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## Malaysia: 2018 National Budget

### Overview

The 2018 National Budget was announced by the Minister of Finance, Malaysia, on October 27, 2017. Below are the relevant issues from an individual tax perspective.

### Reduction of individual income tax rates

Under the current legislation, the income tax structure for resident individuals is based on progressive tax rates ranging from 0% to 28% on chargeable income. Nonresident individuals are taxed at a flat rate of 28%.

To increase the disposable income of the middle income group and address the rising cost of living, the 2018 National Budget reduces individual income tax rates for resident individuals by 2% for the three chargeable income bands as follows:

| Chargeable Income Bands (RM) | Current Tax Rates (%) | 2018 Tax Rates (%) |
|---|---|---|
| 0 – 5,000 | 0 | 0 |
| 5,001 – 20,000 | 1 | 1 |
| 20,001 – 35,000 | 5 | 3 |
| 35,001 – 50,000 | 10 | 8 |
| 50,001 – 70,000 | 16 | 14 |
| 70,001 – 100,000 | 21 | 21 |
| 100,001 – 250,000 | 24 | 24 |
| 250,001 – 400,000 | 24.5 | 24.5 |
| 400,001 – 600,000 | 25 | 25 |
| 600,001 – 1,000,000 | 26 | 26 |
| 1,000,000 and above | 28 | 28 |

The projected income tax savings for individuals resulting from the tax rate reduction are between RM300 to RM1,000.

**Effective date:** Year of assessment 2018

**Tax exemption on rental income from residential homes**

Rental income earned on residential homes owned by resident individuals is currently subject to tax from 0% to 28%.

To encourage Malaysian resident individuals to rent out residential homes at reasonable charges, subject to certain conditions, the 2018 National Budget will provide a 50% income tax exemption on rental income earned by Malaysian resident individuals.

**Effective dates:** Years of assessment 2018 to 2020

**Extension of period of relief on net savings in the National Education Savings Scheme (SSPN)**

For years of assessment 2012 to 2017, resident individuals have been eligible for tax relief up to RM 6,000 for net savings in the SSPN.

To further encourage savings for the purpose of financing the tertiary education of children, the 2018 National Budget extends that relief for another three years.

**Effective dates:** Years of assessment 2018 to 2020

**Tax incentives for women returning to work after a career break**

Under the current legislation, there are no tax incentives for women returning to work after a career break.

To encourage women to return to the workforce, women who go back to work after a career break of two or more years can now apply for an individual income tax exemption on their employment income for a maximum of 12 consecutive months.

This exemption is only applicable to women returning to the workforce after a career break of at least two years as of October 27, 2017.

Applications for this exemption must be submitted to Talent Corporation Malaysia Berhad ("TalentCorp") from 1 January 2018 to 31 December 2019.

**Effective dates:** Years of assessment 2018 to 2020

**Deloitte's view**

As a continuation of Vision 2020, the National Transformation (TN50) initiative was introduced to drive Malaysia to be among the top 20 nations in economic development, social advancement, and innovation.

The 2018 National Budget, titled "Prospering an Inclusive Economy, Balancing between Worldly and Hereafter, for the Wellbeing of Rakyat, Towards the TN50 Aspirations," focuses on alleviating the high cost of living for those in the middle-income category, maximizing disposable income, and nurturing women's involvement in the workforce.

Numerous other incentives from the budget focus on the wellness of women, including a required minimum level of participation by women on the boards of directors of government-linked companies, increased maternity leave days for women employed in the private sector, and budget allocation to conduct training and entrepreneurship programs for women.

The impact of the abovementioned proposals on expatriate assignees in Malaysia is expected to be minimal.


— Ang Weina (Kuala Lumpur)
Partner
Deloitte Malaysia
angweina@deloitte.com

Michelle Lai (Kuala Lumpur)
Director
Deloitte Malaysia
michlai@deloitte.com

Chee Ying Cheng (Kuala Lumpur)
Director
Deloitte Malaysia
yichee@deloitte.com

Lee Lai Kuen (Kuala Lumpur)
Associate Director
Deloitte Malaysia
lailee@deloitte.com

Melissa Vong (Kuala Lumpur)
Associate Director
Deloitte Malaysia
mvong@deloitte.com


## Taiwan:
## Authentication of foreign tax payment certificates no longer required

**Overview**

Taiwan's Ministry of Finance issued a ruling on August 25, 2017 that allows taxpayers to provide foreign tax payment certificates to support foreign tax credits claimed on Taiwanese tax returns without obtaining prior authentication of the certificates from Taiwanese embassies or consulates abroad. The ruling is effective as of the date of issuance.

