

**COMPARISON OF THE HOUSE- AND SENATE-PASSED  
VERSIONS OF THE TAX CUTS AND JOBS ACT**

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, compares the provisions of the House- and Senate-passed versions of the Tax Cuts and Jobs Act (“TCJA”).<sup>2</sup>

Largely following the organization of the House bill, the document is divided into four sections, individual tax reform, business tax reform, taxation of foreign income and foreign persons, and exempt organizations.<sup>3</sup> Within each section of the document, provisions of the legislation are divided into three categories: (1) provisions for which there are no differences between the House bill and the Senate amendment; (2) provisions for which there are differences between the House bill and the Senate amendment; and (3) provisions that are in only the House bill or the Senate amendment. Except for provisions that are only in the Senate amendment, within each category provisions are generally listed in the order in which they appear in the House bill.

A provision may be included in the first category (no differences between the House bill and Senate amendment) if the House bill provision and the Senate amendment provision are substantively the same as one another but include differences in, for example, their legislative language or effective (or termination) dates.

For provisions in the second category (House-Senate differences), this document does not describe all differences. Instead, the document summarizes certain differences between the House and Senate bills that in the judgment of the Joint Committee staff are substantial in nature.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Comparison of the House- and Senate-Passed Versions of the Tax Cuts and Jobs Act*, (JCX-64-17), December 7, 2017. The document can be accessed at [www.jct.gov](http://www.jct.gov).

<sup>2</sup> H.R. 1, 115<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2017); S. Amdt. 1855, 115<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2017). The House-passed version of TCJA is generally referred to as the “House bill,” and the Senate-passed version is generally referred to as the “Senate amendment.”

<sup>3</sup> Individual alternative minimum tax (“AMT”) provisions are included in the individual tax reform section, and corporate AMT provisions are included in the business tax reform section even though the AMT provisions of the House bill are in a separate title.

## INDIVIDUAL TAX REFORM

### A. Provisions without Differences

- Repeal of deduction for personal exemptions<sup>4</sup> (sec. 1003 of the House bill, sec. 11041 of the Senate amendment, and sec. 151 of the Code)
- Alternative inflation measure<sup>5</sup> (sec. 1001 of the House bill, sec. 11002 of the Senate amendment, and sec. 1(f) of the Code)
- Rollovers between qualified tuition programs and qualified ABLE programs<sup>4</sup> (sec. 1205 of the House bill, sec. 11025 of the Senate amendment, and secs. 529 and 529A of the Code)
- Repeal of overall limitation on itemized deductions<sup>4</sup> (sec. 1301 of the House bill, sec. 11046 of the Senate amendment, and sec. 68 of the Code)
- Repeal of deduction for taxes not paid or accrued in a trade or business, with an exception for up to \$10,000 in real property taxes paid by an individual<sup>4</sup> (sec. 1303 of the House bill, sec. 11042 of the Senate amendment, and sec. 164 of the Code)
- Limitation on wagering losses<sup>4</sup> (sec. 1305 of the House bill, sec. 11051 of the Senate amendment, and sec. 165(d) of the Code)
- Charitable contributions (sec. 1306 of the House bill, secs. 11023, 13703, and 13704 of the Senate amendment, and sec. 170 of the Code)
- Increase in the charitable contribution percentage limit<sup>4</sup> (from 50 percent to 60 percent) for charitable contributions of cash to public charities
- Denial of charitable deduction for payments in exchange for which the payer obtains the right to purchase college athletic event seating
- Repeal of charitable contribution substantiation exception for contributions reported by the donee charitable organization
- Repeal of deduction for moving expenses other than Members of the Armed Forces<sup>4</sup> (sec. 1310 of the House bill, sec. 11050 of the Senate amendment, and sec. 217 of the Code)
- Repeal of income and FICA tax exclusions for employer-provided qualified moving expenses<sup>4</sup> (sec. 1405 of the House bill, sec. 11049 of the Senate amendment, and sec. 132(g) of the Code)
- Repeal of rule permitting a contribution to traditional or Roth IRA to be recharacterized as a contribution to the other type of IRA (sec. 1501 of the House bill, sec. 13611 of the Senate amendment, and sec. 408A(d) of the Code)

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<sup>4</sup> In Senate amendment, the provision expires, and reverts to present law, for taxable years beginning after December 31, 2025.

<sup>5</sup> Chained Consumer Price Index for All Urban Consumers (“C-CPI-U”).

- Modification of rules relating to withdrawals from cash or deferred arrangements to provide consistency in the types of retirement plan funds that can be distributed to an employee experiencing financial hardship (sec. 1504 of the House bill, sec. 13612 of the Senate amendment, and sec. 401(k) of the Code)
- Extended rollover period for an employee whose retirement plan account is reduced by a loan balance at termination of employment (a “plan loan offset”) to contribute a corresponding amount to another retirement plan or IRA (sec. 1505 of the House bill, sec. 13613 of the Senate amendment, and sec. 402(c) of the Code)<sup>6</sup>

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<sup>6</sup> Some technical differences exist between the House and Senate language.

**B. Provisions with Differences**

**1. Income tax rates and brackets (sec. 1001 of the House bill, sec. 11001 of the Senate amendment, and sec. 1 of the Code)**

House bill.—The table below presents the tax rates and brackets for taxable years beginning after December 31, 2017 in the House bill:

<b>Bracket Beginning Point</b>				
Rate (percent)	Married Filing Jointly (dollars)	Head of Household (dollars)	Single (dollars)	Married Filing Separately (dollars)
12	0	0	0	0
25	90,000	67,500	45,000	45,000
35	260,000	200,000	200,000	130,000
39.6	1,000,000	500,000	500,000	500,000

Senate amendment.—The table below presents the tax rates and brackets for taxable years beginning after December 31, 2017 in the Senate amendment<sup>4</sup>:

<b>Bracket Beginning Point</b>				
Rate (percent)	Married Filing Jointly (dollars)	Head of Household (dollars)	Single (dollars)	Married Filing Separately (dollars)
10	0	0	0	0
12	19,050	13,600	9,525	9,525
22	77,400	51,800	38,700	38,700
24	140,000	70,000	70,000	70,000
32	320,000	160,000	160,000	160,000
35	400,000	200,000	200,000	200,000
38.5	1,000,000	500,000	500,000	500,000

Both the House bill and Senate amendment have rates applicable to trusts and estates that are similar in structure to those under present law and applies these rates to the unearned income of certain children. Both the House bill and Senate amendment index brackets using the C-CPI-U for taxable years beginning after December 31, 2019.

## **2. Increase in standard deduction (sec. 1002 of the House bill, sec. 11021 of the Senate amendment, and sec. 63 of the Code)**

### House Bill

- Increases the standard deduction to \$24,400 for married individuals filing a joint return, \$18,300 for head-of-household filers, and \$12,200 for all other taxpayers.
- Indexes the standard deduction for inflation using the C-CPI-U for taxable years beginning after December 31, 2019.
- Eliminates the additional standard deduction for the elderly and the blind.

### Senate Amendment

- Increases the standard deduction to \$24,000 for married individuals filing a joint return, \$18,000 for head-of-household filers, and \$12,000 for all other individuals.<sup>4</sup>
- Indexes the standard deduction for inflation using the C-CPI-U for taxable years beginning after December 31, 2018.

## **3. Maximum rate on business income of individuals (sec. 1003 of the House bill and new sec. 5 of the Code); Deduction for qualified business income (sec. 11011 of the Senate amendment and new sec. 199A of the Code)**

### House Bill

- Qualified business income of an individual from a partnership, S corporation, or sole proprietorship, is subject to Federal income tax at a rate no higher than 25 percent.
  - A 25-percent tax rate applies generally to dividends received from a REIT (other than any portion that is a capital gain dividend or a qualified dividend), and applies generally to dividends that are includable in gross income from certain cooperatives.
- A reduced tax rate of 11, 10, or nine percent applies in the case of an individual's qualified active business income below an indexed threshold of \$75,000 (in the case of a joint return or a surviving spouse; three quarters of that amount for individuals filing as head of household and half that amount for other individuals).
  - The reduced rate is phased in: the reduced rate is 11 percent (that is, one percentage point below the 12 percent rate) for taxable years beginning in 2018 and 2019, and is 10 percent (that is, two percentage points below the 12 percent rate) for taxable years beginning in 2020 and 2021. For taxable years beginning in 2022 and thereafter the reduced rate is nine percent (that is, three percentage points below the 12 percent rate).
- Qualified business income includes 100 percent of any net business income derived from any passive business activity. A passive business activity generally has the same meaning as a passive activity under the present-law passive loss rules.

- Qualified business income includes 30 percent (except as otherwise provided under rules for determining the capital percentage) of any net business income derived from any active business activity. An active business activity generally has the same meaning as under the present-law passive loss rules.
- In the case of a capital-intensive business, a taxpayer may “prove out” a capital percentage by electing the application of an increased percentage for the taxable year it is made and each of the next four taxable years.
  - The applicable percentage is determined by dividing (1) the specified return on capital for the activity for the taxable year, by (2) the taxpayer’s net business income derived from that activity for that taxable year.
- In the case of a specified service activity, the capital percentage is generally zero, except that a taxpayer may elect to determine the capital percentage under a special rule for capital-intensive specified service activities, provided the applicable percentage for the taxable year is at least 10 percent.

#### Senate Amendment

- For taxable years beginning after December 31, 2017 and before January 1, 2026, an individual taxpayer generally may deduct 23 percent of qualified business income from a partnership, S corporation, or sole proprietorship.
- An individual taxpayer also generally may deduct 23 percent of qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income.
- A specified agricultural or horticultural cooperative generally may deduct 23 percent of its taxable income for the year.
- A limitation based on 50 percent of W-2 wages paid that are properly allocable to the trade or business applies with respect to individuals and specified agricultural or horticultural cooperatives.
  - The W-2 wage limit is phased in above a threshold amount of taxable income, which is \$250,000 (twice that amount for joint returns of individuals), indexed.
  - The W-2 wage limit does not apply with respect to qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income.
- A disallowance of the deduction with respect to specified service trades or businesses is phased in above the threshold amount of taxable income, which is \$250,000 (twice that amount for joint returns of individuals), indexed.
- Qualified business income is limited to items that are effectively connected with the conduct of a trade or business within the United States. Puerto Rico is treated the same as the United States for this purpose.
- Qualified business income does not include reasonable compensation paid to the taxpayer for services rendered with respect to the trade or business, nor guaranteed payments (or similar payments) paid to the taxpayer if he or she is a partner.

