TAX ALERT

MAJOR TAX OVERHAUL SIGNED INTO LAW

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On Friday, December 22nd, President Trump signed into law the Tax Cuts and Jobs Act (TCJA). This bill contains arguably the most sweeping changes in US tax law since the enactment of the Tax Reform Act of 1986. The signing is the culmination of months of discussions and meetings among the so-called Big Six that laid the framework for the bill and then negotiations and compromises among the members of the House and Senate over the past two months that resulted in the bill moving swiftly through the House, Senate and Conference Committee.

Among its many provisions, the TCJA reduces the top individual tax rate, modifies the individual tax brackets, eliminates and/or caps many individual itemized deductions, reduces the corporate tax rate, enhances many corporate deductions, changes the corporate taxation system to a territorial one, and provides for repatriation of offshore earnings.

Although the Senate parliamentarian ruled that the tax bill's short name, "Tax Cuts and Jobs Act," violated budget rules, we will refer to the law by that name throughout this publication.

INDIVIDUALS

Individual Tax Rates

The new individual income tax rates and brackets are as follows:

Rate	Married Filing Joint	Married Filing Separate	Head of Household	Single
10%	Up to $19,050	Up to $9,525	Up to $13,600	Up to $9,525
12%	$19,051 to $77,400	$9,526 to $38,700	$13,601 to $51,800	$9,526 to $38,700
22%	$77,401 to $165,000	$38,701 to $82,500	$51,801 to $82,500	$38,701 to $82,500
24%	$165,001 to $315,000	$82,501 to $157,500	$82,501 to $157,500	$82,501 to $157,500
32%	$315,001 to $400,000	$157,501 to $200,000	$157,501 to $200,000	$157,501 to $200,000
35%	$400,001 to $600,000	$200,001 to $300,000	$200,001 to $500,000	$200,001 to $500,000
37%	Over $600,000	Over $300,000	Over $500,000	Over $500,000

Mazars Insight – In 2017, the top individual income tax rate was 39.6% and applied to taxable income over $470,700 (for married filing joint taxpayers). It is interesting to note that the tax brackets for single taxpayers are ½ the tax brackets for married filing joint taxpayers, except for the highest tax bracket.

The current tax treatment of capital gains and qualified dividends is not changed.

The tax brackets and rates applicable to estates and trusts under the plan are as follows:

10% Up to $2,550
24% $2,551 to $9,150
35% $9,151 to $12,500
37% Over $12,500

This plan indexes the new brackets for inflation with changes effective for tax years beginning after December 31, 2017 and before December 31, 2025.

Standard Deduction

The bill would nearly double the standard deduction and index it for inflation beginning after 2018. The new standard deductions are as follows:

$24,000 for married individuals filing a joint return
$18,000 for head-of-household
$12,000 for all other individuals

The additional standard deduction for the blind and elderly remains intact. Increases to the basic standard deductions are temporary and expire after December 31, 2025.

Personal Exemptions

The personal exemption is repealed beginning in 2018. Taxpayers will no longer be able to claim personal exemptions for themselves, a spouse, or any dependents. The repeal expires on December 31, 2025.

Alternative Minimum Tax (AMT)

Both the AMT exemption and phase-out amounts are increased from the current law. Beginning January 1, 2018, the AMT exemption amounts are as follows:

$109,400 for married filing jointly
$70,300 for single
$54,700 for married filing separately

The exemption begins to be phased out once a taxpayer's income reaches the following amounts:

$1,000,000 for married filing jointly
$500,000 for single
$500,000 for married filing separately

These increases are effective for tax years beginning after December 31, 2017 and expire after December 31, 2025.

Itemized Deductions
The TCJA presents substantial changes to itemized deductions. The changes are mostly temporary, taking effect for tax years beginning after December 31, 2017 and ending as of January 1, 2026. One exception to this timeline is the change to the medical expense deduction which takes effect as of January 1, 2017 and ends December 31, 2018.

- State & Local Income Taxes and Real Estate Taxes – The aggregate amount of nonbusiness state and local real property taxes, personal property taxes and state and local income taxes that may be deducted is capped at $10,000 ($5,000 for a married taxpayer filing a separate return).

  Mazars Insight: The elimination of the state and local income tax deduction was a contentious issue throughout the legislative process. This provision significantly affects taxpayers in high income tax states, such as New York, New Jersey and California.

