AN OVERVIEW OF THE TAX CUTS AND JOBS ACT*

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*Officially: H.R. 1 – An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the on the budget for fiscal year 2018.

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DISCLAIMER

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WHERE DID THIS TAX LAW COME FROM?

- Trump’s campaign pledge to cut taxes and Republican congressional majority having no other major legislative achievements as the first year of Trump’s and the majority’s term drew to a close.
- Many major provisions of the Tax Cuts and Jobs Act have been discussed for a number of years.
- Deep partisan divide.
- Filibuster-proofing the bill in the Senate.
- The reconciliation procedures.
- The Byrd rule.
- The result.

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SOME GENERAL GUIDANCE

- Unless otherwise excepted, TCJA provisions affecting individuals are effective January 1, 2018 and expire (“sunset”) at the end of 2025. Some exceptions are shown in the presentation.
- Unless otherwise excepted, TCJA provisions affecting corporations are effective January 1, 2018 and are permanent. Some exceptions are shown in the presentation.
- Special rules may apply to non-calendar year taxpayers.
- Generally, married filing separate return limitations and benefits are one-half of married filing limitations stated herein.
- We cover many, but not all, changes in the TCJA.

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OUTLINE OF PRESENTATION

We will review primary tax changes affecting:

- Individuals
- Estate/Gift/GST Taxes
- Compensation and benefits
- Businesses
- International income taxation
- Not-for-profit organizations
- Other matters

We will only lightly touch on planning opportunities and needs, due to time constraints.

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INDIVIDUALS

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INDIVIDUAL TAX RATES

- Seven tax brackets: 10%, 12%, 22%, 24%, 32%, 35% and 37%
- Thresholds are adjusted
- Children that are subject to the “Kiddie Tax” will have two different tax regimes for their earned and unearned income:
  - Earned Income: Taxed at the rates applied to single filers.
  - Unearned Income: Taxed at ordinary income and preferential rates applied to trusts and estates.
    - Children will no longer be subject to their parents’ tax rate.

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ABOVE-THE-LINE DEDUCTIONS

- Moving Expenses – Suspended through tax year 2025; however, still available for members of the U.S. military who move pursuant to a military order.
- Alimony – Effective for divorce or separation agreements entered into after December 31, 2018*:
  - Deduction - The deduction for alimony or separate maintenance payments is repealed.
  - Inclusion - The inclusion of income by the recipient is repealed.
  - Existing alimony or separate maintenance agreements are grandfathered, as are modifications to existing agreements.
  - *Please note the 1-year delay on the implementation of this provision
  - This is a permanent change. No sunset.
  - Also applies to divorce or separation agreements existing before January 1, 2019 and modified on or after January 1, 2019, if the modification expressly provides that the amendments by the TCJA apply to such modification.

STANDARD DEDUCTION & PERSONAL EXEMPTIONS

- The standard deduction is increased to the following amounts:
  - Married Filing Jointly: $24,000
  - Head-of-Household: $18,000
  - All Other Taxpayers: $12,000
    - *The deduction is indexed for inflation in future years.*

- The personal exemption is suspended through tax year 2025.
  - The personal exemption for estates and trusts remains at $100 (complex), $300 (simple), $600 (estates).

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ITEMIZED DEDUCTIONS

- Medical Expenses – The AGI threshold is lowered to 7.5 percent for all taxpayers for tax years 2017 and 2018 and returns to 10 percent in 2019.
- State and Local Taxes – Taxpayers are permitted a maximum $10,000 deduction of the sum of:
  - (i) state and local real property taxes,
  - (ii) state and local personal property taxes, and
  - (iii) state and local income taxes (or sales tax, if elected).
  - This limitation does not apply to real property taxes and personal property taxes paid or accrued in carrying on a trade or business.
  - Nonbusiness foreign property taxes are no longer deductible.
- Mortgage Interest – Taxpayers are permitted to deduct the interest paid on acquisition indebtedness of up to $750,000.
  - Debt incurred on or before December 15, 2017, is grandfathered under the previous law of interest paid on acquisition indebtedness of up to $1,000,000.
- Home Equity Interest – The deduction for interest paid on home equity indebtedness is suspended.