- The accuracy-related penalty is tightened in the case of the deduction under the provision.

Substantially similar or identical rules in House bill and Senate amendment

- The House bill excludes investment income from qualified business income. The Senate amendment generally follows the House bill.
- The House bill defines a specified service activity as any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, including investing and investment management, trading, or dealing in securities, partnership interests, or commodities, and any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees. For this purpose a security and a commodity have the meanings provided in the rules for the mark-to-market accounting method for dealers in securities (sections 475(c)(2) and 475(e)(2), respectively). The Senate amendment definition of a specified service trade or business follows the House bill.

**4. Child tax credit (sec. 1101 of the House bill, sec. 11022 of the Senate amendment, and sec. 24 of the Code)**

House Bill

- Increases the child tax credit to \$1,600.
- Increases the adjusted gross income phaseout thresholds to \$230,000 for married taxpayers filing joint returns and \$115,000 for other individuals.
- The credit is refundable up to \$1,100 in 2018 (indexed). Earned income threshold unchanged from present law (\$3,000).
- Any qualifying child claimed for the credit is required to use a Social Security number as that child's taxpayer identification number. The entire credit with respect to that qualifying child (refundable and nonrefundable portion) is denied if no SSN is provided.

Senate Amendment

- Increases the child tax credit to \$2,000.<sup>4</sup>
- Increases the adjusted gross income phaseout thresholds to \$500,000 for all taxpayers.<sup>4</sup>
- The credit is refundable up to \$1,100 in 2018 (indexed). Earned income threshold is lowered to \$2,500 (from present law \$3,000).<sup>4</sup>
- Increases age for qualifying child by one year (children under age 18). This change expires one year earlier than other expiring provisions (for taxable years beginning after December 31, 2024).

- Any qualifying child claimed for the credit is required to use a Social Security number as that child's taxpayer identification number. Only the refundable portion of the credit is denied if no SSN is provided.<sup>4</sup>

**5. Credit for non-child taxpayers (sec. 1101 of the House bill, sec. 11022 of the Senate amendment, and sec. 24 of the Code)**

House Bill

- Provides a \$300 non-refundable credit for each member of a taxpayer's household other than a qualifying child.
- Expires for taxable years beginning after December 31, 2022.
- Phase-out rules applicable to the child tax credit apply.

Senate Amendment

- Provides a \$500 non-refundable credit for non-child dependents of the taxpayer.<sup>4</sup>
- Phase-out rules applicable to the child tax credit apply.

**6. Modification of 529 accounts (sec. 1202 of the House bill, sec. 11033 of the Senate amendment, and sec. 529 of the Code)**

House Bill

- Terminates contributions to Coverdell savings accounts.
- Allows up to \$10,000 (annually) in aggregate 529 distributions to be used for elementary and secondary school tuition.
- Allows distributions to be used for apprenticeship expenses.
- Provides that accounts may be opened for individuals who are *in utero*.

Senate Amendment

- Allows up to \$10,000 in aggregate 529 distributions to be used for elementary and secondary school tuition. This also includes certain home school expenses.

**7. Treatment of discharge of student loan indebtedness in the case of death or disability of student (sec. 1203 of the House bill, sec. 11031 of the Senate amendment, sec. 108 of the Code)**

House Bill

- Provides that student loans discharged on account of the death or disability of the student are not includible in income.
- Excludes from income amounts received under the Indian Health Service loan repayment program.

#### Senate Amendment

- Provides that student loans discharged on account of the death or disability of the student are not includible in income.<sup>4</sup>

### **8. Modifications to ABLE accounts (sec. 1205 of the House bill, secs. 11024 and 11025 of the Senate amendment, and sec. 529A of the Code)**

#### House Bill

- Allows amounts to be rolled over from 529 accounts into ABLE accounts, up to the annual maximum contribution limit.

#### Senate Amendment

- Allows amounts to be rolled over from 529 accounts into ABLE accounts, up to the annual maximum contribution limit (not including the increased limit below).<sup>4</sup>
- Increases the annual contribution limit by earned income of the designated beneficiary, up to the poverty line.<sup>4</sup>
- Makes contributions to ABLE accounts eligible for the saver's credit.<sup>4</sup>

### **9. Deduction for home mortgage interest (sec. 1302 of the House bill, sec. 11043 of the Senate amendment, and sec. 163 of the Code)**

#### House Bill

- Lowers the limitation on qualifying indebtedness to \$500,000. Indebtedness incurred on or before November 2, 2017 is grandfathered at \$1,000,000.
- Eliminates the deduction for interest on indebtedness incurred to purchase a second home.
- Eliminates the deduction for home equity interest indebtedness.

#### Senate Amendment

- Eliminates the deduction for home equity interest indebtedness.<sup>4</sup>

### **10. Deduction for certain miscellaneous expenses (secs. 1307 and 1312 of the House bill, sec. 11045 of the Senate amendment, and sec. 67 of the Code)**

#### House Bill

- Repeals the deduction for tax preparation fees.
- Repeals the deduction for unreimbursed employee business expenses.

#### Senate Amendment

- Repeals the deduction for tax preparation fees.<sup>4</sup>
- Repeals the deduction for unreimbursed employee business expenses.<sup>4</sup>
- Repeals the deduction for expenses for the production or collection of income.<sup>4</sup>

- Repeals other miscellaneous itemized deductions currently subject to the two-percent floor.<sup>4</sup>

**11. Deduction for casualty and theft losses (sec. 1304 of the House bill, sec. 11044 of the Senate amendment, and sec. 165 of the Code)**

House Bill

- Repeals the deduction for personal casualty and theft losses.
- Provides a rule grandfathering the provisions of the “Disaster Tax Relief and Airport and Airway Extension Act of 2017” (related to victims of Hurricanes Harvey, Irma and Maria).

Senate Amendment

- Repeals the deduction for personal casualty and theft losses, other than in the case of a casualty loss suffered in a Presidentially declared disaster.<sup>4</sup>

**12. Deduction for educator expenses (sec. 1312 of the House bill, sec. 11032 of the Senate amendment, and sec. 62(a)(2) of the Code)**

House Bill

- Repeals the \$250 above-the-line deduction for educator expenses.

Senate Amendment

- Increases the above-the-line deduction for educator expenses to \$500.<sup>4</sup>

**13. Modify exclusion of gain from sale of a principal residence (sec. 1402 of the House bill, sec. 11047 of the Senate amendment, and sec. 121 of the Code)**

House Bill

- Modifies the holding period requirement such that a taxpayer must live in the residence for five out of the eight prior taxable years.
- Exclusion applies only to one residence every five years.
- Exclusion phases out based on modified adjusted gross income (\$250,000/\$500,000) measured over the average income for taxable year and two prior years.

Senate Amendment

- Modifies the holding period requirement such that a taxpayer must live in the residence for five out of the eight prior taxable years.<sup>4</sup>
- Exclusion applies only to one residence every five years.<sup>4</sup>

**14. Employee achievement awards (sec. 1403 of the House bill, sec. 13310 of the Senate amendment, and secs. 74(c) and 274(j) of the Code)**

House Bill

- Repeals income and FICA tax exclusions; allows deduction without limit.

Senate Amendment

- Clarifies forms of achievement awards ineligible for deduction (cash, gift cards, and various intangible property).

**15. Deduction for medical expenses (sec. 1308 of the House bill, sec. 11028 of the Senate amendment, and sec. 213 of the Code)**

House Bill

- Repeals the deduction for medical expenses.

Senate Amendment

- Retains the deduction for medical expenses.
- Decreases the floor for the medical expense deduction to 7.5 percent for taxable years 2017 and 2018.

**16. Estate, gift, and generation-skipping transfer taxes (secs. 1601 and 1602 of the House bill, sec. 11061 of the Senate amendment, and chapters 11, 12, and 13 of the Code)**

House Bill

- Permanently doubles the basic exclusion amount for estate and gift tax purposes from \$5 million to \$10 million (indexed for inflation occurring after 2011) for estates of decedents dying and gifts made after December 31, 2017.
- Repeals the estate and generation-skipping transfer taxes for estates of decedents dying, gifts made, and generation-skipping transfer made after December 31, 2024.
- Reduces the gift tax rate from 40 percent to 35 percent for gifts made after December 31, 2024.

Senate Amendment

- Doubles the basic exclusion amount for estate and gift tax purposes from \$5 million to \$10 million (indexed for inflation occurring after 2011) for estates of decedents dying and gifts made after December 31, 2017, and before January 1, 2026.

**17. Individual alternative minimum tax (sec. 2001 of the House bill, sec. 12001 of the Senate amendment, and sec. 55 of the Code)**

House Bill

- Repeals the individual alternative minimum tax.