  A planning idea that was being considered by many in the tax community came to an abrupt end with the inclusion of a single provision in the bill released by the Conference Committee and ultimately signed into law. The idea under consideration was prepaying 2018 state income taxes in 2017 in order to deduct such prepayments on one's 2017 income tax return before the new monetary limitations (i.e., the $10,000) came into effect on January 1, 2018. In response, the drafters of the bill inserted a provision that prevents an individual from claiming an itemized deduction in 2017 for prepayment of a future year's income tax liability.

- Mortgage Interest Deduction: The TCJA allows a mortgage interest deduction related to new loans up to $750,000 (instead of the current $1 million). The mortgage could be on one's primary or secondary (i.e., vacation) home. Loans entered into prior to December 15, 2017 are subject to the $1million limitation. However, the bill repeals the deduction for interest on home equity indebtedness (i.e. a home equity line of credit).
- Medical Expenses: The adjusted gross income floor is reduced to 7.5% as opposed to the current 10% floor for all taxpayers for the 2017 and 2018 tax year.
- Miscellaneous Itemized Deductions: All miscellaneous itemized deductions subject to the 2% floor are disallowed for tax years beginning after December 31, 2017 through December 31, 2025. Some common examples of these deductions include tax preparation fees, investment advisory fees, and indirect miscellaneous itemized deductions from pass through entities.
- Personal Casualty Losses: Personal casualty losses are no longer deductible subject to certain exceptions related to losses incurred in a federally-declared disaster area.
- Overall Limitation on Itemized Deductions: The phase out of itemized deductions based on a taxpayer's adjusted gross income is repealed.
- Charitable Contributions: The adjusted gross income limitation on cash contributions to public charities and certain private foundations is increased from 50% to 60%, effective for contributions made in tax years after 2017 and before 2026.

  Mazars Insight – The final version of the TCJA retains many of the modifications on itemized deductions proposed by the previous House and Senate versions of the bill. The elimination of deductions subject to the 2% floor, the overall limitation on nonbusiness state and local income tax and real property taxes, and the reduced mortgage interest deduction will force many taxpayers to utilize the increased standard deduction in lieu of itemizing deductions. Though this may lead to an overall simplification of tax filings, many taxpayers will be dismayed to find that expenses which used to reduce their taxable income will no longer have that effect. Financial incentives for purchasing property could potentially dwindle and charitable giving may be reduced as the tax benefit of doing so falls by the wayside for many taxpayers.

Child Tax Credit/Family Tax Credit
The child tax credit is increased to $2,000 per child, $1,400 of which would be refundable (indexed for inflation beginning after 2018). It also provides a $500 nonrefundable credit for non-child dependents. The credit would begin to phase out once the taxpayer's adjusted gross income reaches $400,000 for joint filers, an amount which would *not* be indexed for inflation. The bill requires a taxpayer to provide the social security number of each qualifying child claimed on the tax return in order to receive the refundable portion of the credit. These provisions apply to taxable years beginning after December 31, 2017 and before January 1, 2026.

Mazars Insight: The modifications made to this provision during the joint conference helped secure Senator Marco Rubio's (R-Fla) vote.

Education Related Provisions
Distributions of up to $10,000 are now allowed to be made from Section 529 plans for certain expenses associated with enrollment or attendance at an elementary or secondary public, private or religious school. Discharge of student debt on account of death or disability is now excludible from taxable income.

Mazars Insight: The bill does not modify the current American Opportunity Tax Credit or the Lifetime Learning Credit, nor does it repeal the student loan interest deduction or the deduction for qualified tuition and related expenses as was proposed in the bill originally passed by the House.

Moving Expenses
The bill suspends the deduction of moving expenses as of December 31, 2017, and before January 1, 2026. The deduction would remain available to active duty members of the Armed Forces.

Gain from the Sale of a Principal Residence Exclusion
Unlike the bills passed by both the House and Senate, the final version of the TCJA does not change the current treatment of the gain from sale of a principal residence. Accordingly, the $500,000 exclusion for joint filers ($250,000 for single filers) from the gain related to the sale of a principal residence still applies, and a taxpayer is still required to own and use the home for two out of the previous five years as his principal residence.

Alimony
Alimony payments are no longer deductible and receipt of alimony is no longer includible in gross income, effective for divorce agreements executed after December 31, 2018.

Affordable Care Act
The bill does not repeal the taxes created under the Affordable Care Act. Accordingly, the 3.8% net investment income tax and the additional .9% Medicare tax will remain intact. The individual mandate has been eliminated and the bill reduces to zero the penalty for failure to maintain health insurance coverage.