ITEMIZED DEDUCTIONS, CONTINUED

- Charitable Contributions – Three modifications:
  - (1) Cash contributions to public charities now have a 60 percent of AGI limitation (previously it was 50 percent).
  - (2) Denial of charitable deduction for payments made in exchange for athletic seating rights (previously able to deduct 80 percent of amounts paid).
  - (3) Removal of substantiation exception for certain contributions reported by the charitable organization.
- Casualty Losses – Suspended through tax year 2025, unless the loss is attributable to a Federally declared disaster loss.
  - If a taxpayer has a personal casualty gain, he/she may deduct personal casualty losses not attributable to a Federal declared disaster loss in the amount equal to no more than the personal casualty gain.
- Wagering Transactions - In addition to the limitation on gambling losses, expenses incurred in carrying on any wagering transaction are also limited to the extent of gambling winnings.

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ITEMIZED DEDUCTIONS, CONTINUED

- Miscellaneous Itemized Deductions Subject to 2-percent floor - These have been suspended and include investment fees and expenses, tax preparation fees, and unreimbursed business expenses, among others.
  - For fiduciary taxpayers, the wording of new Section 67(g) casts doubt on the deduction for any administrative cost (e.g., trustee fees, investment, management and custodial fees, and attorney/accounting fees). Further guidance is required.

- “Pease” Limitation – Suspends the overall limitation on itemized deductions.

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CHILD CREDIT AND DEPENDENT CREDIT

- Increases the child tax credit to $2,000 per qualifying child; $1,400 per qualifying child refundable – indexed for inflation.
  - Requires SSN for each qualifying child.
- Provides a $500 nonrefundable credit for dependents other than qualifying children (generally retaining the current law definition of dependent).
- Phase-out threshold of $400,000 (for married taxpayers filing a joint return), and $200,000 (for all other taxpayers).

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RECHARACTERIZATION OF ROTH CONVERSION REPEALED

- Before the TCJA, a special rule allowed, among other actions, a conversion of a traditional IRA to a Roth IRA to be “unwound” in the following year anytime before a taxpayer must file his/her tax return.
- Now, the special recharacterization rule does not apply to a conversion of a traditional IRA to a Roth IRA. Thus, a recharacterization cannot be used to unwind a Roth conversion. However, recharacterization is still permitted with respect to other contributions.

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ALTERNATIVE MINIMUM TAX (AMT)

- The individual AMT has been retained.
- The exemption amounts have been increased to the following thresholds:
  - Joint Filers: $109,400 ($54,700 for MFS)
  - All other Filers: $70,300
- The exemption phase-out thresholds are increased to:
  - Joint Filers: $1,000,000
  - All other Filers: $500,000
  - Trusts and Estates – Remains unchanged.
- Many of the tax preference items that are AMT addbacks have been suspended.

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ACA SHARED RESPONSIBILITY PAYMENTS

- There are no individual shared responsibility payments beginning in 2019. The TCJA reduces the penalty for the individual mandate to $0.
- This repeal is permanent.
- The employer shared responsibility penalties and information reporting obligations remain in effect.

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ESTATE, GIFT, AND GST TAXES

ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES

- Estate and Gift Taxes – Beginning in 2018, the exemption for estate and gift taxes is increased to $10,000,000 (and adjusted forward for inflation from 2011).
    - Inflation - There will be a roughly $11,000,000 estate and gift exemption starting in 2018.

- Generation-Skipping Transfer Tax – Beginning in 2018, the amount of the generation-skipping transfer tax exemption is increased to $10,000,000 (and adjusted forward for inflation from 2011).
    - Inflation - There will be a roughly $11,000,000 generation-skipping transfer tax exemption starting in 2018.
        - These increases are set to expire on December 31, 2025, and the exemption amounts will return to the pre-tax reform amounts.
            - This makes the current planning techniques still relevant, even for estates that do not exceed the increased exemption amount.