### Senate Amendment

- Retains the alternative minimum tax.
- Provides an increase in the AMT exemption amount (\$109,400/\$70,300) and the exemption amount phaseout thresholds (\$208,400/\$156,300).<sup>4</sup>

## C. Provisions Unique to Each Bill

### House Bill

- Repeal of credit for the elderly and permanently and totally disabled (sec. 1102 of the House bill and sec. 22 of the Code)
- Repeal plug-in hybrid electric vehicle credit (sec. 1102 of the House bill and sec. 30D of the Code)
- Termination of credit for interest on certain home mortgages (sec. 1102 of the House bill and sec. 25 of the Code)
- Require Social Security number for student for purposes of the American Opportunity credit (sec. 1102 of the House bill and sec. 25A of the Code)
- Individuals prohibited from engaging in employment in United States not eligible for earned income tax credit (sec. 1103 of the House bill and sec. 32 of the Code)
- Procedures to reduce improper claims of earned income tax credit (sec. 1104 of the House bill and sec. 32 of the Code)
  - Clarifies that a taxpayer is required to claim all allowable deductions in computing net earnings from self-employment for EIC purposes.
  - Modifies employer reporting requirements associated with the deduction and withholding of certain employment taxes on wages.
- Certain income disallowed for purposes of the earned income tax credit (sec. 1105 of the House bill and sec. 32 of the Code)
  - Clarifies that the Secretary may limit earned income for EIC purposes to amounts substantiated either by third party returns or by the taxpayer's books and records.
- Modify credits for higher education tuition expenses (sec. 1201 of the House bill and sec. 25A of the Code)
  - Expands American Opportunity credit into 5<sup>th</sup> year of higher education, at half-value of credit.
  - Repeals Hope credit and Lifetime Learning credit.
- Repeal of other provisions relating to education
  - Repeal deduction for student loan interest (sec. 1203 of the House bill and sec. 221 of the Code)
  - Repeal deduction for college tuition and related expenses (sec. 1204 of the House bill and sec. 222 of the Code)
  - Repeal of exclusion (including FICA exclusion) for employer educational assistance programs (sec. 1204 of the House bill and sec. 127 of the Code)
  - Repeal of exclusion on United States savings bonds used for educational expenses (sec. 1204 of the House bill and sec. 135 of the Code)

- Repeal of exclusion (including FICA exclusion) for qualified tuition reductions (sec. 1204 of the House bill and sec. 117(d) of the Code)
- Charitable mileage rate, which is currently fixed by statute at 14 cents per mile, adjusted for inflation (sec. 1306 of the House bill and sec. 170 of the Code)
- Repeal of deduction for alimony payments (and corresponding inclusion in gross income) (sec. 1309 of the House bill and sec. 215 of the Code)
- Repeal deductions and income and FICA tax exclusions for contributions to Archer medical savings accounts (sec. 1311 of the House bill and secs. 106(b) and 220 of the Code)
- Limit income and FICA tax exclusions to \$50,000 (phased out based on compensation level) for employer-provided housing (sec. 1401 of the House bill and sec. 119 of the Code)
- Sunset income and FICA tax exclusions for dependent care assistance programs— exclusion ends December 31, 2022 (sec. 1404 of the House bill and sec. 129 of the Code)
- Repeal income and FICA tax exclusions for adoption assistance programs (sec. 1406 of the House bill and sec. 137 of the Code)
- Reduction to age 59½ of minimum age at which any type of retirement plan may make distributions to employees who are still employed (sec. 1502 of the House bill and sec. 401(a)(36) of the Code)
- Modification of retirement plan rules to remove prohibition on employee contributions for six months after receiving a hardship distribution (sec. 1503 of the House bill and secs. 401(k) and 403(b) of the Code)
- Modification of nondiscrimination rules to provide greater flexibility for defined benefit retirement plans in which new employees are not eligible to participate and for defined contribution plans providing “make-up” contributions to employees whose benefits under a defined benefit plan have been frozen (sec. 1504 of the House bill and sec. 401(a)(4) and (26) of the Code)

### **Senate Amendment**

- Limitation on losses for taxpayers other than corporations (sec. 11012 of the Senate Amendment and sec. 461 of the Code)
  - For taxable years beginning after December 31, 2017 and before January 1, 2026, excess business losses of a taxpayer other than a corporation are not allowed for the taxable year.
  - Such losses are carried forward and treated as part of the taxpayer’s net operating loss (“NOL”) carryforward in subsequent taxable years.
  - Excess business loss for the taxable year is the excess of aggregate deductions attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer, plus a threshold amount.

- The threshold amount for a taxable year is \$250,000 (twice that amount in the case of a joint return), indexed.
- Extend combat zone benefits to Sinai Peninsula of Egypt<sup>4</sup> (sec. 11026 of the Senate amendment and secs. 2, 112, 692, 2201, 3401, 4253, 6013, and 7508 of the Code)
- Extend the limitations period with respect to excluding amounts received by wrongfully incarcerated individuals by one year (sec. 11027 of the Senate amendment and sec. 139F of the Code)
- Relief for individuals residing in areas experiencing a presidentially declared disaster during 2016 (sec. 11029 of the Senate amendment, off-Code)
  - Retirement plan and IRA distributions up to \$100,000 exempt from 10-percent early withdrawal tax, includible in income in installments over three years, and eligible for rollover to another plan or IRA within three years.
  - Deduction for casualty losses not subject to ten-percent AGI floor, may be taken in addition to standard deduction.
- Repeals income and FICA tax exclusions for employer-provided bicycle commuter fringe benefit<sup>4</sup> (sec. 11048 of the Senate amendment and sec. 132(f)(1)(D) of the Code)
- Extend time limit for contesting IRS levy from nine months to two years (sec. 11071 of the Senate amendment and secs. 6343 and 6532 of the Code)
- Prohibits increases in user fees for installment agreements (sec. 11072 of the Senate amendment and new sec. 6159(f) of the Code)
- Above-the-line deduction for attorneys' fees relating to awards to whistleblowers (sec. 11073 of the Senate amendment and sec. 62(a)(21) of the Code)
- Clarification of whistleblower awards (sec. 11074 of the Senate amendment and new sec. 7623(c) of the Code)
- Eliminates ACA individual shared responsibility payment for failure to obtain required health coverage (sec. 11081 of the Senate amendment and sec. 5000A of the Code)
- Modification of rules for length of service award programs for public safety volunteers to allow awards of up to \$6,000 for each year of volunteer service (sec. 13612 of the Senate amendment and sec. 457(e) of the Code)

## BUSINESS TAX REFORM

### A. Provisions without Differences

- Reduction in corporate tax rate to 20 percent (sec. 3001 of the House bill, sec. 13001 of the Senate amendment, and sec. 11 of the Code)<sup>7</sup>
- Reduction in dividends-received deductions (sec. 3001 of the House bill, sec. 13002 of the Senate amendment, and sec. 243 of the Code)<sup>8</sup>
- Modification of treatment of S corporation conversions into C corporations (sec. 3204 of the House bill, sec. 13543 of the Senate amendment, and secs. 481 and 1371 of the Code)<sup>9</sup>
- Like-kind exchanges limited to real property not held primarily for sale (sec. 3303 of the House bill, sec. 13303 of the Senate amendment, and sec. 1031 of the Code)
- Repeal of deduction for local lobbying expenses (sec. 3305 of the House bill, sec. 13308 of the Senate amendment, and sec. 162(e) of the Code)
- Repeal of deduction for income attributable to domestic production activities (sec. 3306 of the House bill, sec. 13305 of the Senate amendment, and sec. 199 of the Code)<sup>10</sup>
- Limitation on deduction for FDIC premiums (sec. 3309 of the House bill, sec. 13531 of the Senate amendment, and sec. 162 of the Code)
- Recharacterization of certain gains in the case of partnership profits interests held in connection with performance of investment services (sec. 3314 of the House bill, sec. 13309 of the Senate amendment, and new sec. 1061 of the Code)<sup>11</sup>

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<sup>7</sup> The House bill applies to taxable years beginning after December 31, 2017. The Senate amendment applies to taxable years beginning after December 31, 2018. Under the House bill, personal service corporations are taxed at 25 percent.

<sup>8</sup> The House bill applies to taxable years beginning after December 31, 2017. The Senate amendment applies to taxable years beginning after December 31, 2018.

<sup>9</sup> The House bill is effective upon date of enactment. The Senate amendment applies to taxable years beginning after December 31, 2017. However, both bills are applicable to revocations of S corporation elections that occur during the two-year period beginning on the date of enactment.

<sup>10</sup> The House bill applies to taxable years beginning after December 31, 2017. The Senate amendment applies to noncorporate taxpayers and certain special rules for agricultural and horticultural cooperatives for taxable years beginning after December 31, 2017, and to C corporations for taxable years beginning after December 31, 2018.

<sup>11</sup> The House bill is drafted to provide that section 83 does not apply to the transfer of an applicable partnership interest, whereas the Senate amendment is drafted to provide that the short-term capital gain treatment under the provision applies notwithstanding section 83 or any election in effect under section 83(b).

- Amortization of research and experimental expenditures (sec. 3315 of the House bill, sec. 13206 of the Senate amendment, and sec. 174 of the Code)<sup>12</sup>
- Repeal of advance refunding bonds (sec. 3602 of the House bill, sec. 13532 of the Senate amendment, and sec. 149 of the Code)
- Net operating losses of life insurance companies (sec. 3701 of the House bill, sec. 13511 of the Senate amendment, and secs. 805(a)(5) and 810 of the Code)
- Repeal of small life insurance company deduction (sec. 3702 of the House bill, sec. 13512 of the Senate amendment, and sec. 806 of the Code)
- Adjustment for change in computing reserves (sec. 3704 of the House bill, sec. 13513 of the Senate amendment, and sec. 807(f) of the Code)
- Repeal of special rule for distributions to shareholders from pre-1984 policyholders surplus account (sec. 3705 of the House bill, sec. 13514 of the Senate amendment, and sec. 815 of the Code)
- Repeal of special estimated tax payments (sec. 3708 of the House bill, sec. 13516 of the Senate amendment, and sec. 847 of the Code)
- Modification of limitation on excessive employee remuneration (sec. 3801 of the House bill, sec. 13601 of the Senate amendment, and sec. 162(m) of the Code)<sup>13</sup>
- Excise tax on excess tax-exempt organization executive compensation (sec. 3802 of the House bill, sec. 13602 of the Senate amendment, and new sec. 4960 of the Code)
- Treatment of qualified equity grants (sec. 3803 of the House bill, sec. 13603 of the Senate amendment, and secs. 83, 3401, and 6051 of the Code)

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<sup>12</sup> The House bill applies to amounts paid or incurred in taxable years beginning after December 31, 2022. The Senate amendment applies to amounts paid or incurred in taxable years beginning after December 31, 2025, and includes conforming amendments to sections 41 and 280C.

<sup>13</sup> The Senate amendment provides a transition rule for remuneration pursuant to a written binding contract in effect on November 2, 2017 that is not materially modified after such date.

## B. Provisions with Differences

### 1. Increased expensing (sec. 3101 of the House bill, secs. 13201 and 13311 of the Senate amendment, and sec. 168(k) of the Code)

House bill and Senate amendment.—The tables below present the applicable percentage for the additional first-year depreciation deduction and increase in the section 280F limitation on passenger automobile depreciation under section 168(k).

