sunset at the end of 2025, returning individuals to the current tax rules thereafter.
- Keeps the current seven tax bracket structure, but generally raises the income threshold for each bracket and lowers the top rate from 39.6% to 37% for joint filers earning at least $600,000 and single filers earning at least $500,000
- Capital gains and dividend rates are unchanged
- Nearly doubles the standard deduction to $12,000 for single filers and $24,000 for married filers, while eliminating personal exemptions
- Expands the child tax credit and establishes a new credit for non-child dependents
  - Child tax credit – current $1,000 credit increased to $2,000 with a significantly higher income phaseout
  - Additional dependent credit – new $500 credit for each non-child dependent
- Doubles the current exemption amount for the federal estate tax
- Limits the mortgage interest deduction to interest on the first $750,000 of debt for mortgages incurred after December 15, 2017; existing mortgages (including refinances of current mortgage debt) will be grandfathered under current rules
- Limits itemized deduction of state and local taxes, including property and either income or sales taxes, to $10,000
- Allows up to $10,000 per year in distributions from 529 plans to pay for primary or secondary school tuition
- Permanently repeals the Affordable Care Act's individual mandate penalty
- Repeals the following –
  - Miscellaneous itemized deductions
  - Moving expenses (other than for members of the armed forces)
  - Personal casualty loss deduction (other than for losses incurred in a federally declared disaster)
  - Alimony expense deduction and alimony income inclusion (applicable for divorce or separation instruments after 2018)
- Retains the following –
  - Individual alternative minimum tax ("AMT"), but significantly narrows application by raising the exemption and exemption phaseout amounts
  - Deduction of medical expenses in excess of 7.5% (lowered from 10%) of income
  - Charitable contribution deduction, including raising limitation from 50% to 60% of taxpayer's contribution base
  - Earned income tax credit
  - Treatment of popular retirement savings vehicles such as 401(k)s and IRAs

Businesses

- Lowers the corporate income tax rate from a top 35% rate to a single, flat rate of 21% effective for tax years beginning after December 31, 2017
- For tax years beginning after December 31, 2017 and before January 1, 2026, lowers the effective tax rate for income of businesses conducted as sole-proprietorships, partnerships and S-corporations by allowing the deduction of 20% of such income
  - This deduction is not available to most service trades or businesses (including, health, legal, consulting, financial and brokerage services); and
  - The deduction is limited to 50% of wages paid by the business plus 2.5% of the basis of depreciable tangible property used in the business.
  - Neither the limitation on services trades nor the wage and capital limitation applies to taxpayers with taxable income below $157,500 ($315,000 for married taxpayers filing jointly).
- Establishes immediate expensing with respect to investment in depreciable assets (both new and used property) for five years but then phases out the provision over the subsequent five-year period by 20 percentage points per year
- Establishes an indefinite carryforward (and no carryback) for net operating losses ("NOL") but also caps the NOL deduction at an amount equal to 80% of taxable income (as computed without the NOL deduction)
- Limits the business interest expense deduction to the sum of the amount of business interest income plus 30% of the company's earnings before interest, tax, depreciation, and amortization for tax years beginning before January 1, 2022; after that, the bill would limit the deduction to the amount of business interest income plus 30% of earnings before interest and taxes
- Limits § 1031 like-kind property exchanges to real property
- Establishes 100% deduction for the "foreign-source portion" of dividends received by domestic corporations from specified 10%-owned foreign corporations

- Imposes a one-time 15.5% tax on offshore earnings held as cash or cash equivalents and a 8% tax on noncash assets, payable over eight years, whether or not the earnings are repatriated
- Repeals the following –
  - Corporate AMT
  - § 199 Domestic Production Activities Deduction
  - Entertainment expense and certain fringe benefits deductions
  - Deduction for any settlement, payout, or attorney's fees subject to a nondisclosure agreement related to sexual harassment or sexual abuse
  - Deduction for lobbying expenses with respect to legislation before local government bodies
  - Technical terminations of partnerships
- Retains the following –
  - Low-income housing credit
  - Research & development credit
  - New markets tax credit
  - Exemption for private activity bonds
  - Exclusion from income of § 118 contributions to capital (with modified definition of "contributions to capital" not to include contributions by governmental agencies)

Tax-Exempt Entities

- Establishes a tax equal to the corporate tax rate (21%) on compensation paid in excess of $1 million to an executive or highly-paid officer of a tax-exempt organization
- Imposes 1.4% excise tax on net investment income of private colleges and universities with at least 500 tuition-paying students, more than 50% of such students are located in the U.S., and with assets of at least $500,000 per student
- Establishes that UBTI must be computed separately for each trade or business activity; losses from one unrelated trade or business may not be used to offset income derived from another unrelated trade or business

For questions or more information, please contact Christine M. Green, Kenneth S. Wear or another member of Clark Hill's Corporate Practice Group.

The text is available at HERE.