Retirement
The current laws regarding retirement accounts were generally retained. However, the bill prohibits taxpayers from recharacterizing Roth IRA contributions as Traditional IRA contributions in order to unwind a Roth conversion.

Estate & Gift Tax
The bill increases the federal estate, generation skipping transfer and gift tax exemption to $10 million (indexed for inflation as of 2011) from the currently applicable $5 million (as of 2011) for all decedents dying and generation skipping transfers and gifts made after December 31, 2017. This increase will expire as of January 1, 2026. The bill does not provide for a repeal of the estate tax or generation skipping transfer tax, nor does it provide for a reduction in the gift tax rate.

Mazars Insight – The doubling of the lifetime exemption could prove to be extremely useful if utilized properly. Due to the temporary nature of this increase, taxpayers need to consider whether or not to take full advantage of the increased gift tax exemption before it expires. Consideration must also be given to the basis that donees and beneficiaries take when they receive assets from donors and decedents. In some situations, it may be more advantageous for a person to not make a gift during their lifetime, but instead to let an asset pass to their beneficiary at death, since an asset's basis received by a beneficiary is its fair market value at the time of the decedent's death. Additionally, clients who may not otherwise be required to file an estate tax return (Form 706) should be advised to file nonetheless in order to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount. This will allow the client to pass the temporarily increased unused lifetime exemption amount to the surviving spouse upon death.

DOMESTIC ENTITIES

Corporate Tax Rate Cut
The bill cuts the corporate tax rate to 21% effective for tax years beginning after December 31, 2017.

Dividends Received Deduction Decrease
The law reduces the corporate dividends received deduction. There is no change to the 100% exclusion for dividends received from wholly-owned subsidiaries. For corporations owning between 20% and 80% of a subsidiary, the dividends received deduction is reduced from 80% to 65%. For corporations owning less than 20% of a subsidiary, the dividends received deduction is reduced from 70% to 50%.

Corporate Alternative Minimum Tax Repeal
The corporate AMT is repealed for tax years beginning after 2017.

Pass Through Deduction
The bill provides an individual deduction of 20% of domestic "qualified business income" earned from a pass-through entity. Qualified business income is the net amount of items of income, gain, loss and deduction. Qualified business income does not include income earned from a specified service business, *i.e,* a business involved in the performance of services in the fields of health, law, consulting, athletics, financial services, brokerage services, or 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 or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities.

However, the deduction is still available from such specified service businesses to the extent a taxpayer's income does not exceed $315,000 ($157,500 for unmarried individuals), with a phase out for income up to $415,000 ($207,500 for unmarried individuals).

The plan contains an additional limitation applicable to individuals with taxable income above the threshold amount ($315,000 for joint returns). The deduction's availability is limited based upon either a (i) wages paid test, or (ii) a wages paid plus capital element test, whichever offers a greater deduction. Under the first test, the deduction is limited to 50% of the individual's proportionate share of W-2 wages paid by the pass-through entity that are allocable to the qualified business income. Under the second test, the deduction is limited to 25% of such wages paid plus 2.5% of the unadjusted basis (*i.e.* basis immediately after acquisition) of all "qualified property." Under this second test, "qualified property" is tangible, depreciable property used in the production of qualified business income. This second test, added by the Conference Committee, will allow certain capital intensive businesses that pay little or no wages (such as real estate developers) to take advantage of the pass-through deduction.

Mazars Insight – This provision provides a large tax deduction to holders of certain pass-through interests. However, the availability of the deduction is subject to a number of complicated limitations that will require careful planning to ensure taxpayers' affairs are structured to best take advantage of the new deduction.

Increased Expensing
Replacing the current rules relating to bonus depreciation, taxpayers will be able to immediately expense 100% of the cost of qualified property acquired and placed in service after September 27, 2017 and before January 1, 2023. Notably, the definition of qualified property will be expanded, making this expensing available for both original and acquired property if it is the taxpayer's first use. Property used in a real property trade or business will be excluded.

Section 179 Expensing
The law increases the small business expensing limitation to $1 million, with the phase-out threshold also being increased to $2.5 million, indexing these amounts to inflation. The provision also expands the definition of Section 179 property to include certain depreciable tangible personal property used to furnish lodging and to include certain nonresidential real property improvements.

Interest Expense Deduction
Generally, no deduction is allowed for interest expense in excess of 30% of adjusted taxable income. The law defines adjusted taxable income as a business's taxable income computed without regard to business interest expense, business interest income, net operating losses, the new 20% deduction for certain pass-through income, and (through 2021) depreciation, amortization, or depletion. Interest disallowed would be carried forward indefinitely. Interest disallowed is treated as paid or accrued in the following year and may be carried forward indefinitely.