#### Applicable percentage

Placed in Service Year <sup>14</sup>	House Bill		Senate Amendment	
	Bonus Depreciation Percentage			
	Qualified Property in General/Specified Plants	Longer Production Period Property and Certain Aircraft	Qualified Property in General/Specified Plants	Longer Production Period Property and Certain Aircraft
<b>Portion of Basis of Qualified Property Acquired before Sept. 28, 2017</b>				
Sept. 28, 2017 – Dec. 31, 2017	50 percent	50 percent	100 percent	100 percent
2018	40 percent	50 percent	100 percent	100 percent
2019	30 percent	40 percent	100 percent	100 percent
2020	None	30 percent <sup>15</sup>	100 percent	100 percent
2021 and thereafter	None	None	See below	See below

<sup>14</sup> In the case of specified plants, this is the year of planting or grafting.

<sup>15</sup> Thirty percent applies to the adjusted basis attributable to manufacture, construction, or production before January 1, 2020, and the remaining adjusted basis does not qualify for bonus depreciation. Thirty percent applies to the entire adjusted basis of certain aircraft described in section 168(k)(2)(C) and placed in service in 2020.

<b>Portion of Basis of Qualified Property Acquired after Sept. 27, 2017</b>				
Sept. 28, 2017 – Dec. 31, 2022	100 percent	100 percent	100 percent	100 percent
2023	None	100 percent <sup>16</sup>	80 percent	100 percent
2024	None	None	60 percent	80 percent
2025	None	None	40 percent	60 percent
2026	None	None	20 percent	40 percent
2027	None	None	None	20 percent <sup>17</sup>
2028 and thereafter	None	None	None	None

Increase in section 280F limitation

<b>Passenger Automobiles Placed in Service</b>	<b>House Bill</b>	<b>Senate Amendment</b>
<b>Acquired before Sept. 28, 2017</b>		
Sept. 28, 2017 – Dec. 31, 2017	\$8,000	\$8,000
2018	\$6,400	\$8,000
2019	\$4,800	\$8,000
2020 and thereafter	None	See below
<b>Acquired after Sept. 27, 2017</b>		
Sept. 28, 2017 – Dec. 31, 2022	\$16,000	\$8,000
2023–2026	None	\$8,000
2027 and thereafter	None	None

<sup>16</sup> One hundred percent applies to the adjusted basis attributable to manufacture, construction, or production before January 1, 2023, and the remaining adjusted basis does not qualify for bonus depreciation. One hundred percent applies to the entire adjusted basis of certain aircraft described in section 168(k)(2)(C) and placed in service in 2023.

<sup>17</sup> Twenty percent applies to the adjusted basis attributable to manufacture, construction, or production before January 1, 2027, and the remaining adjusted basis does not qualify for bonus depreciation. Twenty percent applies to the entire adjusted basis of certain aircraft described in section 168(k)(2)(C) and placed in service in 2027.

## Qualified property

### Used property

House bill.—Removes the requirement that the original use of qualified property must commence with the taxpayer (*i.e.*, allows the additional first-year depreciation deduction for new and used qualified property).

Senate amendment.—Maintains present law original use requirement.

### Qualified film, television, and live theatrical productions

House bill.—No provision.

Senate amendment.—Expands the definition of qualified property to include qualified film, television, and live theatrical productions for which a deduction otherwise would have been allowable under section 181 without regard to the dollar limitation or termination of such section.

### Exclusions related to exceptions from business interest limitation

House bill.—Excludes from the definition of qualified property any property used in:

- A real property trade or business,
- The trade or business of certain regulated public utilities, and
- A trade or business that has had floor plan financing indebtedness and that elects under the business interest limitation to deduct the interest on such debt.

Senate amendment.—Excludes from the definition of qualified property any property which is:

- Primarily used in the trade or business of certain regulated public utilities and electric cooperatives, or
- Used in a trade or business that has had floor plan financing indebtedness and that elects under the business interest limitation to deduct the interest on such debt.

### Election to accelerate AMT credits in lieu of bonus depreciation

House bill.—Repeals the election to accelerate AMT credits in lieu of bonus depreciation as a conforming amendment to the repeal of AMT.

Senate amendment.—Maintains present law.

## Decoupling from percentage-of-completion method

House bill.—Extends the special rule under the percentage-of-completion method for the allocation of bonus depreciation to a long-term contract for property placed in service before January 1, 2023 (January 1, 2024, in the case of longer production period property).

Senate amendment.—Follows the House bill, but extends the special rule to property placed in service before January 1, 2027 (January 1, 2028, in the case of longer production period property).

## Effective date

House bill.—Generally applies to property acquired and placed in service after September 27, 2017, and to specified plants planted or grafted after such date.

Senate amendment.—Generally applies to property placed in service after September 27, 2017, in taxable years ending after such date, and to specified plants planted or grafted after such date.

## Transition rule

House bill.—For a taxpayer's first taxable year ending after September 27, 2017, the taxpayer may elect to apply section 168 without regard to the amendments made by this provision. In the case of any taxable year that includes any portion of the period beginning on September 28, 2017, and ending on December 31, 2017, the amount of any net operating loss for such taxable year which may be treated as a net operating loss carryback is determined without regard to the amendments made by this provision.

Senate amendment.—For a taxpayer's first taxable year ending after September 27, 2017, the taxpayer may elect to apply a 50-percent allowance.

## **2. Expansion of section 179 expensing (sec. 3201 of the House bill, sec. 13101 of the Senate amendment, and sec. 179 of the Code)**

### Dollar limitations

#### House Bill

- Increases the maximum amount a taxpayer may expense under section 179 to \$5,000,000, and the phase-out threshold amount to \$20,000,000, for taxable years beginning in 2018, 2019, 2020, 2021 and 2022.
- Indexes such amounts for inflation for taxable years beginning after 2018.

### Senate Amendment

- Increases the maximum amount a taxpayer may expense under section 179 to \$1,000,000, and the phase-out threshold amount to \$2,500,000, for taxable years beginning after 2017.
- Indexes such amounts, as well as the \$25,000 sport utility vehicle limitation, for inflation for taxable years beginning after 2018.

### Qualified property

House bill.—Expands the definition of qualified real property under section 179 to include qualified energy efficient heating and air-conditioning property acquired and placed in service by the taxpayer after November 2, 2017.

Senate amendment.—Expands the definition of:

- Section 179 property to include certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging; and
- Qualified real property to include any of the following improvements to nonresidential real property placed in service after the date such property was first placed in service: roofs; heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems.

### Effective date

#### House Bill

- Applies the increased dollar limitations under section 179 to taxable years beginning after December 31, 2017.
- Applies the expansion of qualified real property to include qualified energy efficient heating and air-conditioning property to property acquired and placed in service after November 2, 2017.

#### Senate Amendment

- Applies to property placed in service in taxable years beginning after December 31, 2017.

**3. Small business accounting method reform and simplification (sec. 3202 of the House bill, secs. 13102 to 13105 of the Senate amendment, and secs. 263A, 448, 460, and 471 of the Code)**

Gross receipts test for small business taxpayers

House bill.—A taxpayer whose average annual gross receipts for the three prior taxable-year period do not exceed \$25,000,000.<sup>18</sup> The \$25 million amount is indexed for inflation beginning after 2018.

Senate amendment.—Follows the House bill, but with a \$15 million gross receipts test.

Cash method of accounting

House bill.—Expands the universe of small business corporations (and partnerships with a C corporation partner) that may use the cash method. Expands the universe of small business farming C corporations (or farming partnerships with a C corporation partner) that may use the cash method. Retains the present law \$25 million gross receipts limit for family farming corporations that are allowed to use the cash method, but applies such limit using the gross receipts test contained in the House bill.

Senate amendment.—Follows the House bill except that the gross receipts test is applied to family farming corporations at the consolidated group level consistent with present law.

Accounting for inventories

House bill.—Exempts small business taxpayers from the requirement to keep inventories and allows such taxpayers to use a method of accounting for inventories that either (1) treat inventories as non-incidentals materials and supplies, or (2) conforms to the taxpayer's financial accounting treatment of inventories.

Senate amendment.—Follows the House bill.

Uniform capitalization rules

House bill.—Expands the exception for small business taxpayers from the uniform capitalization rules.

Senate amendment.—Follows the House bill.

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<sup>18</sup> Consistent with present law, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 are treated as one person. In addition, special rules applicable under present law regarding taxpayers in existence less than three years, taxpayers with short taxable years, adjustments for returns and allowances, and the treatment of predecessors of the taxpayers continue to apply.

### Accounting for long-term contracts

House bill.—Expands the exception for small construction contracts from the requirement to use the percentage-of-completion method for taxpayers that meet the gross receipts test for the taxable year in which the contract was entered into.<sup>19</sup>

Senate amendment.—Follows the House bill.

## **4. Interest limitation (secs. 3203 and 3301 of the House bill, secs. 13301 and 13311 of the Senate amendment, and sec. 163(j) of the Code)**

### In general

#### House Bill

- Limits interest deduction to the sum of (i) the business interest income of the taxpayer for the taxable year, (ii) 30 percent of the adjusted taxable income of the taxpayer for the taxable year, and (iii) the floor plan financing interest of the taxpayer for the taxable year.
- Defines adjusted taxable income by starting with taxable income without regard to non-business items, interest, and NOLs, but adding back deductions for depreciation, amortization, or depletion.
- Defines floor plan financing interest as interest paid or accrued on indebtedness used to finance the acquisition of motor vehicles held for sale to retail customers and secured by the inventory so acquired, defining motor vehicle as an automobile, a truck, a recreational vehicle, a motorcycle, a boat, farm machinery or equipment, or construction machinery or equipment.

Senate amendment.—Follows the House bill, but with the following modifications:

- Makes the following changes to the definition of adjusted taxable income:
  - Does not add back deductions for depreciation, amortization, or depletion;
  - Adds back any deduction under section 199; and
  - Adds back the 23-percent deduction for qualified business income.
- Makes the following changes to the definition of floor plan financing:
  - Permits interest on indebtedness used to finance the acquisition of motor vehicles for sale or lease to qualify as floor plan financing interest;

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<sup>19</sup> Consistent with present law, such contract must be expected (at the time the contract is entered into) to be completed within two years of commencement of the contract.

- Includes self-propelled vehicles in the definition of motor vehicle; and
- Does not include construction machinery or equipment in the definition of motor vehicle.