Under various Taiwanese tax laws, taxpayers who intend to claim foreign tax credits on their income, estate, or gift tax returns must obtain foreign tax payment certificates from the related foreign tax authorities that evidence the foreign taxes paid and must have those certificates authenticated by Taiwanese embassies or consulates in the relevant foreign countries before submitting the certificates to Taiwanese tax authorities to support foreign tax credit claims.

However, Taiwanese embassies or consulates abroad can only verify the validity of foreign tax payment certificates. Taiwanese tax authorities ultimately determine whether the certificates can be used to support foreign tax credit claims. In light of this, the August 25 ruling allows taxpayers to provide foreign tax payment certificates to Taiwanese tax authorities without obtaining prior authentication from Taiwanese embassies or consulates abroad.

**Deloitte's view**

The new ruling will ease the process of providing foreign tax payment certificates to support foreign tax credit claimed on Taiwanese tax returns. However, taxpayers should ensure they have clear documentation of the foreign taxes paid because Taiwanese tax authorities may require further supporting documentation during their review of such tax returns.

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## United States:
## US tax reform draft legislation updated with amendments and Senate proposal

**Overview**

On November 9, 2017, Senate Finance Committee Chairman Orrin Hatch, R-Utah, released the Chairman's Mark of a comprehensive tax reform proposal. As is traditional in the Finance Committee, the Tax Cuts and Jobs Act (the "Act") was released as a technical summary rather than in legislative language. The measure broadly follows the contours of the tax reform bill bearing the same name that was approved in the House Ways and Means Committee earlier in the day. Both proposals contain provisions geared towards lowering income tax rates for corporations and individuals, an increase in standard deduction for individuals, and the simplification of the tax code by repeal of various deductions and the alternative minimum tax.
**URL:** https://www.finance.senate.gov/imo/media/doc/11.9.17%20Chairman's%20Mark.pdf

The following information focuses on the impact of both proposals to company mobility and rewards programs. For a more detailed discussion of the Act, please refer to *Tax News & Views*, November 10, 2017.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/TNV/171110_1.html?

**Key provisions impacting Mobility programs**

**Lowering of individual income tax rates**

**House Proposal:** Reduce number of tax brackets to four, 12%, 25%, 35%, and 39.6% (with a phase-out of the tax benefit of the 12% bracket for high-income taxpayers), and increase income thresholds applicable at the lower levels.

| Tax rate | Single / Married Filing Separate | Head of Household | Married Filing Joint |
|---|---|---|---|
| 12% | $0-44,999 | $0-67,499 | $0-89,999 |
| 25% | 45,000-199,999 | 67,500-229,99 | 90,000-259,999 |
| 35% | 200,000-499,999 | 230,000-499,999 | 260,000-999,999 |
| 39.6% | 500,000+ | 500,000+ | 1,000,000+ |

**Senate Proposal:** Adjusts tax rates and brackets as listed below, including a reduction of the top tax rate from 39.6% to 38.5%.

| Tax rate | Single / Married Filing Separate | Heads of Household | Married Filing Joint |
|---|---|---|---|
| 10% | $0-9,524 | $0-13,599 | $0-19,049 |
| 12% | $9,525-38,699 | $13,600-51,799 | $19,050-77,399 |
| 22.5% | $38,700-59,999 | $51,800-59,999 | $77,400-119,999 |
| 25% | $60,000-169,999 | $60,000-169,999 | $120,000-289,999 |
| 32.5% | $170,000-199,999 | $170,000-199,999 | $290,000-389,999 |
| 35% | $200,000-499,999 | $200,000-499,999 | $390,000-999,999 |
| 38.5% | $500,000+ | $500,000+ | $1,000,000+ |

**Observation:** Under both proposals, tax reimbursement costs for tax equalized assignments could change, depending on the mix of assignees inbound and outbound to the US, and also to high or low-tax countries. Companies may consider projecting the overall impact of this compression of brackets and lowering of rates on their projected tax reimbursement costs.

### Increased standard deduction and repeal of personal exemptions

**House Proposal:** Increase standard deduction to $12,000 for single individuals, $18,000 for single filers with a qualifying child, and $24,000 for joint filers, and repeal all personal exemptions.