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COMPENSATION & BENEFITS

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CHANGES TO SECTION 162(m) - $1 MILLION DEDUCTION LIMITATION

- Eliminates performance-based compensation and commissions exception

- Modifies definition of “Covered Employees”
  - PEO, PFO, 3 Highest compensated officers
  - Once a covered employee, always a covered employee

- Expands “Covered Employers”
  - Publicly traded
  - Large non-listed companies with >$10m in assets and 2,000+ shareholders
  - Foreign companies publicly traded through ADRs

- Note later in this presentation similar provision affecting compensation to not-for-profit employees.

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QUALIFIED EQUITY GRANTS (SEC. 83(i))

- Employees may elect to defer the income inclusion for wages attributable to stock acquired from exercise of an option or settlement of a restricted stock unit (RSU)

- Covered Employers
  - Privately held corporations with broad-based equity plans (at least 80 percent of full-time US employees receive options and RSUs)

- Covered Employees: Full-time employees other than "Excluded Employees"
  - CEO & CFO any time; 1 percent owner in current or last 10 years (attribution rules)
  - 4 highest paid officers in current or last 10 years

- 5-year deferral period (or earlier intervening event)
  - IPO, revocation of election, becoming an Excluded Employee

RETIREMENT PLANS

- Plan loan offsets
  - For participants who terminate with outstanding loans, loan is offset by reducing vested account balance
  - Participant may defer taxation on loan by rolling over and contributing balance to IRA
  - Timeline for making rollover is extended from 60 days after the offset to the due date (including extension) of income tax return for year of offset

- 2016 disaster relief – qualified distributions
  - Distributions during 2016-2017 not exceeding $100,000
  - Avoids 10 percent early withdrawal tax
  - May include income rateably over 3-year period from date of distribution
  - Ability to recontribute all or a portion during 3-year period

FRINGE BENEFITS

- Achievement awards
  - Clarifies cash & equivalents and non-tangible property (e.g., theatre tickets) awarded for long service/safety achievement are included in income
  - Length of service awards for bona fide public safety volunteers
    - Increases aggregate amount of length of services awards that may accrue and be deferred with respect to any year of service to $6,000.
- Qualified moving expenses (employer-paid)
  - Suspends exclusion from gross income and deduction by employer, except for military
- Qualified bicycle commuting reimbursements
  - Suspends exclusion from gross income
- Qualified transportation fringe benefits
  - No employer deduction (except employer-provided transportation for safety)

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ENTERTAINMENT & MEALS EXPENSES

- Entertainment expenses
  - Subject to limited exceptions, no deduction for entertainment, amusement, or recreation activities, facilities or membership dues related to such activities.
  - Repeals the “directly-related-to” and “associated-with” exceptions to the deduction disallowance
- Meals expenses
  - No more 100% deductible meals for employees for the benefit of the employer; these expenses are subject to 50% limitation.
  - While reasonable people are currently disagreeing with one another, it appears that the kinds of business meals that were 50% deductible before TCJA are still deductible.
- Change chart of accounts and procedures to track changed categories of these kinds of expenses – see also the next slide.

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ENTERTAINMENT & MEALS EXPENSES, CONT.

- Exceptions to the repeal of entertainment and meals costs.
  - [De minimis] food and beverages for employees. (Note the 50% limitation above for food and beverages.)
  - Expenses treated as compensation. (100% deductible)
  - Reimbursed expenses. (100% deductible)
  - Expenses for recreational, social, or similar activities (including facilities therefor) primarily for the benefit of employees who are not “highly compensated employees.” (100% deductible.) Food and beverage - 50% limitation.
  - Employee, stockholder, agents, or directors business meetings. (Note the 50% limitation above for food and beverages.)
  - Meetings of business leagues. (Note the 50% limitation above for food and beverages.)
  - Items available to public. (100% deductible)
  - Expenses for entertainment sold to customers. (100% deductible)
  - Expenses includable in income of persons who are not employees. (100% deductible.)