### Application to pass-through entities

#### House Bill

- Requires a partner in a partnership to ignore the partner's distributive share of the nonseparately stated income or loss of the partnership when calculating adjusted taxable income.
- Increases a partner's interest limitation to reflect the partner's distributive share of the amount by which the partnership's limitation amount exceeds the partnership's business interest.<sup>20</sup>
- Similar rules also apply to a shareholder in an S corporation.

#### Senate amendment.—Follows the House bill with the following modifications:

- Requires a partner in a partnership to ignore the partner's distributive share of all items of income, gain, deduction, or loss of the partnership when calculating adjusted taxable income.
- Provides a special rule for the carryforward of disallowed partnership deductions under which the disallowed deductions are allocated to partners, carried forward at the partner level, deducted only against excess taxable income of the partnership that produced the carryforward, and non-transferrable.

### Carryforward of disallowed business interest

House bill.—Permits disallowed interest deductions to be carried forward for five years after the year in which the interest was paid or accrued, on a first-in, first-out basis.

Senate amendment.—Permits disallowed interest deductions to be carried forward indefinitely, subject to certain restrictions applicable to partnerships, described above.

### Exceptions

House bill.—Exempts the following categories of taxpayers or trades or businesses from the interest limitation:

- Any taxpayer that meets the \$25 million gross receipts test of section 448(c) as set out in the House bill;

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<sup>20</sup> Some technical differences exist between the House and Senate language.

- Certain regulated public utilities; and
- Any real property trade or business, as defined in section 469(c)(7)(C).

#### Senate Amendment

- Exempts the following categories of taxpayers from the interest limitation:
  - Any taxpayer that meets the \$15 million gross receipts test of section 448(c) as set out in the Senate amendment; and
  - Certain regulated public utilities and electric cooperatives.
- Permits a real property trade or business (as defined in section 469(c)(7)(C)) to elect to be exempt from the interest limitation.
- Permits a farming business (as defined in section 263A(e)(4)), as well as any business engaged in the trade or business of a specified agricultural or horticultural cooperative (as defined in new section 199A(g)(2)), to elect to be exempt from the interest limitation.

### **5. Modification of net operating loss deduction (sec. 3302 of the House bill, sec. 13302 of the Senate amendment, and sec. 172 of the Code)**

#### Net operating loss limitations

House bill.—Limits the net operating loss (“NOL”) deduction to 90 percent of taxable income.

Senate amendment.—Limits the NOL deduction with respect to losses arising in taxable years after December 31, 2017 to 90 percent of taxable income and to 80 percent of taxable income in taxable years beginning after December 31, 2022.

#### Net operating loss carrybacks

House bill.—Allows a one-year carryback in the case of certain disaster losses incurred in the trade or business of farming, or by certain small businesses.

Senate amendment.—Allows a two-year carryback in the case of certain disaster losses incurred in the trade or business of farming.

#### Special rule for net operating loss carryovers

House bill.—Increases NOL carryovers attributable to losses arising in taxable years beginning after December 31, 2017.

Senate amendment.—No provision.

## Special rule for property and casualty insurance companies

House bill.—No provision.

Senate amendment.—Provides a special rule for the NOLs of property and casualty insurance companies, which may be carried back two years and carried over 20 years to offset 100 percent of taxable income in such years.

## **6. Fringe benefit deductions (sec. 3307 of the House bill, sec. 13304 of the Senate amendment, and sec. 274 of the Code)**

### Entertainment expenses

#### House Bill

- Disallows deduction for expenses associated with entertainment activities, membership dues, *de minimis* fringes that are primarily personal in nature, and facilities associated with any of these.
- Repeals present-law exception for expenses associated with recreational, social, or similar activities primarily for the benefit of rank-and-file employees.
- Disallows deduction for expenses reimbursed by non-employer service recipient that is a tax-exempt organization.
- Modifies present-law exception to permit deduction only up to the amount properly reported as compensation.

#### Senate Amendment

- Disallows deduction for expenses associated with entertainment activities, membership dues, and facilities associated with any of these.

### Meal expenses

#### House Bill

- Disallows deduction for expenses associated with entertainment meals, including meals in connection with recreational, social, or similar activities primarily for benefit of rank-and-file employees.
- Modifies present-law exception to permit deduction only up to the amount properly reported as compensation.

#### Senate Amendment

- Disallows deduction for expenses associated with entertainment meals.
- Applies 50-percent deduction limitation to expenses associated with providing meals for the convenience of the employer on the employer's business

premises, or on or near the employer's business premises through certain employer-operated eating facilities; further expands deduction disallowance to 100 percent after December 31, 2025.

#### Transportation and parking expenses

##### House Bill

- Repeals deduction for expenses associated with providing employees with qualified transportation and parking benefits; modifies present-law exception to permit deduction only up to the amount properly reported as compensation.

##### Senate Amendment

- Repeals deduction for expenses associated with providing employees with qualified transportation and parking benefits.
- Disallows deduction for expenses of employer-paid or employer-provided commuting except as necessary for ensuring the employee's safety.

#### Other benefit expenses

House bill.—Repeals deduction for expenses associated with providing employees an on-premises athletic facility; modifies present-law exception to permit deduction only up to the amount properly reported as compensation.

Senate amendment.—No provision.

#### **7. Credit for clinical testing for certain drugs for rare diseases or conditions (orphan drug credit) (sec. 3401 of the House bill, sec. 13401 of the Senate amendment, and sec. 45C of the Code)**

House bill.—Repeals the orphan drug credit.

Senate amendment.—Reduces orphan drug credit rate to 27.5 percent.

#### **8. Rehabilitation tax credit (sec. 3403 of the House bill, sec. 13402 of the Senate amendment, and sec. 47 of the Code)**

House bill.—Repeals the rehabilitation credit.

Senate amendment.—Repeals the 10-percent credit for pre-1936 buildings; retains the 20-percent credit for qualified rehabilitation expenditures with respect to a certified historic structure, allowable ratably over a five-year period starting with the year the qualified rehabilitated building is placed in service.

**9. Modification of proration rules for property and casualty insurance companies (sec. 3706 of the House bill, sec. 13515 of the Senate amendment, and sec. 832(b)(5)(B) of the Code)**

House bill.—Replaces the 15-percent reduction with a 26.25-percent reduction.

Senate amendment.—Replaces the 15-percent reduction with a reduction equal to 5.25 percent divided by the top corporate tax rate.

## C. Provisions Unique to Each Bill

### House Bill

- Repeal of corporate alternative minimum tax (“AMT”) and provision to make AMT credits refundable (sec. 2001 of the House bill and secs. 55 and 53 of the Code)
- Revision of treatment of contributions to capital (sec. 3304 of the House bill and sec. 118 of the Code)
- Unrelated business taxable income increased by amount of certain fringe benefit expenses for which deduction is disallowed (sec. 3308 of the House bill and sec. 512 of the Code)
- Repeal of rollover of publicly traded securities gain into specialized small business investment companies (sec. 3310 of the House bill and sec. 1044 of the Code)
- Certain self-created property not treated as a capital asset, including a patent, invention, model or design, or a secret formula or process (sec. 3311 of the House bill and sec. 1221 of the Code)
- Repeal of special rule for sale or exchange of patents (sec. 3312 of the House bill and sec. 1235 of the Code)
- Repeal of technical terminations of partnerships (sec. 3313 of the House bill and sec. 708(b) of the Code)
- Uniform treatment of expenses in contingency fee cases (sec. 3316 of the House bill and new sec. 162(r) of the Code)
- Repeal of employer-provided child care credit (sec. 3402 of the House bill and sec. 45F of the Code)
- Repeal of work opportunity tax credit (sec. 3404 of the House bill and sec. 51 of the Code)
- Repeal of deduction for certain unused business credits (sec. 3405 of the House bill and sec. 196 of the Code)
- Termination of new markets tax credit (sec. 3406 of the House bill and sec. 45D of the Code)
- Repeal of credit for expenditures to provide access to disabled individuals (sec. 3407 of the House bill and sec. 44 of the Code)
- Modification of credit for portion of employer social security taxes paid with respect to employee tips (sec. 3408 of the House bill and sec. 45B of the Code)

- Modifications to credit for electivity produced from certain renewable resources (sec. 3501 of the House bill and sec. 45 of the Code)
- Modification of the energy investment tax credit (sec. 3502 of the House bill and sec. 48 of the Code)
- Extension and phaseout of residential energy efficient property credit (sec. 3503 of the House bill and sec. 25D of the Code)
- Repeal of enhanced oil recovery credit (sec. 3504 of the House bill and sec. 43 of the Code)
- Repeal of credit for producing oil and gas from marginal wells (sec. 3505 of the House bill and sec. 45I of the Code)
- Modification of credit for production from advanced nuclear power facilities (sec. 3506 of the House bill and sec. 45J of the Code)
- Termination of private activity bonds (sec. 3601 of the House bill and sec. 103 of the Code)
- Repeal of tax credit bonds (sec. 3603 of the House bill and secs. 54A, 54B, 54C, 54D, 54E, 54F, and sec. 6431 of the Code)
- No tax-exempt bonds for professional stadiums (sec. 3604 of the House bill and sec. 103 of the Code)
- Surtax on life insurance company taxable income (sec. 3703 of the House bill and sec. 801 of the Code)
- Modification of discounting rules for property and casualty insurance companies (sec. 3707 of the House bill and sec. 846 of the Code)

### **Senate Amendment**

- Modifications to depreciation limitations on luxury automobiles and personal use property (sec. 13202 of the Senate amendment and sec. 280F of the Code)
- Modifications of treatment of certain farm property (sec. 13203 of the Senate amendment and sec. 168 of the Code)
- Modification of the applicable recovery period for real property and qualified improvement property; new single definition for qualified improvement property; modification of the depreciation method used for qualified improvement property; and requirement that a real property trade or business electing out of the business interest limitation use the alternative depreciation system (sec. 13204 of the Senate amendment and sec. 168 of the Code)