Real property trades or businesses can elect out of this provision if ADS is used to depreciate its applicable real property. Businesses with average gross receipts of $25 million or less (over a three year period) are exempt from this limitation. The limitation is determined at the entity level.

Mazars Insight – Heavily leveraged Taxpayers should review how their business is capitalized in light of the law's restrictions on interest deductibility.

Net Operating Loss Deduction
For losses arising in years after 2017, carrybacks are disallowed, subject to minor exceptions. Additionally, taxpayers will only be able to deduct an NOL carryover to the extent of 80% of taxable income. The law generally allows for indefinite carryforward of NOLs.

Like-Kind Exchanges
The law repeals the tax free treatment of like-kind exchanges, except for those relating to the like-kind exchange of real property. However, taxpayers can apply existing rules with respect to exchanges involving personal property if the relinquished property is disposed of, or the replacement property is acquired by December 31, 2017.

Domestic Production Deduction
For tax years beginning after 2017, the law repeals the 9% domestic production deduction relating to qualified production activities income.

Meals & Entertainment Expenses
Under the new law, entertainment expenses, even where directly related to the active conduct of a taxpayer's business, will no longer be deductible.

The law retains the 50% limitation on food/beverages and qualifying business meals associated with the operation of a trade or business, such as meals consumed by employees while traveling for work.

The deduction for meals provided through employer-operated facilities on an employer's business premises is limited to 50% until 2025 and is disallowed thereafter.

Expanded Availability of Cash Method of Accounting
Eligibility to use the cash method of accounting is expanded to include corporations and partnerships with a corporate partner with gross receipts of $25 million or less instead of the current threshold of $5 million. The requirement that the business satisfy that test for all prior year years is repealed and replaced with a three-year look-back at annual average gross receipts.

Mazars Insight - Cash basis reporting may be simpler in some circumstances, but may not be the most advantageous tax reporting method. Careful consideration must be given to the most beneficial method of reporting income and expenses.

Accounting for Inventories
The aforementioned cash method limitation would also be applicable to businesses with inventories, and such businesses may account for inventory as non-incidental materials and supplies if opting to use the cash method.

Mazars Insight - Many businesses will maintain their inventory accounting method for both internal and external financial reporting purposes and consideration should be given to the most beneficial tax reporting method. Overall cash basis tax reporting can result in significant swings in taxable income reporting. Cash management, while always critical to operating the business, will require even closer attention in managing tax payment requirements in future periods.

UNICAP Rules
Businesses eligible to use the cash method under the increased $25 million threshold will also be exempt from UNICAP for all real and personal property acquired or manufactured by the business.

Mazars Insight - This is a welcome change for small businesses, as compliance with these regulations is complicated and onerous to both taxpayers and practitioners.

Accounting for Long-term Contracts
The $10 million average gross receipts exception to the percentage-of-completion method for accounting for long-term contracts is increased to $25 million. This will allow taxpayers greater flexibility in using the completed contracted method.

Technical Termination of Partnerships
The partnership technical termination rule would be repealed, permitting the continuation of a partnership where 50% or more of a capital and profits interest is sold or exchanged during a 12 month period.

Mazars Insight - This provision eliminates short year tax returns and the necessity for new tax elections when over 50% of a partnership interest is sold. Additionally, the resetting of depreciable asset basis would no longer be permitted.

Carried Interest
The law imposes a three-year holding period requirement in order to obtain long-term capital gain rates with respect to partnership interests received in connection with the performance of services in an activity consisting of raising or returning capital and investing or developing securities, commodities, real estate holdings, options, derivatives, etc.

S Corporation Conversions into C Corporations
Distributions from an eligible terminated S corporation would be treated as paid from its Accumulated Adjustments Account (previously taxed S corporation earnings) and C corporation earnings & profits on a prorata basis. This provision applies to corporations that revoke their S corporation election within 2 years after the date of enactment. Under this proposal, distributions will be partially non-taxable until the terminated S corporation's accumulated adjustments account is fully distributed.

Research Expenditures
For certain research expenditures incurred for research within the United States in taxable years beginning after 2021, a business will be required to amortize the amount over a 5-year period. For research performed outside of the United States, the relevant amortization period will be 15 years.