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EMPLOYER CREDIT FOR PAID FAMILY AND MEDICAL LEAVE

- Allows employers to claim a credit equal to 12.5 percent of the amount of wages paid to employees during a family and medical leave
- Pay must be at least 50 percent of wages normally paid to the employee
- Credit is increased 0.25 percent (up to 25 percent) for each 1 percent by which the rate of pay exceeds 50 percent
- 12 weeks maximum duration each taxable year
- Any leave which is paid by a state or required by state law will not be taken into account in determining the amount of paid family and medical leave provided by the employer
- Program sunsets on December 31, 2019

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CARRIED INTEREST HOLDING PERIOD

- Gain on sale of capital assets held more than 1-year generally subject to long-term capital gain rates
- Gain attributable to "applicable partnership interests" is subject to recharacterization as short-term capital gain unless the underlying asset has been held for at least 3 years
- Applicable partnership interests include partnership interests that are transferred to (or held by) the taxpayer in connection with the performance of substantial services in any "applicable trade or business"
  - Applicable trade or business includes an activity (1) conducted on a regular, continuous and substantial basis, (2) consists of raising or returning capital, and (3) either investing in (or disposing of) specified assets or developing specified assets
  - Specified assets include securities and commodities, real estate held for rental or investment, cash or cash equivalents, options or derivative contracts on any of the above, or proportionate partnership interests in any of the above
  - Applicable partnership interests do not include interests that are held directly or indirectly by a corporation or capital interests that provide a right to share in capital commensurate with (a) amount of capital contributed or (b) value of such interest subject to tax under section 83 upon the receipt of vesting of such interest

BUSINESSES

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CORPORATE TAX CHANGES

- Corporate income taxed at a single-rate of 21%.
  - Personal services corporations tax at 21%
- Corporate dividends received deduction: 70% DRD reduced to 50%; 80% DRD reduced to 65%.
- Corporate AMT is repealed.

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EXCESS BUSINESS LOSSES

- Business losses of taxpayers other than C corporations are only permitted in the current year to the extent that they do not exceed the sum of:
  - (i) Taxpayer's gross income and
  - (ii) $500,000 for joint filers or $250,000 for other taxpayers
    - Excess businesses losses will be disallowed and added to the taxpayer's net operating loss (NOL) carryforward.
- Expansion of limitation on excess farm losses
- For pass-through entities, this limitation is applied at the partner/shareholder level.
- Sunsets 12/31/25

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NET OPERATING LOSSES

- For NOLs arising in 2018 or later, the NOL deduction allowed is now equal to the lesser of:
  - (1) the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, or
  - (2) 80 percent of the taxable income computed without regard to the NOL.
- Subject to limited exceptions, NOLs arising in 2018 or later can now only be carried forward to future tax years and there is no carryback.
  - The amount of the carryover deduction is limited to a maximum of 80 percent of the taxable income computed without regard to the NOL.
  - The limitation and carryback elimination does not apply to a property and casualty insurance company and NOLs of such companies can be still be carried back two years and forward 20 years. (Note that TCJA includes a total of 13 provisions that change the taxation of U.S. insurance companies and products.)
  - Certain small businesses may be able to carry back one year certain disaster losses.
  - NOLs from farm activities can be carried back two years

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SECTION 199A DEDUCTION FOR QUALIFIED BUSINESS INCOME (THE "PASS-THROUGH DEDUCTION")

- Taxpayers other than corporations are generally eligible to claim a deduction equal to the sum of:
    - The lesser of (A) the taxpayer's "combined qualified business income amount" or (B) 20 percent of the excess of the taxpayer's taxable income over capital gain plus qualified cooperative dividends, plus
    - The lesser of (A) 20 percent of the aggregate amount of qualified cooperative dividends or (B) the taxpayer's taxable income (reduced by net capital gains)
- A taxpayer's combined qualified business income amount is equal to the sum of (1) 20 percent of the taxpayer qualified business income (QBI) with respect to each qualified trade or business plus (2) 20 percent of the aggregate amount of qualified real estate investment trust dividends and qualified publicly traded partnership income.

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SECTION 199A DEDUCTION, CONTINUED

- QBI includes the net amount of domestic qualified items of income, gain, deduction, and loss with respect to the taxpayer's qualified businesses
- Qualified trade or business includes any trades or businesses other than specified service trades or businesses
- A specified service trade or business means any trade or business involving the performance of services in the fields of:
  - Health, law, accounting, actuarial sciences, performing arts, consulting, athletics, financial services, brokerage services, 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
  - Engineering and architecture are not included in the term "specified service trade or business."
- Exception for specified service businesses where a taxpayer's taxable income does not exceed $315,000 (joint filer) or $157,500 (other filers), subject to full phase-in at $415,000 and $207,500, respectively.