- Use of alternative depreciation system for electing farming businesses (sec. 13205 of the Senate amendment and sec. 168 of the Code)
- Expensing of certain costs of replanting citrus plants lost by reason of casualty (sec. 13207 of the Senate amendment and sec. 263A of the Code)
- Provides special rules for taxable year of inclusion for items of gross income subject to the all events test or subject to the special rules under part V of subchapter P of Chapter 1 (excluding items of gross income in connection with a mortgage servicing contract) and codifies the deferral method of accounting for advanced payments provided by Revenue Procedure 2004-34 (sec. 13221 of the Senate Amendment and sec. 451 of the Code)
- Denial of deduction for certain fines, penalties, and other amounts (sec. 13306 of the Senate amendment and sec. 162(f) and new sec. 6050X of the Code)
- Denial of deduction for settlements subject to nondisclosure agreements paid in connection with sexual harassment or sexual abuse (sec. 13307 of the Senate amendment and new sec. 162(q) of the Code)
- Prohibition on cash, gift cards, and other nontangible personal property as deductible employee achievement awards (sec. 13310 of the Senate amendment and sec. 274 of the Code)
- Elimination of deduction for living expenses incurred by members of Congress (sec. 13312 of the Senate amendment and sec. 162 of the Code)
- Employer credit for certain paid family and medical leave (sec. 13403 of the Senate amendment and new sec. 45S of the Code)
- Low-income housing credit modifications (veterans and rural housing) (secs. 13411 and 13412 of the Senate amendment and sec. 42 of the Code)
- Treatment of gain or loss of foreign persons from sale or exchange of interests in partnerships engaged in trade or business within the United States (sec. 13501 of the Senate amendment and secs. 864 and 1446 of the Code)
- Modification of the definition of substantial built-in loss in the case of transfer of partnership interest (sec. 13502 of the Senate amendment and sec. 743 of the Code)
- Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss (sec. 13503 of the Senate amendment and sec. 704 of the Code)
- Computation of life reserves (sec. 13517 of the Senate amendment and sec. 807 of the Code)
  - Tax reserves are the greater of net surrender value (cash value) or 92.87 percent of the statutory reserve.

- Eight-year spread of difference in the amount of reserve under new and old method.
- Modification of rules for life insurance company proration for purposes of determining the dividends received deduction (sec. 13518 of the Senate amendment and sec. 812 of the Code)
  - Replaces section 812 with a provision setting company share at 70 percent and policyholder share at 30 percent.
- Capitalization of certain policy acquisition expenses (sec. 13519 of the Senate amendment and sec. 848 of the Code)
  - Extends capitalization period from 120 months to 180 months.
  - Increases percentages of net premiums that are capitalized to 2.1 percent for annuity contracts, 2.46 percent for group life insurance contracts, and 9.24 percent for all other specified insurance contracts.
- Tax reporting for life settlement transactions (sec. 13520 of the Senate amendment and new sec. 6050X of the Code)
- Clarification of tax basis of life insurance contracts (sec. 13521 of the Senate amendment and sec. 1016 of the Code)
- Exception to transfer for valuable consideration rules (sec. 13522 of the Senate amendment and sec. 101 of the Code)
- Cost basis of specified securities determined without regard to identification (sec. 13533 of the Senate amendment and secs. 1012 and 6045 of the Code)
- Expansion of qualifying beneficiaries of an electing small business trust (sec. 13541 of the Senate amendment and sec. 1361 of the Code)
- Charitable contribution deduction for electing small business trusts (sec. 13542 of the Senate amendment and sec. 641(c) of the Code)
- Increase in excise tax rate for stock compensation of insiders in expatriated corporations (sec. 13604 of the Senate amendment and sec. 4985 of the Code)
- Craft beverage modernization and tax reform (secs. 13801 through 13808 of the Senate amendment and secs. 263A, 5051, 5141, 5414, 5041, 5001, and 5212 of the Code)
- Modification of tax treatment of Alaska Native Corporations and Settlement Trusts (sec. 13821 of the Senate amendment and new secs. 139G and 247 and sec. 6039H of the Code)
- Amounts paid for aircraft management services (sec. 13822 of the Senate amendment and sec. 4261 of the Code)

- Opportunity zones (sec. 13823 of the Senate amendment and new secs. 1400Z-1 and 1400Z-2 of the Code)

## TAXATION OF FOREIGN INCOME AND FOREIGN PERSONS

### A. Provisions without Differences

- Repeal of section 902 indirect foreign tax credits; determination of section 960 credit on current year basis (sec. 4101 of the House bill, sec. 14301 of the Senate amendment, and secs. 902 and 960 of the Code)
- Source of income from sales of inventory determined solely on basis of production activities (sec. 4102 of the House bill, sec. 14304 of the Senate amendment, and sec. 863(b) of the Code)
- Repeal of inclusion based on withdrawal of previously excluded subpart F income from qualified investment (sec. 4201 of the House bill, sec. 14213 of the Senate amendment, and sec. 955 of the Code)
- Repeal of treatment of foreign base company oil related income as subpart F income (sec. 4202 of the House bill, sec. 14211 of the Senate amendment, and sec. 954(a) of the Code)
- Inflation adjustment of *de minimis* income exception for foreign base company (sec. 4203 of the House bill, sec. 14212 of the Senate amendment, and sec. 954(d)(3) of the Code)
- Look-thru rule for related controlled foreign corporations (“CFCs”) made permanent (sec. 4204 of the House bill, sec. 14217 of the Senate amendment, and sec. 954(c)(6) of the Code)
- Elimination of requirement that corporation must be controlled for 30 days before subpart F inclusions apply (sec. 4206 of the House bill, sec. 14216 of the Senate amendment, and sec. 951(a)(1) of the Code)
- Restriction on insurance business exception to passive foreign investment company rules (sec. 4501 of the House bill, sec. 14501 of the Senate amendment, and sec. 1297 of the Code)

## B. Provisions with Differences

### **1. Deduction for foreign-source portion of dividends received by domestic corporations from specified 10-percent owned foreign corporations (sec. 4001 of the House bill, sec. 14101 of the Senate amendment, and new sec. 245A of the Code)**

Both the House and Senate legislation provide a 100-percent dividends-received deduction for domestic corporations, with the following differences.

#### Hybrid dividends

##### House Bill

No provision.

##### Senate Amendment

The dividends received deduction (“DRD”) is not available for any dividend received by a U.S. shareholder from a CFC or by a CFC from another CFC if the dividend is a hybrid dividend. A hybrid dividend is an amount received from a CFC for which a deduction would be allowed under this provision and for which the specified 10-percent owned foreign corporation received a deduction (or other tax benefit) from taxes imposed by a foreign country.

#### Holding period requirement

##### House Bill

Minimum holding period to be eligible for DRD: holding the stock for more than 180 out of 361 days.

##### Senate Amendment

Minimum holding period to be eligible for DRD: holding the stock for more than 365 out of 731 days.

### **2. Modification of subpart F inclusion for increased investments in United States property (sec. 4002 of the House bill, sec. 14218 of the Senate amendment, and sec. 956 of the Code)**

#### House Bill

- Provides that the amount of inclusion required under section 956 is zero for U.S. shareholders that are domestic C corporations.
- Extends regulatory authority for applying section 956 to U.S. shareholders that are partnerships with corporate partners.

### Senate Amendment

Rather than restate the computation of the inclusion under section 956, the Senate amendment adds a specific exception from the scope of section 956 for taxpayers that are domestic corporations.

### **3. Rules relating to sales or transfers involving specified 10-percent owned foreign corporations (sec. 4003 of the House bill, sec. 14102 of the Senate amendment, and secs. 367(a)(3)(C), 961, 1248, and new sec. 91 of the Code)<sup>21</sup>**

The House bill and Senate amendment provide generally that a domestic corporate shareholder's adjusted basis in the stock of a 10-percent owned foreign corporation is reduced by an amount equal to the portion of any dividend received with respect to such stock from such foreign corporation that was not taxed by reason of a dividends received deduction allowable under section 245A in any taxable year of such domestic corporation. In addition, if a U.S. corporation transfers substantially all of the assets of a foreign branch to a foreign corporation which, after such transfer, is a 10-percent owned foreign corporation, the U.S. corporation includes in gross income an amount equal to the transferred loss amount.

#### Sales of CFC stock by U.S. persons or another CFC

##### House Bill

The House Ways and Means committee report provides, "...a distribution from a foreign subsidiary that is eligible for a DRD would reduce the value of the foreign subsidiary, reducing any built-in gain or increasing any built-in loss in the shareholder's stock of the subsidiary. Reducing gain in this manner is consistent with the application of section 1248(a) (or section 964(e)) to recharacterize gain as a dividend for which a DRD may be allowed. Increasing loss in this manner, however, creates a double U.S. tax benefit for receiving a tax-free distribution from a foreign subsidiary."<sup>22</sup>

##### Senate Amendment

Any amount received by the domestic corporation which is treated as a dividend for purposes of section 1248, is treated as a dividend for purposes of applying the provision.

If an amount is treated as a dividend because of a sale or exchange by a CFC of stock in another foreign corporation held for a year or more, then the foreign-source portion of the dividend is treated as subpart F income of the selling CFC and a U.S. shareholder of the selling CFC includes in income an amount equal to the shareholder's pro rata share of the amount

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<sup>21</sup> The House bill heading is "Limitation on losses with respect to specified 10-percent owned foreign corporations."

<sup>22</sup> House Ways and Means Committee Report on H.R.1, Tax Cuts and Jobs Act, H.R. Rep. No. 115-409, Nov. 13, 2017, pp. 373-75.

treated as subpart F income. A DRD is allowed by the U.S. shareholder with respect to the inclusion.

Repeal of active trade or business exception

House Bill

No provision.

Senate Amendment

Section 367 is amended to provide that in the case of transfers of property used in the active conduct of a trade or business from a U.S. corporation to a foreign corporation, the foreign corporation is not considered a foreign corporation, for purposes of determining the extent to which gain is recognized on such transfer.

**4. Treatment of deferred foreign income upon transition to participation exemption system of taxation and deemed repatriation at two-tier rate (sec. 4004 of the House bill, sec. 14103 of the Senate amendment, and sec. 965 of the Code)**

Scope of earnings and profits subject to the transition tax

House Bill

- Tax is based on the greater of the aggregate post-1986 accumulated foreign earnings and profits as of November 2, 2017 or December 31, 2017, not reduced by distributions during the taxable year ending with or including the measurement date, and increased by any qualified deficit that is treated as a qualified deficit for taxable years beginning after December 31, 2017.
- Deferred earnings of a U.S. shareholder are reduced (but not below zero) by the shareholder's share of deficits from any specified foreign corporations, including netting against deficits of another U.S. shareholder in a different U.S. ownership chain within the same U.S. affiliated group.