**Senate Proposal:** Similar provision as the House proposal.

**Observation:** The repeal of personal exemptions may result in increased tax reimbursement and tax preparation costs for companies sending employees on business travel or assignments to the US Nonresident and dual-status resident taxpayers are not entitled to a standard deduction, and without a personal exemption, a nonresident or dual-status resident individual would be taxable in the US on the first dollar of income earned in the US As a result, more individuals travelling to the US would be required to file a US tax return. Companies should consider the impact of any additional tax reimbursement and compliance costs on their global mobility program.

### Reduced mortgage interest deduction

**House Proposal:** The bill would limit the deduction for mortgage interest to only the taxpayer's principal residence, as opposed to the current law which allows mortgage interest to be deducted on the principal residence and one other property. Further, the maximum amount of indebtedness to be considered acquisition indebtedness would be reduced from $1 million to $500,000. Finally, interest on home equity indebtedness incurred after the effective date of the bill would no longer be deductible.

**Senate Proposal:** The proposal retains the mortgage interest deduction rules based on current law, with the exception that it would repeal the deduction for home equity indebtedness that is currently permitted on debt up to $100,000.

**Observation:** Taxpayers on assignment who maintain homes in both their home and host countries would see limits on the amount of interest that can be deducted if the House proposal is adopted, further increasing tax costs. Companies would need to determine how to handle these increased costs as it relates to current and future international assignments.

### Modified IRC Sec. 121 gain from sale of a principal residence

**House Proposal:** The exclusion of gain from the sale of a principal residence would still be available, but the provisions and conditions would change. To exclude the gain, an individual would have to own and use a home as the individual's principal residence for five out of the previous eight years. Further, the exclusion would only be available once every five years. Finally, the exclusion would be phased out by one dollar for every dollar by which a taxpayer's adjusted gross income exceeds $500,000 ($250,000 for single filers).

**Senate Proposal:** Similar provision to the House proposal, except that the Senate did not include a phaseout. The exclusion would apply to all taxpayers regardless of income level.

**Observation:** This provision would require taxpayers to live in their homes for a longer period in order to exclude gain, and additional provisions may lower the benefit of this exclusion. As a result, fewer taxpayers would qualify to exclude the full gain on the sale of their home. Companies should recognize that this provision may impact an employee's decision on whether to accept a global assignment and may need to review their tax reimbursement policies to address this situation.

### Repeal of deduction for moving expenses and exclusion for qualified moving expense reimbursement

**House Proposal:** The provision would repeal moving expense deduction and exclusion for qualified moving expense reimbursements (with the exception of military moves).

**Senate Proposal:** Similar provision to the House proposal.

**Observation:** Moving expense reimbursements paid by an employer to an employee that in the past were not taxable to the employee would now be taxable. Companies may see an increased tax cost relating to the gross-up of these reimbursements.

**Limitation on exclusion for employer-provided housing (not housing exclusion under Sec. 911)**

**House Proposal:** Under current law, housing and meals provided to an employee living on a property provided by the employer and for the convenience of the employer are excluded from income if the meals are on the business premises of the employer and the employee is required to accept lodging on the premises of the employer as a condition of employment.

The bill would limit the exclusion for housing provided for the convenience of the employer and for employees of education institutions to $50,000 ($25,000 for a married individual filing a joint return) and would phase out for highly compensated individuals.

**Senate Proposal:** None.

**Observation:** The limitation on the exclusion for employer-provided housing proposed by the House could have a greater impact in certain industries where companies send individuals to work in remote locations (such as, oil and gas, construction or engineering). For instance, these employees often live in campsites provided by the employer for the convenience of the employer and for security purposes. Under the proposed House bill, employers in these types of industries may see an increase in tax reimbursement costs for the housing provided.

**Key provisions impacting rewards programs**

**Reduced corporate tax rates**

**House Proposal:** The bill would reduce the corporate tax rate from 35% to a flat rate of 20% for tax years beginning after 2017.

**Senate Proposal:** The proposal would reduce the corporate tax rate from 35% to a flat rate of 20% for tax years beginning after 2018.

**Observation:** Companies may want to consider accelerating corporate tax deductions to increase the value of their deductions. With respect to a company's rewards programs, there may be opportunities to accelerate deductions relating to bonus programs, restricted stock units, pension contributions, and VEBAs. It will be important to stay informed about the legislative process regarding the effective date of the rate change, as a 2018 effective date would mean some of the accelerations require that companies take action before year-end 2017.