SECTION 199A DEDUCTION, CONTINUED

- The deduction attributable to 20 percent of the taxpayer's QBI cannot exceed the greater of (A) 50 percent of W-2 wages paid with respect to the QBI or (B) The sum of 25 percent of W-2 wages plus 2.5 percent of the unadjusted basis of qualified property.
- Qualified property includes depreciable tangible property that is (i) held by and available for use in the trade or business at the close of the taxable year, (ii) used during the year in the production of QBI, and (iii) has a remaining depreciable period.
- The term "depreciable period" means the later of 10 years from the original placed in-service date or the last day of the last full year in the applicable recovery period determined under section 168.
- The W-2 wages or W-2 wages plus capital limitation does not apply to taxpayers with taxable income not exceeding $315,000 (joint filers) or $157,500 (other filers). The limitation is phased-in for taxpayers with taxable income exceeding these amounts over ranges of $100,000 and $50,000.
- With respect to trusts and estates, rules similar to the rules under prior-law Section 199 apply for apportioning between fiduciaries and beneficiaries any W-2 wages and unadjusted basis of qualified property under the limitation based on W-2 wages and capital.
- Sunsets 12/31/25.
- Accuracy-related penalty under Section 6662(d) applies if understatement causes an understatement exceeding $5,000 or 5 percent of the tax required to be shown on the return, rather than the usual 10 percent.

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DEPRECIATION AND EXPENSING

- Depreciation limitation amounts increased for passenger automobiles placed in service after 2017.
- Expensing of certain property (bonus depreciation).
  - Allows full (100 percent) expensing of new and used qualified property, acquired and placed in service after September 27, 2017 through 2022, then phases out the provision over the subsequent 4 years.
  - The law is not applicable to certain businesses, generally public utilities, not subject to limitation on interest expense.
  - Sunsets after 2026.

DEPRECIATION AND EXPENSING, CONTINUED

- Section 179 expensing
  - Raises Section 179 small business expensing cap to $1 million, with a phase-out starting at $2.5 million.
  - Expands definition of property eligible for Section 179 expensing – certain property used in furnishing lodging, and roofs, heating, ventilation, air-condition property, fire protection and alarm systems, and security systems for nonresidential real property that are placed in service after December 31, 2017.
- Shortens the 7-year recovery period to 5 years for equipment used in a farming business (as defined in Section 263A(e)(4)), the original use of which commences with the taxpayer and is placed in service after December 31, 2017
- Repeals the required use of the 150% defining balance depreciation method for 3, 5, 7 and 10-year property used in a farming business

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SMALL BUSINESS THRESHOLDS FOR CERTAIN ACCOUNTING METHODS - $25 MILLION ANNUAL GROSS RECEIPTS

- The average annual gross receipts threshold exception that allows cash method of accounting for a C corporation or a partnership with a C corporation partner is increased to $25 million.
- Businesses (other than tax shelters) that meet the $25 million average annual gross receipts test are exempt from the UNICAP requirements.
- An exemption from inventories is provided for businesses (other than tax shelters) that meet the $25 million average annual gross receipts test.
- For long-term contracts, the exception from percentage-of-completion for smaller taxpayers (other than tax shelters) with construction contracts would be expanded by increasing the average annual gross receipts test from $10 million to $25 million.

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BUSINESS INTEREST DEDUCTION LIMITATION

- The limitation does not apply to “small businesses”: business averaging $25 million or less of gross receipts for the preceding three years.
- Caps net interest deduction at 30 percent of what can generally described as earnings before interest, taxes, depreciation, and amortization as adjusted (“EBITDA”) from 2018 through 2021, and 30 percent of what can generally be described as earnings before interest and taxes as adjusted (“EBIT”) thereafter.
- Indefinite carryforward of unused expense.
- Real estate properties and trades or businesses can elect to be exempt if they forgo bonus depreciation.