Senate Amendment

- Tax is based on the greater of the aggregate post-1986 accumulated foreign earnings and profits as of November 9, 2017 or December 31, 2017, not reduced by distributions during the taxable year ending with or including the measurement date.
- In determining the post-1986 earnings and profits subject to the transition tax, earnings and profits accumulated by a company prior to attaining its status as a specified foreign corporation are not included.

- Deficits may reduce the aggregate foreign earnings of a U.S. shareholder, but cannot be used to offset earnings of another U.S. shareholder in a different chain of U.S. ownership within the same U.S. affiliated group.
- Qualified deficits must be used in reducing the pool of earnings subject to the transition tax; any excess qualified deficits must be identified and may be carried over to the following year.

#### Partial dividend-received deduction and related foreign tax credits

##### House Bill

- A deduction from the amount of the section 951 inclusion is based on equivalent percentages required to achieve a 14-percent rate of tax on accumulated post-1986 foreign earnings held in the form of cash or cash equivalents, and 7-percent rate of tax on all other earnings.
- Disallows a portion of foreign tax credits attributable to the nontaxable portion of the income inclusion, in the fixed percentages of 80 percent of foreign taxes paid with respect to noncash earnings, and 60 percent of the credits paid with respect to earnings held in cash.
- Suspends otherwise applicable recapture provisions for overall foreign losses and foreign oil and gas losses in computing foreign tax credits.
- Carryover period for excess credits is increased from 10 to 20 years.

##### Senate Amendment

- The bill authorizes a 78.6-percent deduction of deferred foreign income held in cash or cash equivalents, and a 58.6-percent deduction of deferred foreign income held in cash assets. Foreign tax credits are disallowed to the extent that a deduction was permitted for the income to which the credits are attributable.
- Permits a U.S. shareholder of a deferred foreign income corporation to elect not to take into account the section 951 inclusion and related foreign taxes deemed paid with respect to such income, for purposes of computing the net operating loss for the taxable year of the section 951 inclusion.

##### Cash position

Both the House and Senate amendments differentiate between earnings held in the form of cash or cash equivalents, and those held in illiquid assets, including authority for the Secretary to disregard transactions that lack economic substance, with the following differences.

### House Bill

- Cash position is the average of the aggregate cash position measured as of the date of introduction and as of the year-end of the last two taxable years ending before date of introduction.
- Publicly traded stock of a specified foreign corporation is excluded from cash position to the extent of the U.S. shareholder pro rata share of cash.
- Related party loans are generally excluded from the computation of cash position of a specified foreign corporation.
- Blocked income is not included in the cash position of a specified foreign corporation, but is included in the pool of earnings on which the transition tax is based.

### Senate Amendment

- Cash position is the greater of the aggregate cash position as of the last day of the last taxable year beginning before January 1, 2018 and the average aggregate cash position as of the last day of each of the last two years ending before date of introduction.
- Personal property actively traded on an established market is excepted from the cash position of a specified foreign corporation if the property is stock in the specified foreign corporation.
- Related party loans are excluded from the computation of cash position, to the extent it is treated as such by another specified foreign corporation.

### Schedule of installment payments over eight years

#### House Bill

- Minimum installment payment is 12.5 percent of the net tax liability.

#### Senate Amendment

- Payments are due in amounts of 8 percent for each of the first five years, followed by payments of 15 percent, 20 percent and 25 percent in the last three years.

### Additional provisions in Senate Amendment

- Provides that real estate investment trusts (“REITs”) are not required to take into account the section 951 inclusions for purposes of determining qualified REIT gross income, and further permits the REIT to elect to include the section 951 amount in income over eight years, with a proportionate share of the partial dividends-received deduction.
- Extends the limitations period for assessment of tax deficiencies from three years to six years for issues related to determination of the net tax liability.

- Denies any deduction with respect to the section 951 inclusion if an entity becomes an expatriated entity within the meaning of section 7874(a)(2) within ten years of the date of enactment, and imposes a tax of 35 percent tax in the year of expatriation, with no foreign tax credits.
- Grants specific authority to the Secretary to address double-counting of profits, manipulation of measurement dates for determining earnings and profits subject to the provision and to deter abuse.

**5. Current year inclusion of foreign high-return amounts or global intangible low-taxed income (sec. 4301 of the House bill, sec. 14201 of the Senate amendment, and new sec. 951A of the Code)**

House Bill

- The provision provides U.S. shareholders a 50-percent exclusion on their foreign high-return amount.
- In computing their foreign high return amount, U.S. shareholders subtract from net CFC tested income an amount equal to the excess (if any) of (1) the applicable percentage of the aggregate of the shareholder's pro rata share of qualified business asset investment over (2) the amount of interest expense taken into account in determining the shareholder's net CFC tested income. The applicable percentage is 7 percent plus the Federal short-term rate.
- Tested income does not include active finance income, active insurance income, or commodities gross income.
- Tested foreign income taxes are foreign income taxes paid or accrued with respect to tested income or tested loss.
- Qualified business asset investment for a taxable year is based on CFCs' adjusted basis in specified tangible property as of the close of the taxable year.
- For purposes of computing qualified business asset investment, specified tangible property is any tangible property to the extent the property is used the production of tested income or tested loss.

Senate Amendment

- The provision provides corporate U.S. shareholders a 50-percent deduction on their global intangible low-taxed income for taxable years beginning after December 31, 2017, and before January 1, 2026.<sup>23</sup> For taxable years beginning after December 31, 2025, the deduction is reduced to 37.5 percent.

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<sup>23</sup> The deduction is described in sec. 14202 of the Senate amendment and new sec. 250 of the Code as amended by the Senate amendment.

- In computing their global intangible low-taxed income, corporate U.S. shareholders subtract from net CFC tested income an amount equal to 10 percent multiplied by the aggregate of the shareholder's pro rata share of qualified business asset investment.
- Tested income includes active finance income and active insurance income, and does not include foreign oil and gas extraction income.
- Tested foreign income taxes are foreign income taxes paid or accrued with respect to tested income but not tested loss.
- Qualified business asset investment for a taxable year is based on the average of CFCs' adjusted basis in specified tangible property as of the close of each quarter of the taxable year.
- For purposes of computing qualified business asset investment, specified tangible property is any tangible property to the extent the property is used in the production of tested income. For specified tangible property used in the production of tested and non-tested income, a formula applies for allocating the adjusted basis in the property.

**6. Modification of stock attribution rules for determining CFC status (sec. 4205 of the House bill, sec. 14214 of the Senate amendment, and secs. 318 and 958 of the Code)**

House Bill

- Amends the subpart F rules on application of the constructive ownership provisions of section 318 by repealing the provision of section 958(b)(4) that precludes attribution of stock held by a foreign person to a U.S. person.
- Conforms section 6038 reporting requirements to require that entities that are treated as CFCs by reason of the rules on constructive ownership are within the scope of the reporting requirements.
- Provision is effective for taxable years of foreign corporations beginning after December 31, 2017, and to the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

Senate Amendment

- Amends the subpart F rules on application of the constructive ownership provisions of section 318 by repealing the provision of section 958(b)(4) that precludes attribution of stock held by a foreign person to a U.S. person.
- Provision is effective for the last taxable year of foreign corporations beginning before January 1, 2018, and all subsequent years, as well as to the taxable years of U.S. shareholders in which or with which such taxable years of foreign corporations end.

**7. Limitation on deductibility of interest from members of an international group (sec. 4302 of the House bill, sec. 14221 of the Senate amendment, and new sec. 163(n) of the Code)**

Scope

House Bill

- Limits amount of net interest expense that may be deducted by a domestic corporation that is a member of an international financial reporting group.<sup>24</sup> For this purpose, an international financial reporting group is a group of entities that: (1) includes at least one foreign corporation engaged in a trade or business in the United States or at least one domestic corporation and foreign corporation; (2) prepares consolidated financial statements for the reporting year; and (3) reports annual gross receipts in excess of \$100 million.

Senate Amendment

- Limits amount of net interest expense that may be deducted by a domestic corporation that is a member of a worldwide affiliated group.<sup>25</sup> For this purpose, affiliated group is defined by reference to section 1504, but substituting a 50 percent ownership threshold (by vote and value) for the 80 percent threshold of section 1504(a)(2), and by disregarding section 1504(b)(3) so as to permit inclusion of foreign corporations in the affiliated group.

Limitation on deductibility

House Bill

- Disallows a deduction for interest expense to the extent the domestic corporation's share of the group's global net interest expense exceeds 110 percent of the U.S. corporation's share of the group's global earnings before interest, taxes, depreciation, and amortization ("EBITDA"). Disregarded entities are included for this purpose. EBITDA is computed according to financial accounting records.

Senate Amendment

- Reduces the deduction for interest paid or accrued by the domestic corporation's net interest expense and the "debt-to-equity differential percentage" of the worldwide affiliated group. The debt-to-equity differential percentage of the worldwide affiliated group is defined as the "excess domestic indebtedness" of the group divided by the total indebtedness of the domestic corporations that are members of the group. "Excess domestic indebtedness" is the amount by which the total indebtedness of the U.S. members exceeds 110 percent of the total indebtedness those members would hold if their total indebtedness to total equity

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<sup>24</sup> A U.S. consolidated group is considered a single corporation under this provision.

<sup>25</sup> All U.S. corporate members of the worldwide affiliated group are treated as one member when determining whether the group has excess domestic indebtedness as a result of a debt-to-equity differential.

ratio were proportionate to the ratio of total indebtedness to total equity in the worldwide group. Total equity generally means the sum of the money and all other assets of such corporation, reduced by (but not below one) the total indebtedness of the corporation. Assets and indebtedness are computed according to U.S. tax basis amounts.

- Phases in the new provision such that it applies if excess indebtedness of the domestic corporation exceeds 130 percent of total indebtedness of the worldwide affiliated group in 2018, 125 percent in 2019, 120 percent in 2020, 115 percent in 2021, and 110 percent in 2022 and thereafter.

#### Carryover of disallowed deduction

##### House Bill

- Where applicable, disallowed interest deductions pursuant to whichever provision denies a greater amount of interest deductions (between revised section 163(j) and new section 163(n)). Disallowed interest can be carried forward for five years.

