

## CORPORATE, TAX & TRANSACTIONAL ALERT

11/3/2017

### Potential New Tax Changes: The Tax Cuts and Jobs Act

The new tax bill, The Tax Cuts and Jobs Act ("Bill"), is estimated to add \$1.5 trillion to the national debt over the next 10 years. The House Ways and Means Committee begins reviewing the Bill on Monday, November 6, 2017. President Trump has urged Congress to have the Bill on his desk by Christmas. In response, the House is hoping to have the Bill passed by Thanksgiving. A competing bill for tax reform is due for release from the Senate next week. Details about the House tax Bill are outlined below.

#### Income Tax Changes

The current corporate tax rate in the United States is 35%, one of the highest tax rates in the world. The new Bill proposes to cut the tax effective immediately upon passage of the Bill. There will be no phase-in period. The corporate tax will be 25% for personal service corporations, such as medical or legal corporations, and 20% for all other corporations.

There are currently seven different individual income tax brackets. The new Bill reduces that number to four. The breakdown is as follows:

	Current Tax Code		New Bill	
Single Filer	10%	\$0-\$9,325	12%	\$0-\$45,000
	15%	\$9,326-\$37,950		
	25%	\$37,951-\$91,900	25%	\$45,001-\$200,000
	28%	\$91,901-\$191,650		
	33%	\$191,651-\$416,700		
	35%	\$416,701-\$418,400	35%	\$200,0001-\$500,000
	39.6%	\$418,401 or more		
Married Couple	10%	\$0-\$19,050	12%	\$0-\$90,000
	15%	\$19,051-\$77,400		
	25%	\$77,401-\$156,150	25%	\$90,001-\$260,000
	28%	\$156,151-\$237,950		
	33%	\$237,951-\$424,950		
	35%	\$424,951-\$480,050	35%	\$260,0001-\$1M
	39.6%	\$480,051 or more		
	39.6%	\$1,000,001 or more	39.6%	\$1,000,001 or more

Individuals that own their own business can form pass-through entities. These entities are certain forms of businesses that allow the income of the business and its character to pass through to the owner to report on the owner's income tax return at the rate applicable to such income. The new Bill limits the pass-through rate to 25% and limits the income that would qualify for this rate. Professional services entities, such as a law firm, are not eligible for this 25% pass-through rate.

The Alternative Minimum Tax, a rate that applies to individuals or companies eligible for too many taxable deductions, will be eliminated.

### **Tax Deductions/Credits are Increased, Decreased, or Eliminated**

The Standard Deduction reduces the amount of income subject to federal income tax. The Bill increases the Standard Deduction as follows:

Current Tax Code		New Bill	
Individual	\$6,350	Individual	\$12,000
Family	\$12,700	Family	\$24,000

The child tax credit will be increased from \$1,000 per child to \$1,600 per child. Additionally, a \$300 credit for each non-child dependent and parent will be implemented until it is phased out after five years. Please note that the \$4,050 per child exemption will be repealed and this credit implemented instead.

As a compromise to the elimination of the State and Local Income Tax (SALT) deduction, individuals will be able to deduct up to \$10,000 of local property taxes from their taxable income.

Couples who purchased a house can currently deduct interest payments on their mortgage up to the first \$1 million of their home loans. The loan amount eligible for interest deductions has been decreased to \$500,000, although currently held mortgages will be grandfathered in.

There are a series of deductions/credits that have been completely eliminated under the bill: (1) State and Local Income (SALT) Tax; (2) Personal Exemption; (3) Medical Expenses Deduction; (4) Property and Casualty Losses Deduction; (5) Student Interest Loan Payment Deduction; (6) Moving Expenses Deduction; (7) Alimony Payment Deduction; (8) Deduction for Expenses Attributable to being an Employee; and (9) Tax Preparation Deduction.

### **Self-Employment Tax Changes**

Under current law, a shareholder of an S corporation is not subject to self-employment tax on their distributive share of the S corporation's income. The Bill changes current law by imposing self-employment tax on an S corporation shareholder's "labor share" of such S corporation's non-separately computed income. In a professional S corporation, the labor share would be essentially 100% of the person's distributive share of the S corporation's income on their Schedule K-1. This change will eliminate one of the advantages of using an S corporation for professional entities.

### **Estate Tax Phased Out**

The estate tax will phase out over the next six years and then it will be effectively eliminated. Additionally, the tax will now only apply to estates worth \$10 million or more. The current tax applies to estates worth \$5.6 million or more.

### **Repatriation Tax Created**

Certain foreign earnings of non-U.S. based corporations with U.S.-corporation shareholders are not taxed in the U.S. until those foreign earnings are distributed to their U.S. shareholder. The Bill imposes a deemed tax on those accumulated untaxed earnings at 12% on cash and 5% on illiquid assets.

### **Territorial Tax Regime**

Currently, U.S. corporations are taxed on their income wherever earned. The Bill implements a change to a territorial based system.

### **Increased Expensing for Equipment**

Under current law, a business can take up to 50% bonus depreciation on certain property placed in service during the year. The Bill increases such percentage to 100% through January 1, 2023. The Bill also expands Code Section 179 expensing of depreciable assets by increasing the \$500,000 expensing limit to \$5,000,000 and increases the \$2,000,000 limit for property placed in service (over which the expensing limit is reduced) to \$20,000,000 of property placed in service.

### **School Endowment Tax Created**

This new tax proposes to tax university endowment income at 1.4%. It would only apply to schools with assets greater than \$100,000 per student. Certain small schools are specifically exempted from the tax.

### **Repeal of Like-Kind Exchanges for Personal Property**

The Bill retains the tax exemption for like-kind exchanges of real property, but eliminates the tax-exemption for like-kind exchanges of personal property.

### **Changes to Net Operating Loss Rules**

The Bill allows for perpetual carryforward of net-operating losses, but generally eliminates carrybacks. However, the maximum amount of income for a year that can be offset by a net-operating loss is limited to 90% of such income.

### **Repeal of Section 199 Deduction for Domestic Production Activities**

The Bill repeals the deduction under Code Section 199 for income attributable to domestic production activities.

### **Immediate Taxation of Nonqualified Deferred Compensation Once it is No Longer Subject to a Service Condition**

The Bill adds a new Section 409B to the Internal Revenue Code ("Code"), which provides that compensation which is deferred under a nonqualified deferred compensation plan shall become immediately taxable once the rights to such compensation are no longer subject to a substantial risk of forfeiture and clarifies that only a condition related to the future performance of services is treated as a substantial risk of forfeiture. The Bill also eliminates Code Section 409A, which imposed detailed rules applicable to the structure of nonqualified deferred compensation.

### **Retained Provisions**

Finally, the Obamacare Individual Mandate, pre-tax contributions to 401(k) plans and tax deferral associated with 401(k) investments have not been affected by this Bill.

Roetzel & Andress has broad tax experience working on behalf of businesses. Roetzel will continue to provide updates on these tax changes as the Bill moves through Congress but do not hesitate to reach out to us with any questions regarding how these potential tax changes could affect you and your business.

**Authors**

John B. Waters  
[jwaters@ralaw.com](mailto:jwaters@ralaw.com)

Diana M. Feitl  
[dfeitl@ralaw.com](mailto:dfeitl@ralaw.com)

Cassandra Manna  
[cmanna@ralaw.com](mailto:cmanna@ralaw.com)

**Manager**

Christopher P. Reuscher  
[creuscher@ralaw.com](mailto:creuscher@ralaw.com)