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BUSINESS INTEREST DEDUCTION LIMITATION, CONTINUED

- Limitation does not apply to regulated public utilities and electric cooperatives.
- Interest from “motor vehicle floor plan financing” exempt from limitation.

REVENUE RECOGNITION

- Taxpayers must recognize income no later than the taxable year in which such income is taken into account as income on the taxpayer's applicable financial statement.
- Exceptions exist.

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LIKE-KIND EXCHANGES

- The like-kind exchange provisions are now limited to real property.
  - A transition rule allows like-kind exchange transaction of personal property to be completed if the taxpayer has disposed of the relinquished property or acquired the replacement property on or before December 31, 2017.

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CONTRIBUTIONS TO CAPITAL

- Contributions to capital of a corporation generally are not included in gross income.
- The TCJA provides that the term “contributions to capital” does not include (1) any contribution in aid of construction or any other contribution as a customer or potential customer, and (2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such).

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SECTION 199 - DPAD

- Repealed for tax years beginning after 2017.

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ENTERTAINMENT EXPENSES

- Deductions are disallowed for entertainment, amusement/recreation facilities, membership dues with social purposes, transportation fringe benefits, on-premises gyms or other athletic facilities, or other amenities provided to an employee that are personal in nature.
- Exception: the deduction for 50% of food and beverage expenses associated with operating a trade or business would generally be retained.
- Exclusion from income of benefiting employees remains.

DEDUCTION FOR MEALS PROVIDED FOR THE CONVENIENCE OF THE EMPLOYER

- Reduced from 100% in 2017 and prior years to 50% in 2018 and then repealed altogether in 2026.

"SELF-CREATED PROPERTY" NO LONGER TREATED AS CAPITAL ASSETS

- Property not considered capital assets would be expanded to include certain "self-created property," such as patents, inventions, models, designs, secret formulas or processes. Gain or loss from such property would be ordinary.

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PARTNERSHIP CHANGES

- The 12-month provision known as the “technical termination” rule, found at Section 708(b)(1)(B) is repealed.
- Taxation of gain on the sale of partnership interest by foreign person is based on lookthrough basis (codifying Rev. Rul. 91-32 and rejecting *Grecian Magnesite Mining*, 149 TC No 3 (2017)). Increases exposure to U.S. tax.
- Modification of the definition of substantial built-in loss under Section 743(d), expanding the test for substantial built-in loss to apply both at the partnership level and at the transferee partner level.
- Section 704(d) basis limitation: Charitable contributions and foreign taxes are basis-limited.

RESEARCH AND DEVELOPMENT COSTS

- For expenditures incurred after 2021, expensing of R&D costs is repealed and R&D costs are amortized over 5 years (15 years for certain foreign expenditures).
  - These rules do not apply to expenditures for the acquisition or improvement of land, or for expenditures paid to ascertain the existence, location, extent, or quality of mineral deposits, including oil and gas.
- The R&D credit under Section 41 continues.

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OTHER BUSINESS CHANGES

- Deduction for local lobbying is repealed, beginning on the date of the enactment of the law.
- Law expands the denial of deduction for government fines and penalties to cover any amounts related to restitution, remediation or required compliance with any law unless they were identified in the court order or settlement agreement as such. Generally, this provision is effective on date of enactment.
- Denies a deduction for payments related to sexual harassment or sexual abuse, where the payment is subject to a nondisclosure agreement. Attorney’s fees not deducted. Applies to payments made after date of enactment.

INTERNATIONAL PROVISIONS

A View from 40,000 Feet

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A TRANSITION TO A TERRITORIAL TAXING SYSTEM

- Historically, the United States has taxed its citizens, permanent residents and U.S. corporations on their worldwide income.
- Most developed countries employ a territorial system of taxation, which exempts foreign profits of domestic multinational businesses from domestic taxation.