##### Senate Amendment

- Where applicable, disallowed interest deductions pursuant to whichever provision denies a greater amount of interest deductions (between revised section 163(j) and new section 163(n)). Disallowed interest can be carried forward indefinitely.

### **8. Base erosion using deductible cross-border payments between affiliated companies (sec. 4303 of the House bill and new secs. 4491 and 6038E of the Code; sec. 14401 of the Senate amendment and secs. 6038A and 6038C and new secs. 59A and 59B of the Code)**

#### House Bill

Imposes an excise tax on specified amounts paid by U.S. payors to related foreign recipients to the extent the amounts are deductible by the U.S. payor. The provision applies to payments between entities in a group that files a consolidated financial statement with at least \$100 million of annual outbound deductible payments to affiliated entities. The excise tax does not apply if the foreign recipient elects to be subject to U.S. income tax on the amounts received. In calculating the U.S. income tax liability imposed under such an election, deemed expenses are allowed as a deduction. A foreign tax credit of 80 percent of applicable foreign credits are allowed.

#### Exclusions

A specified amount is any amount which is allowable by the payor as a deduction or includible in costs of goods sold, or inventory, or in the basis of an amortizable or depreciable asset. A specified amount does not include: (i) interest, (ii) an amount paid or incurred for the acquisition of a or a commodity, or (iii) for a payor which has elected to use a services cost method under section 482, an amount paid or incurred for services if such amount is the total services cost with no markup.

### Senate Amendment

A base erosion tax applies to taxpayers with annual gross receipts of \$500 million or more. The tax is 10 percent (12.5 percent after 2025) of modified taxable income, reduced by the regular tax liability. Modified taxable income is taxable income increased by any deductible payments made to a related foreign person including depreciation deductions on assets purchased from a related foreign person and adjusted by all credits other than R&D credits (and all credits after 2025). The tax does not apply if the total add-backs are no more than four percent of the total deductions of the taxpayer.

### Exclusions

The provision only applies to deductions, not any amount that constitutes reductions in gross receipts of the taxpayer unless it is paid or accrued by the taxpayer with respect to a surrogate foreign corporation. Costs of goods sold are excluded. Payments with respect to derivatives as defined are excluded. Any amount paid or accrued by a taxpayer for services is excluded if the services meet the requirements for eligibility for use of the services cost method determined without regard to the requirement that the services not contribute significantly to fundamental risks of business success or failure and such amount constitutes the total services cost with no markup.

## C. Provisions Unique to Each Bill

### House Bill

- Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico (sec. 4401 of the House bill and sec. 199 of the Code)
  - The provision temporarily (and retroactively) extends the section 199 deduction for domestic production activities in Puerto Rico for one additional year.
- Extension of temporary increase in limit on cover over of rum excise taxes to Puerto Rico and the U.S. Virgin Islands (sec. 4402 of the House bill and sec. 119(d) of the Code)
  - The provision temporarily (and retroactively) increases the limit on cover of rum excises taxes (from \$10.50 to \$13.25 per proof gallon) to Puerto Rico and the U.S. Virgin Islands for six additional years.
- Extension of American Samoa economic development credit (sec. 4403 of the House bill and sec. 119 of Pub. L. No. 109-432)
  - The provision temporarily (and retroactively) extends the American Samoa economic development credit for six additional years.

### Senate Amendment

- Deduction for foreign-derived intangible income derived from trade or business within the United States (sec. 14202 of the Senate amendment and new sec. 250 of the Code)
  - The provision provides domestic corporations a 37.5-percent deduction for foreign-derived intangible income for taxable years beginning after December 31, 2017, and before January 1, 2026. For taxable years beginning after December 31, 2025, the deduction is reduced to 21.875 percent.
  - Foreign-derived intangible income equals a domestic corporation's deemed intangible income multiplied by the percentage of its deduction-eligible income that is foreign-derived.
  - Deduction-eligible income is defined similarly to tested income (which is used in determining global intangible low-taxed income). Deemed intangible income is the difference between deduction-eligible income and a 10-percent return on qualified business asset investment.
- Special rules for transfers of intangible property from CFCs to United States shareholders (sec. 14203 of the Senate amendment and new sec. 966 of the Code)
  - For distributions of intangible property held by a CFC on the date of enactment of the provision and made to a corporate U.S. shareholder over a limited period of time, the fair market value of the property on the date of the distribution is treated as not

exceeding the adjusted basis of the property immediately before the distribution. Intangible property is intangible property described in section 936(h)(3)(B) and computer software described in section 197(e)(3)(B).

- Modification of definition of U.S. shareholder (sec. 14215 of the Senate amendment and sec. 951 of the Code)
  - The provision expands the definition of U.S. shareholder to include any U.S. person who owns at least 10 percent of the total value of shares of all classes of stock in the CFC.
- Limitations on income shifting through intangible property transfers (sec. 14222 of the Senate amendment and secs. 367 and 482 of the Code).
  - Scope of the definition of intangible property is clarified to include goodwill, going concern value and workforce-in-place.
  - Use of aggregate methods of valuing transfers of intangibles codified.
- Certain related party amounts paid or accrued in hybrid transactions or with hybrid entities (sec. 14223 of the Senate amendment and new sec. 267A of the Code)
  - The provision denies a deduction for interest or royalties paid or accrued to a related party in connection with a hybrid transaction or with a hybrid entity, to the extent that the related party does not have a corresponding inclusion or is allowed a deduction with respect to the amount paid for foreign tax purposes.
- Shareholders of surrogate foreign corporations not eligible for reduced rate on dividends (sec. 14224 of the Senate amendment and sec. 1(h)(11) of the Code)
- Separate foreign tax credit limitation basket for foreign branch income (sec. 14302 of the Senate amendment and sec. 904(d) of the Code)
  - The provision adds a separate foreign tax credit limitation basket for foreign branch income.
- Acceleration of election to allocate interest, etc., on a worldwide basis (sec. 14303 of the Senate amendment and sec. 864 of the Code).
  - The provision would accelerate the effective date of section 864(d), which would permit taxpayers to apportion the interest expense of U.S. members of a worldwide affiliated group on a worldwide basis.
- Election to increase percentage of domestic taxable income offset by overall domestic loss treated as foreign source (sec. 14305 of the Senate amendment and sec. 904(g) of the Code).
  - The provision permits an election to use up to 100 percent of a pre-2018 unused overall domestic loss in computing the foreign tax credit limitations to be taken into

account in a taxable year beginning after December 31, 2017 and before January 1, 2028.

- Repeal of fair market value method of interest expense apportionment (sec. 14502 of the Senate amendment and sec. 864 of the Code)
- Modification to source rules involving U.S. Virgin Islands (sec. 14503 of the Senate amendment and secs. 865 and 937 of the Code)
  - The provision modifies the sourcing rule in section 937(b)(2) by modifying the U.S. income limitation to exclude only U.S. source (or effectively connected) income attributable to a U.S. office or fixed place of business. The provision also modifies section 865(j)(3) by providing Treasury with the authority to waive the 10 percent foreign tax requirement for source treatment of capital gains income earned by a U.S. Virgin Islands resident.

## EXEMPT ORGANIZATIONS

### A. Provisions without Differences

- None.<sup>26</sup>

### B. Provisions with Differences

#### 1. Excise tax based on investment income of private colleges and universities (sec. 5103 of the House bill, sec. 13701 of the Senate amendment, and new sec. 4969<sup>27</sup> of the Code)

House bill.—Imposes an excise tax at a rate of 1.4 percent on the net investment income of certain private colleges and universities with at least 500 students and with endowment assets of at least \$250,000 per student. For these purposes, assets and investment income of related entities are treated as assets and investment income of the educational institution.

Senate amendment.—Follows the House bill with the following modifications. First, the education institution must have at least 500 *tuition paying* students. Second, the endowment-per-student threshold is increased from \$250,000 to \$500,000. Third, the provision clarifies that the related-party rule generally applies only to assets and investment income intended or available for the use or benefit of the educational institution, and that an amount held by a related party cannot be taken into account with respect to more than one educational institution.

### C. Provisions Unique to Each Bill

#### House Bill

- Clarification that an organization (such as a State pension fund) that is described in section 511(a) and thus is subject to the tax on unrelated business income (“UBIT”) does not fail to be so treated by reason of exercising an essential government function (within the meaning of section 115) (sec. 5001 of the House bill and sec. 511 of the Code)
- Exclusion of research income from unrelated business taxable income for certain organizations limited to income from publicly available research (sec. 5002 of the House bill and sec. 512(b)(9) of the Code)

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<sup>26</sup> Two provisions relating to charitable contributions that are included with the exempt organizations provisions (in the business title) of the Senate amendment, are included in the individual income tax title of the House bill. These provisions—(1) denial of deduction for college athletic event seating rights and (2) repeal of substantiation exception in the case of contributions reported by the donee organization—are described in the section of this document relating to individual tax reform.

<sup>27</sup> The House bill creates new section 4969 of the Code. The Senate amendment creates new section 4968 of the Code.

- Simplification of excise tax based on private foundation investment income by replacing the present-law two-rate structure (two percent and one percent) with a single rate of 1.4 percent (sec. 5101 of the House bill and sec. 4940 of the Code)
- An organization that operates an art museum does not qualify as a private operating foundation unless the museum is open during normal business hours to the public for at least 1,000 hours during the taxable year (sec. 5102 of the House bill and sec. 4942(j) of the Code)
- Exception from private foundation excess business holdings tax for philanthropic business holdings, generally, an independently operated business enterprise that pays all of its after-tax profits to the foundation (sec. 5104 of the House bill and sec. 4943 of the Code)
- Temporary modification of the present-law prohibition on political campaign activity by section 501(c)(3) organizations (the so-called “Johnson amendment”) such that organizations are permitted to make statements relating to a political campaign in ordinary course of its tax-exempt activities as long as the organization does not incur more than incidental incremental expenses (sec. 5201 of the House bill and sec. 501(c)(3) of the Code)
- Additional reporting requirements for donor advised fund sponsoring organizations generally relating to distributions from individual donor advised fund accounts (sec. 5202 of the House bill and sec. 6033(k) of the Code)

### **Senate Amendment**

- Unrelated business taxable income required to be separately computed for each trade or business activity (sec. 13702 of the Senate amendment and sec. 512 of the Code)