TAX ALERT

SENATE FINANCE COMMITTEE PASSES TAX CUTS AND JOBS ACT WITH ADDITIONAL CHANGES

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The GOP's wide ranging tax reform, the Tax Cuts and Jobs Act (TCJA), has continued to progress through the legislative process. The Senate Finance Committee completed its markup of the TCJA and, on November 16, by a 14-12 margin, voted to advance the bill to the full Senate. On the same day, the House of Representatives passed its own version of the TCJA by a 227–205 margin. However, significant differences still remain between the House and Senate plans. Our November 13, 2017 Tax Alert contains a full discussion of major provisions and differences between the House and Senate tax reform plans.

Subsequent to the release of the November 13th Tax Alert, Chairman Orrin Hatch proposed modifications (including amendments to the modifications) to the originally released Senate tax reform plan. The Chairman's modified mark, passed by the Senate Finance Committee on November 16th, includes some major revisions to the original Senate plan as well as technical changes and additional provisions targeting specific industries. Below is a brief discussion of some of the changes to the Senate's original version that were included in the modified version of the TCJA passed by the Senate Finance Committee.

Individuals

• **Individual Changes Made Temporary**. In general, the major provisions governing the taxation of individuals are now set to expire after December 31, 2025. Accordingly, the modified tax rates, increased standard deduction, 17.4% pass-through income deduction, repealed personal exemptions, repealed AMT, modified child tax credit, increased estate and gift tax exemption, and modified/repealed individual deductions have all been made temporary in the latest version of the Senate's plan.

• **Individual Tax Rates and Brackets**. The proposed tax rates would be 10%, 12%, 22%, 24%, 32%, 35% and 38.5% instead of 10%, 12%, 22.5%, 25%, 32.5%, 35% and 38.5% as outlined in the original Senate plan. The income tax brackets were also changed slightly.

• **Child Tax Credit Increased.** The Senate Plan now provides for a $2,000 per child tax credit with a higher phase-out (starting at $500,000 of income for married taxpayers).

• **Individual Mandate.** The Senate plan reduces to zero the Patient Protection and Affordable Care Act of 2010's penalty for failure to maintain health insurance coverage.

Domestic Entities

• **Net Operating Loss (NOL) Deduction**. Reduces NOL carryover deduction from 90% to 80% of taxable income effective for tax years beginning after December 31, 2022.

• **Employer Credit for Paid Family & Medical Leave**. 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 would not be available until 2020.

• **Pass Through Tax Rate.** The Senate plan provides a deduction to individual taxpayers in the amount of 17.4% of "qualified business income" received from a pass-through. However, the deduction is generally limited to 50% of wages paid by the business. The Chairman's mark creates an exception to the W-2 wage limit for taxpayers with taxable income not exceeding $500,000 for married individuals filing jointly or $250,000 for other individuals. This exception is subject to a phase out rule. The plan also now allows taxpayers with income from specified service businesses to avail themselves of the 17.4% deduction if their taxable income does not exceed $500,000 for married individuals filing jointly or $250,000 for other individuals. This benefit is also subject to a phase out rule.

• **Research Expenditures**. The revised Senate plan requires certain research expenditures incurred in the United States to be capitalized and amortized over a 5 year period. For research performed outside the United States, the relevant amortization period will be 15 years. This provision is effective for taxable years beginning after December 31, 2025.

• **Carried Interest.** The Senate plan now imposes a three year holding period requirement for qualification as long term capital gain with respect to certain partnership interests received in connection with the performance of services. This is similar to the House proposal.

The advancement of the TCJA out of the Senate Finance Committee and its passage in the House of Representatives are major steps forward for tax reform. GOP leadership plans for the full Senate to vote on the bill during the week after Thanksgiving. However, significant hurdles remain. One Republican senator has already indicated he would not vote for the bill as currently drafted and several other Republican senators have expressed their reservations about the bill. In addition, the Senate and House plans must be reconciled before President Trump can sign the final version into law. Mazars USA LLP will continue to follow new developments and will provide additional analysis as the process continues.

Please contact your Mazars USA LLP professional for additional information.

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