**Additional qualified retirement plan choices**

**House Proposal:** The bill would allow additional flexibility with respect to in-service distributions (while employees are still actively working), hardship distributions, and loan repayments for terminated employees. The bill also makes certain modifications to the so-called "nondiscrimination" testing rules that would allow certain "closed" defined benefit plans to more easily satisfy the nondiscrimination testing rules. These provisions would generally be effective for plan years beginning after 2017.

**Senate Proposal: None.**

**Observation:** Plan sponsors may want to revisit their plans and determine whether they wish to take advantage of the new design choices proposed by the House, as well as to consider the potential impact on plan operations, compliance testing and recordkeeping. Alternatively, plan sponsors may want to rethink their older defined benefit plans in light of the greater ability of frozen plans to pass discrimination testing.

**New 401(k) "catch up" contribution limit**

**House Proposal:** None.

**Senate Proposal:** Employees receiving wages in excess of $500,000 in the preceding year may not make pre-tax "catch up" contributions under a 401(k) plan.

**Observation:** Plan sponsors may want to verify what systems changes are required to properly track this limitation. Many systems are not currently designed to track compensation beyond the far lower statutory "compensation" limit.

**Limitation on nonqualified deferred compensation programs**

**House Proposal:** None. The initial version of the House bill included a provision that would have significantly impacted nonqualified deferred compensation, but the provision was removed from the House bill through an amendment. [A similar provision is found in the Senate proposal and is described below.]

**Senate Proposal:** The proposal would provide that compensation is includible in income once no longer subject to a requirement to provide future service unless paid within 2-1/2 months after the year the service conditions are met. Compensation would be subject to tax without regard to whether there are other conditions on the right to receive the compensation, such as conditions related to performance metrics. The proposal would apply to equity compensation such as options and stock appreciation rights, but not incentive stock options. The proposal would be effective for amounts attributable to services performed after 2017 and would apply to existing arrangements to the extent that services are required in 2018 or later to earn previously deferred compensation. Other arrangements could continue to defer compensation under existing law until the last tax year beginning before 2027.

**Observation:** The Senate proposal would significantly curtail an employee's ability to defer vested compensation in a tax-efficient manner. Companies may want to review existing executive compensation programs.

**Deferral of income for qualified equity grant**

**House Proposal:** A notable amendment to the original House bill proposes that employees in private corporations can elect to defer taxation for up to 5 years from the date of vesting on shares granted in connection with broad based compensatory stock option or restricted stock unit (RSU) programs. The provision would be effective for stock attributable to options exercised or RSUs settled after 2017.

**Senate Proposal: None.**

**Observation:** Private companies with broad based compensatory equity programs may want to evaluate the structure of their programs and determine whether facilitating "qualified equity grants" elections can offer additional value to their employees.

**Modification of limitation on excessive employee remuneration**

**House Proposal:** The bill expands the current limitation on deduction of compensation paid to 'covered employees' under section 162(m) by (1) eliminating the exclusions for commissions or performance-based compensation, including performance-based bonus plans, stock options, and stock appreciation rights, (2) including the CFO as a covered employee subject to limitation, along with the CEO and three most highly compensated officers as shown in SEC disclosures, and (3) providing that status as a covered employee continues to apply if the person was ever a covered employee. The provision would be effective for tax years beginning after 2017.

**Senate Proposal:** Same as House proposal, but the Senate proposal would also expand the definition of corporations covered by the provision to include foreign issuers trading through ADR and other traded entities.

**Observation:** Companies may want to consider the impact of potentially lost deductions and reconsider the structure of compensation packages provided to covered employees.

**Repeal of exclusion for certain fringe benefit programs**

**House Proposal:** The bill repeals the exclusion for certain benefit programs typically offered by employers, such as employee achievement awards. These provisions would be effective for tax years beginning after 2017. An amendment to the original House bill proposes to delay repeal of the exclusion for dependent care assistance programs until after 2022.

**Senate Proposal:** The proposal does not include the provisions repealed by the House, but repeals the exclusion for qualified bicycle commuting reimbursements for tax year beginning after 2017.

**Observation:** Companies may wish to review the impact these changes may have on their payroll system. Additionally, companies may want to review their total rewards strategy and determine whether alternative programs or modifications would help meet employee needs.