Employer Credit for Paid Family & Medical Leave
The law creates a general business credit for employers equal to 12.5% to 25% of wages paid to an employee on family or medical leave. The credit's availability is subject to certain requirements and restrictions and is currently only available for wages paid in 2018 and 2019.

INTERNATIONAL PROVISIONS

The bill confirms substantial changes to the international taxation principles currently in effect, bringing the US closer to a territorial-based regime and curtailing the ability to defer tax on foreign source income. Generally, in the international arena, the TCJA follows more closely the approach previously laid out by the Senate rather than the House.

Establishment of Participation Exemption System

Deduction for Foreign Source Portion of Dividends Received
The Act follows the Senate's plan in providing a 100% dividends received deduction in relation to the foreign portion of dividends received by US C-Corporation shareholders from

10% owned foreign subsidiaries. Additional features of this provision include:

- REIT and RIC shareholders are not eligible;
- No foreign tax credit is permitted with respect for qualifying dividends;
- Hybrid dividends are not subject to the deduction;
- Dividends from Passive Foreign Investment Companies will not be eligible for the deduction;
- Dividends received by a domestic corporation from a specified foreign corporation via a partnership are eligible for the deduction provided certain requirements are met;
- Dividends received by CFCs from specified foreign corporations that are treated as subpart F income may also qualify for the deduction; and
- US shareholders must satisfy a holding period requirement of more than 365 days during the 731 day period that begins on the day that is 365 days before the ex-dividend date.

Mazars Insight – While the participation exemption brings the US closer to a territorial tax system, at least with respect to the earnings of foreign corporations, it is worth noting that Subpart F is still very much alive, and further, the bill introduces additional current tax on certain types of foreign income, described in more detail below. The overall effect is to reduce tax deferral on foreign income while modestly expanding the base.

Special Rules Relating to Sales or Transfers Involving Specified 10-Percent Owned Corporations

In relation to sales or transfers involving specified 10-percent owned foreign corporations, the final bill blends several aspects of the House and Senate proposals, resulting in the following final provisions:

- If the sale of stock in a foreign corporation gives rise to an amount treated as a dividend for purposes of Sections 1248 (Gains from certain sales or exchanges of stock in certain foreign corporations) or Section 964(e) (Gain on certain stock sales by CFCs treated as dividends), such amounts would be treated as dividends for purposes of the 100% dividends received deduction.
- For purposes of determining loss on the sale of the stock of a foreign subsidiary, a domestic corporation must reduce its basis in the specified 10% owned foreign corporation's stock by the amount of any exempt dividends received.
- Where a US corporation transfers substantially all of the assets of a foreign branch to a foreign subsidiary, then the US corporation must include in gross income an amount equal to the transferred loss amount.
- The active trade or business exception to non-recognition treatment under IRC Section 367(a)(3) is repealed.

Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System

The final bill generally follows the Senate's proposal for the treatment of deferred income upon transition to a participation exemption system. The mandatory tax on post-1986 accumulated E&P is increased to an effective rate of 15.5% with respect to cash and cash equivalents, and 8% on illiquid assets. The TCJA also preserves the election to pay the mandatory transition tax over an eight year period. Additionally, in the case of S corporations, it permits shareholders to defer payment of the mandatory transition tax until such time as a 'triggering event' occurs. Triggering events include cessation of the S corporation's business or status as an S corporation, the liquidation or sale of assets, and certain shareholder transfers.

Mazars Insight – We strongly suggest the performance of earnings and profits studies related to any relevant specified foreign corporations in order to accurately determine accumulated post-1986 deferred foreign income that would be subject to the transition tax. Also, to the extent that you are a shareholder of an S corporation that owns specified foreign corporations and are contemplating conversion of the S corporation status or other shareholder transfers, we suggest that such steps are carefully vetted in light of the 'triggering events' that could cause immediate payment on the transition tax.

Election to Increase Percentage of Domestic Taxable Income Offset by Overall Domestic Loss treated as Foreign Source

The final bill incorporates the Senate's proposal to permit an election to increase the percentage of domestic taxable income that is offset by any pre-2018 unused overall domestic loss and re-characterized as foreign source.

<u>Rules Related to Passive and Mobile Income</u>

Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income

The TCJA adopts the Senate proposal that would require U.S. shareholders of CFCs to include in income their "global intangible low-taxed income" (GILTI). The mechanism for taxing such amounts would be similar to Subpart F. That is, a shareholder's GILTI, generally equal to the excess of the shareholder's CFC net income over a routine or ordinary return, would be currently taxable and subsequently increase the shareholder's basis in its CFC stock.

