



税务快讯之美国税改系列 中国企业赴美投资的税务影响



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德勤百年庆 开创新纪元

背景

美国参议院于 12 月 2 日凌晨最终以 51 票比 49 票通过了《减税和就业法案》（“参议院法案”）。为了获得关键性选票以确保法案得以通过，参议院法案在最后一刻进行了几项重大修改。众议院是在 11 月 16 日以 227 票比 205 票通过了众议院法案（H.R.1；“众议院法案”）。

税改时间表及下一步动向

参议院法案将通过协调委员会程序与众议院达成一致，该委员会将由众议院和参议院的主要成员组成。众议院的共和党领导人表示将会举行一个正式协调会议，并已告知议员们将在 12 月 4 日投票同意开始协调会议。会议具体的持续时间将于下周才能确定。特朗普政府仍希望在 2017 年年底前税改法案成为正式法律。

针对中国企业赴美投资事宜的重要提议总结

参议院法案和众议院法案的几项提案可能会对中国企业赴美投资产生相关影响。以下则是与美国联邦企业所得税相关的一些税改草案摘要（涉及穿透实体、免税实体，以及个人的税务不在本次快讯讨论）：

- **企业所得税税率** - 从 35% 调降至 20% 的单一税率。根据众议院法案，该税率将于 2017 年 12 月 31 日后的纳税年度开始生效。而根据参议院法案，该税率将于 2018 年 12 月 31 日后的纳税年度开始生效。从中国当前境外税收抵免政策考虑，美国企业所得税税率降低可能会对未来境外收益的汇回中国产生不利影响，因此中国投资者应该评估当前美国投资控股架构。

- **代替性最低税（“AMT”）** - 一般来说，代替性最低税是一个独立且平行于应纳税所得和税额的计算，其目的是为了防止某些纳税人通过使用过度的税前扣除来避免缴纳美国联邦所得税。众议院法案将于 2017 年 12 月 31 日后的纳税年度开始废除代替性最低税。参议院法案中也有类似的废除提案，但代替性最低税在参议院投票商议的最后时刻被保留了下来。
- **对某些商业资产的一次性费用化** - 美国企业为取得特定资产的全部成本费用将允许一次性税前扣除（即代替了资产按照折旧年限或一定限制分期税前扣除）。这项提案预计将于 2022 年 12 月 31 日后被废除。中国投资者在对资本支出规划时需要考虑新法案的影响。
- **利息费用** - 可抵扣限额调整为 30% 的“调整后应纳税所得额”（将不适用于年均收入总额低于一定临界值数额的企业）。根据众议院法案和参议院法案，这项提案将于 2017 年 12 月 31 日后的纳税年度开始生效。若投资者需要维持此利息费用减免水平，可能需要重新构建目前在美国投资企业的融资安排。
- **美国境内制造税前扣除** - 在众议院法案和参议院法案下，美国境内制造的税前扣除规定（第 199 号扣除规定）将不再适用。该提案在众议院法案下预计将于 2017 年 12 月 31 日后的纳税年度开始生效，而在参议院法案下将于 2018 年 12 月 31 日后的纳税年度开始生效。
- **对营业净亏损的限制** - 根据现行美国联邦所得税法规定，营业净亏损通常情况下可向过去结转两年并结转至未来 20 年。在参众两院的提案中，企业可使用的营业净亏损额将不得超过纳税人当年应纳税所得额的 90%（根据参议院法案，以后年度的抵扣限额将变为 80%），同时未使用的营业净亏损额可以无限期结转。为了防止损失营业净亏损可能带来的未来税收优惠，建议企业可以考虑加速企业收入的确认。
- **研究与开发** - 重要的是，研发费用的可抵用额将在众议院法案和参议院法案中保留不变。
- **税基侵蚀/消费税** - 众议院法案将对美国企业向其境外关联企业（除非与美国贸易和业务有实际关联而被征税的境外关联企业）支付的特定可抵扣款项（除利息和其他事项）征收 20% 的消费税。此提案中的消费税改革将对企业未来供应链和无形资产的持有安排产生一定影响。
- **属地征税** - 美国企业从持有 10% 或以上股份权益的非美国企业（有一定持有期的要求）所获取的非美国源泉的股息收益可 100% 进行税前扣除。若中国投资者拥有的美国公司在美国境外还有子公司，该提议则显得尤为重要。
- **过渡税** - 在向属地征税转型的过程中，美国企业在海外以现金和其他资产形式持有的海外累计利润将被视同汇回美国，并在美国（以较低的税率）应税。纳税人可以选择在 8 年的限期内支付由此产生的纳税义务。若中国投资者拥有的美国公司在美国境外还有子公司，该提议则显得尤为重要。

重要事项

由于当前众议院法案和参议院法案草稿均长达 400 多页，因此值得注意的是以上概述只是对一些复杂性问题的摘要。若上述税改提案被实施，我们强烈建议纳税人向专业美国税务顾问进行咨询，以了解这些和其他提案对现有或未来向美国投资所产生的影响。

联系方式

如果您需要了解美国税改的最新动态，对您企业的影响以及所需要的应对措施，欢迎联系德勤中国的美国税改专项服务小组成员：

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往期回顾

或将深刻改变美国及国际税收领域规则的美国税改进程如何？对赴美投资及跨境经营有何影响？【[德勤税务快讯之美国税改系列](#)】将及时与您分享我们的专业解读。点击浏览往期内容，并请关注更多后续进展。