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A TRANSITION TO A TERRITORIAL TAXING SYSTEM, CONTINUED

- The TCJA transitions the U.S. to a form of territorial system by incorporating the following rules:
  - 100% dividend deduction for foreign-source portions of dividends received by a U.S. shareholder (a domestic C corporation that is not a RIC or REIT) for specified 10%-owned foreign corporations.
  - A deemed repatriation of deferred foreign income subject to a transition tax.
  - Current year taxation of Global Intangible Low-Taxed Income (“GILTI”) for U.S. shareholders of Controlled Foreign Corporations (CFCs)
  - Foreign-Derived Intangible Income of a Domestic Corporation (“FDII”).
  - The Base Erosion Anti-Abuse Tax (“BEAT”)
  - There are a number of other new laws and changes in existing laws generally enacted to conform with the new rules above, including the repeal of the indirect foreign tax credit
  - In most all cases, the new rules begin in 2018, some with respect to 2017 tax returns.

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PARTICIPATION EXEMPTION SYSTEM

- 100% dividend deduction for foreign-source portions of dividends received by U.S. shareholders (a domestic C corporation that is not a RIC or REIT) from "specified 10%-owned foreign corporations" – the Participation Exemption.
- There is a special 366-day holding period in order to get the deduction.
- The deduction is not available if the dividend is a "hybrid dividend" – a dividend for which the paying corporation received a deduction or credit in a foreign country.
- No credit or deduction is allowed for any foreign income taxes paid or accrued with respect to any portion of the dividend that qualifies for the deduction.
- The basis in foreign corporations with respect to the dividends received deduction applies is reduced by the amount of any such dividend, but only for purposes of computing loss on the sale or exchange of that stock.

A DEEMED REPATRIATION OF DEFERRED FOREIGN INCOME SUBJECT TO A TRANSITION TAX

- Generally, U.S. shareholders owning 10% of the voting power of CFCs or other specified foreign corporation must include in income, for the last taxable year of such foreign corporation beginning before January 1, 2018. such shareholder's pro rata portion of the "deemed repatriation amount."
- While the definition of the "deemed repatriation amount" is long and complicated, it is, for the most part, the foreign earnings and profits of the subject corporations that have not been subject to U.S. tax.
- The deemed repatriation will be taxed at 15.5% rate to the extent of the liquid assets portion of the E&P and an 8% rate for all other amounts. The taxpayer may elect to pay resulting liability over an 8-year period, backend loaded.

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CURRENT YEAR TAXATION OF GLOBAL INTANGIBLE LOW-TAXED INCOME (“GILTI”) FOR U.S. SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS (CFCS)

- U.S. shareholder of a CFC includes in income each year, as a deemed dividend, the GILTI of the CFC.
- GILTI is defined as the excess of the U.S. shareholder’s “net CFC tested income” over a “net deemed tangible income return.”
- In a layman‘s tortured terms: By the way of some confusing math, GILTI is the amount of the (a) CFC’s earnings not otherwise taxed in the U.S. (or otherwise excepted) in excess of the (b) (i)10% of tax basis of the CFCs depreciable property used in the trade or business, less (ii) interest expense incurred by the CFC in financing the otherwise deferred income
- GILTI is taxed generally at an effective rate of 10.5% (50% of the U.S. tax rate of 21%).

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FOREIGN-DERIVED INTANGIBLE INCOME OF A DOMESTIC CORPORATION ("FDII")

- A domestic corporation can claim a deduction for an amount equal to 37.5% of its FDII (reduced to 21.875% for tax years beginning after December 31, 2025).
- Thus, through 2025, a domestic corporation is subject to U.S tax on FDII at a rate of 13.125%
- Basically and simplistically, FDII is income earned in the U.S. for selling products or services to foreign persons for use outside of the U.S.

BASE EROSION ANTI-ABUSE TAX ("BEAT")

- BEAT is the main tool to discourage U.S. taxable base erosion.
- BEAT is a minimum tax on multinational corporations (other than RICs, REITs, or S corporations) that have at least $500 million of annual domestic gross receipts (averaged over a 3-year period) and a "base erosion" percentage of 3% or higher (2% or higher for certain banks and registered securities dealers) for the taxable year.
- In layman's terms, BEAT results in a minimum tax of 10% (5% for taxable years beginning in 2018). For years after 2025, the 10% limit (or minimum tax) is increased to 12.5% and some tax credits will no longer offset the BEAT.
- Base erosion generally results from payments or accruals and/or transactions with related foreign corporations that reduce the taxable U.S. earnings.