The bill additionally provides the following modifications to the GILTI provision:

- The deductions are only available to C-Corporations that are not REITs or RICs (other shareholders are taxed on the full GILTI amount)
- The deduction applies to the amount treated as a dividend received by a domestic corporation under IRC Section 78 that is attributable to the corporation's GILTI amount

Mazars Insight – As a result of the deduction available to Corporate shareholders equal to 50% of the GILTI through 2025, US shareholders will be taxed at an effective rate of 10.5% on these amounts irrespective of whether any amounts are distributed. The GILTI provision effectively increases the type of earnings subject to immediate taxation under Subpart F, indicating potential concern that the move toward a territorial system could result in profits permanently shifted offshore.

New Base Erosion and Anti-Abuse Tax (BEAT)
The TCJA introduces a base erosion and anti-abuse tax (BEAT) which essentially operates as a minimum tax applicable to taxpayers that are subject to US net income tax, have average annual gross receipts equal to or exceeding $500 million (over a three year period ending with the preceding tax year), and have issued certain related party deductible payments (i.e., base erosion payments). This minimum tax equals the excess of 10% (25% for tax years beginning post December 31, 2025) of a taxpayer's 'modified taxable income' for a tax year over the taxpayer's regular tax liability for the tax year with an allowance for certain credits under Chapter 1 of the Code. Modified taxable income is essentially calculated by adding back certain deductions attributable to payments to related foreign companies and related NOLs. There are certain exceptions to the BEAT tax for small tax paying groups (i.e., taxpayers with a base erosion percentage of less than 3% for the tax year, or 2% for certain banks and securities dealers), as well as, certain types of payments excluded from the definition of what constitutes base erosion payments.

Mazars Insight – Here is where we really see subpart F remnants in the US taxation system, albeit at a reduced rate. However, there is still quite a bit undefined in this provision. We expect the Treasury Department to prescribe regulations as appropriate to define, with more granularity, the nature of how to calculate adjustments to modified taxable income, particularly with respect to certain industries like banking, securities and insurance. We also expect an explicit anti-abuse provision preventing planning to circumvent BEAT.

<u>Modifications Related to Foreign Tax Credit System</u>

Repeal of Section 902 Indirect Foreign Tax Credits
The final bill generally follows the House version of the provision repealing the indirect foreign tax credit under IRC Section 902, while also adding modifications to the gross up rules under IRC Section 78, the dividend reference in IRC Section 907(c)(3)(A), and the qualifying electing fund rules in IRC Section 1295.

Separate Foreign Tax Credit Limitation Basket for Foreign Branch Income
The Senate proposal is adopted to require foreign branch income to be allocated to a specific foreign tax credit basket.

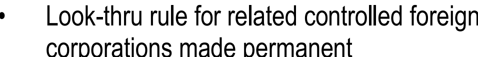
Subpart F Modifications
The TCJA adopts certain modifications to the Subpart F provisions, including:

- Foreign based company oil and shipping rules would be repealed as in both House and Senate plans
- Senate version of the stock ownership attribution rule change adopted, such that certain stock of a foreign corporation owned by a foreign person is attributed to a related US person ("downward attribution") for purposes of determining whether a foreign corporation is a CFC.
- Senate expansion of definition of US shareholder under Subpart F adopted to include owners of 10% of the value of a foreign corporation.
- Elimination of the 30 day holding period rule for Subpart F inclusions to apply

Mazars Insight – The expansion of the downward attribution rules may be cause for concern as it has the potential to cause minority US owners of foreign subsidiaries in an inverted group to be treated as US shareholders of CFCs through attribution from the majority foreign owner. This may cause such an owner to be subject to mandatory repatriation and the GILTI rules in addition to Subpart F.

International Provisions present in either the Senate or House bills that did not make the final bill include:

- Modification of subpart F inclusion for increased investments in US property
- Special rules for transfers of intangibles from CFCs to US shareholders
- Acceleration of election to allocate interest on a worldwide basis
- Inflation adjustment of *de minimis* exception for foreign base company income



- Look-thru rule for related controlled foreign corporations made permanent
- Limitation on deduction of interest by domestic corporations which are members of an international group
- Extension of deduction allowable with respect to income attributable to domestic production activities in Puerto Rico
- Extension of American Samoa economic development credit
- Modification to source rules involving possessions

The TCJA will impact many planning techniques and may require restructuring of certain business entities. Careful attention must be paid to the details behind the various provisions.

Please contact your Mazars USA LLP professional for additional information.

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