- 12月2日 — [【德勤税务快讯之美国税改系列】最新出炉：参议院通过其税改提案](#)
- 11月29日 — [【德勤税务快讯之美国税改系列】美国税改法案近期快讯](#)

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Tax Newsflash on US Tax Reform China outbound impacts



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Background

In the early morning of December 2, the Senate passed its version of the Tax Cuts and Jobs Act (the "Senate Act") by a vote of 51-49. In order to achieve the votes needed for passage, several last-minute and significant modifications were made to prior versions of the Senate Act. Last month, on November 16, the House of Representatives passed its version of the bill (H.R. 1; the "House Act") by a vote of 227-205.

Timing and next steps

The Senate Act must now be reconciled with the House Act through the process of a conference committee, which will consist of a small working group of key members from both the House of Representatives and the Senate. Republican leaders from the House of Representatives insist there will be a formal conference and have told members they will vote to initiate the conference on December 4. The duration of the conference committee will take shape in the coming week. The Trump Administration remains committed to enacting tax reform by the end of 2017.

Summary of key provisions applicable to Chinese investment in the United States

Several of the provisions of both the Senate Act and the House Act could have implications for Chinese investment into the United States. The following is a summary of some of the provisions related to federal corporate income tax addressed in the proposals (provisions related to pass-through entities, tax-exempt entities, and individuals are not the subject of this alert):

- **Tax rate** – reduced to a 20% flat rate from 35%. This rate would generally be effective for tax years beginning after December 31, 2017 under the House Act and for tax years beginning after December 31, 2018 under the Senate Act. The rate reduction may have adverse impact on future earnings repatriated back to China under the current Chinese foreign tax credit rules. Hence, Chinese investors should evaluate their current US investment holding structures.
- **Alternative minimum tax ("AMT")** – very generally, AMT is a separate and parallel taxable income and tax calculation that is intended to prevent certain taxpayers from avoiding US federal income tax through excessive deductions. The House Act would repeal AMT for tax years beginning after December 31, 2017. The Senate Act contained a similar repeal provision but AMT was retained (i.e., no repeal provision) as part of last-minute bargaining in the run up to the Senate vote.
- **Immediate expensing of certain business assets** – US corporations would be permitted to immediately deduct (i.e., in lieu of depreciating over the useful life and subject to certain limitations) the full cost of acquired qualified property. This provision would generally expire after December 31, 2022. Chinese

investors may consider the impact of this development in their capital expenditure planning.

- **Interest expense** – a deduction for interest expense would be limited to 30% of "adjusted taxable income" (exemption applies to businesses with average annual gross receipts below certain threshold amounts). This provision is generally effective for tax years beginning after December 31, 2017 under both the House Act and the Senate Act. Restructuring the current US financing arrangements may be required to maintain the level of tax deduction on interest.
- **Deduction for domestic production** – under both the House Act and the Senate Act, the deduction for domestic (US) production activities (i.e., the section 199 deduction) would no longer be available. This provisions would be effective for tax years beginning after December 31, 2017 under the House Act and for tax years beginning after December 31, 2018 under the Senate Act.
- **Limitation on the use of net operating loss ("NOL")** – under current US federal income tax law, NOLs are generally available to be carried back two years and carried forward 20 years. Under both proposals, a NOL deduction would be limited to 90% of a taxpayer's taxable income (80% for later years under the Senate Act) and unused NOLs could be carried forward indefinitely. Income acceleration strategies may be relevant to prevent from losing future tax benefit on NOLs.
- **Research and development** – importantly, the research and development credit would be preserved under both the House Act and the Senate Act.
- **Base erosion/excise tax** – the House Act would impose a 20% excise tax on certain deductible payments (other than interest and other items) made by US corporations to related non-US corporations (unless otherwise taxed as effectively connected to a US trade or business). The proposed excise tax may have an impact on the supply chain and intangible holding arrangements.
- **Territoriality** – a 100% deduction would be permitted for non-US sourced dividends received by US corporations from certain 10% or greater owned non-US corporations (subject to a holding period requirement). This is important for Chinese companies that own US groups with non-US subsidiaries.
- **Transition tax** – related to a transition to a territorial tax system applicable to US corporations, accumulated non-US earnings generated prior to enactment that are held in cash and other assets would be deemed repatriated and taxed accordingly (at a lower rate). Taxpayers may elect to pay the resulting tax liability over an eight-year period. This is important for Chinese companies that own US groups with non-US subsidiaries.

Important note

As currently drafted, each of House Act and Senate Act is over 400 pages in length. As such, it is important to note that the overview provided above is a summary of some fairly complex issues and, as such, taxpayers are strongly advised to consult with a qualified US tax advisor as to how these (and other) provisions, if and when enacted, could impact existing or future investment in the United States.

Contact list

Please contact any of Deloitte China's US Reform Task Force members below for more information, and how it may impact your business and what you should be doing now.

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Archives

How is the US tax reform progressing? How will this significant reform impact US inbound investment and cross-border businesses? **【Deloitte Tax Newsflash on US Tax Reform】** shares with you our professional insights. Check out the archives below and stay tuned for more updates.

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Senate passes tax bill](#)

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