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NOT-FOR-PROFITS

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EXCISE TAXES

- Executive Compensation
- The Act imposes a 21-percent excise tax on the compensation of the five highest compensated employees with compensation in excess of $1 million. There is an exception for certain medical professionals.

- College and University Endowment Tax
- Imposes a tax of 1.4-percent on the net investment income of a private college or university which had at least 500 students at least 50% of whom are in the United States during the preceding taxable year and the aggregate fair market value of the assets (other than those assets which are used directly in carrying out the institution's exempt purpose) is at least $500,000 per student of the institution.

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UNRELATED TRADE OR BUSINESS INCOME

- UBIT Losses
- The bill disallows tax-exempt organizations from taking the business losses from one unrelated activity and deducting them from the gains of another unrelated activity. Organizations could, however, use losses from an unrelated business to reduce taxes on another year's operation of the same unrelated business.
- Inclusion of Certain Fringe Benefits in UBTI Calculation
- Unrelated business income of a tax-exempt organization would be increased by amounts spent by the organization on qualified transportation fringe benefits, parking facilities, and onsite athletic facilities.

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CHARITABLE GIVING

- Reduces incentives for charitable giving by:
  - Doubling the standard deduction
  - Doubling estate tax exemptions
  - Repealing the deduction for tickets to and seating rights for college athletic events

- Increases the incentives for charitable giving by:
  - Repealing the “Pease” limitation
  - Increasing the charitable contribution deduction limit

OTHER NOT-FOR-PROFIT MATTERS

- Interest income on advance refunding bonds of government bonds is now taxable.

OTHER MATTERS

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CHANGE TO INFLATION ADJUSTMENTS

- Beginning in 2018, inflation adjustments throughout the Internal Revenue Code are based on the Chained Consumer Price Index, or Chained CPI.
- Generally, this will result in higher taxes over time compared to the previous inflation adjustment, the Consumer Price Index.

OTHER MATTERS

- Modeling
- Review of entity selection and possible conversion
- Financial reporting implications, including accounting for income taxes
- State tax implications
- Accounting systems and charts of accounts
- Technical corrections

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APPENDIXES

APPENDIX I - TCJA PROVISIONS NOT DISCUSSED IN THIS OUTLINE

- Filing thresholds for individuals
- Combat zone tax benefits for services in Sinai Peninsula of Egypt
- 529 accounts distributions for primary and secondary education
- Discharge of student loan debt
- Contributions and rollovers to ABLE accounts
- Qualified beneficiary of Electing Small Business Trust ("ESBT") - Sec. 1361
- Charitable contribution of ESBT – Sec. 170 and Sec. 642
- S corporation conversions to C corporations
- Expensing of costs of replanting citrus trees

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APPENDIX I, CONTINUED

- Deduction of FDIC premiums – Section 162
- Elimination of deduction for living expenses of members of Congress
- Repeal of rollover gain from certain publicly-traded securities
- Orphan drug credit
- Rehabilitation credit
- Excise tax on stock compensation from expatriated corporations
- Exempting payments of aircraft owners to aircraft management owners from excise tax
- Qualified Opportunity Zones

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APPENDIX I, CONTINUED

- Extension of time for filing an administrative claim related to a wrongful levy
- Extension of time for third parties to file civil suites against the IRS
- Exceptions on the UNICAP rules for aging beer, wine and distilled spirits
- Excise taxes and bond requirements for beer reduced

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APPENDIX II – SOME PROPOSALS THAT DID NOT MAKE IT INTO THE TCJA

- Private activity municipal bonds are still tax-exempt (but still are an AMT preference item)
- A taxpayer can still specifically identify which shares he/she is selling; no “FIFO” rule.
- Graduate student tuition waivers are still tax exempt.
- The exclusion of gain from the sale of a principal residence survived.
- The plug-in vehicle credit still exists.
- Exclusions from income for dependent care assistance programs and for adoption assistance programs.

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APPENDIX II, CONTINUED

- The employer-provided housing exclusion rules stay the same
- Real property recovery periods remain the same.
- While the gain on sale of self-created patents is now taxed as ordinary income, Section 1235 and the long-term capital treatment of other patents survives.
- A number of business credits survived the law change.

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