### Safe harbor for determination of employee/independent contractor

**House Proposal:** None.

**Senate Proposal:** The proposal provides a safe harbor for worker classification as employees or independent contractors, establishing related requirements for service providers and service recipients. The proposal imposes income tax withholding and reporting obligations, and establishes conditions for any reclassification by the IRS to apply on a prospective basis. The safe harbor provisions generally apply for services performed after December 31, 2017, with an additional grace period of 180 days after enactment of the proposal.

**Observation:** Worker misclassification can be a costly matter for companies with wide ranging implications. Companies may wish to evaluate agreements with service providers to determine whether to bring agreements into conformity with the proposed safe harbor treatment, and to determine whether it makes sense to modify future agreements to fit within the new safe harbor and its protections.

### Deemed repatriation of deferred foreign income

**House Proposal:** US shareholders of a foreign subsidiary that is at least 10% US-owned, generally, would include in income for the subsidiary's last taxable year beginning before 2018, the shareholder's pro rata share of historical earnings and profits ("E&P") of the subsidiary to the extent such amounts have not previously been subject to US tax. This income would be taxed at special rates and may be spread over a period of 8 years.

**Senate Proposal:** US shareholders of specified foreign corporations would include in income for the last taxable year beginning before 2018, the shareholder's pro rata share of undistributed, non-previously taxed historic foreign earnings of the corporation. This income would effectively be taxed at reduced rates and may be spread over a period of 8 years.

**Observation:** As companies calculate their E&P under this new provision, one complex area that is often overlooked and may have a significant impact on the determination of E&P relates to the deduction of foreign pensions under IRC Sec. 404A. Generally, these rules may allow employers to reduce their E&P for contributions made, or liabilities accrued, with respect to certain foreign retirement plans.

### Deloitte's view

Tax reform continues to dominate political discussion, and the release of the Senate proposal and the approval of the House bill by the House Ways and Means Committee are the latest steps in this process. Procedurally, there are still several steps that must be completed before these proposals become law. Changes are still anticipated as the two reform proposals move through the legislative process, including potentially significant changes as the Senate introduces formal legislative language and addresses Senate budgetary requirements.

With regards to mobility programs, the provisions in the Senate proposal are primarily in-line with the House bill released previously. For rewards programs, the differences between the two proposals are greater and many provisions represent a significant change from current law. Companies should continue to monitor these changes closely to stay aware of developments to be able to plan for potential changes. As stated in our previous alert, certain company departments or individuals may actually see an increase in overall tax burdens.

— Joel Eisenreich (Parsippany)
Principal
Deloitte Tax LLP
jeisenreich@deloitte.com

Elizabeth Drigotas (Washington, DC)
Principal
Deloitte Tax LLP
edrigotas@deloitte.com

Grace Melton (Atlanta)
Partner
Deloitte Tax LLP
grmelton@deloitte.com

Michael Loskove (Chicago)
Managing Director
Deloitte Tax LLP
mloskove@deloitte.com

Gregory LaBorde (New Orleans)
Managing Director
Deloitte Tax LLP
glaborde@deloitte.com

Michael Haberman (Parsippany)
Senior Manager
Deloitte Tax LLP
mhaberman@deloitte.com

Elizabeth Karcher (Milwaukee)
Manager
Deloitte Tax LLP
ekarcher@deloitte.com

Trisha Ocampo (Los Angeles)
Manager
Deloitte Tax LLP
tocampo@deloitte.com

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## United States:
## Highly-anticipated US tax reform draft legislation released

### Overview

On November 2, 2017, the House Ways and Means Committee released details of their proposed tax reform bill, referred to as the "Tax Cuts and Jobs Act" ("the Act"). This much-anticipated draft legislation provides details of various potential tax law changes, most of which would be effective January 1, 2018. As expected, the bill contains provisions geared towards lowering income tax rates for corporations and individuals, an increase in standard deduction for individuals, and the simplification of the tax code by repeal of various deductions and the alternative minimum tax. As discussed further below, individual taxpayers have several potential alternatives for relief from the damage caused by Hurricane Harvey, including the following information.
**URL:** http://newsletters.usdbriefs.com/2017/Tax/TNV/171103_1.html

### Key provisions impacting Mobility programs

### Lowering of individual income tax rates

**House Proposal:** Reduce number of tax brackets to four, 12%, 25%, 35%, and 39.6%, and increase income thresholds applicable at the lower levels.

At a high level, the brackets cover income at the following levels:

- **12%:** Income up to $44,999 for single/Married Filing Separately (MFS) and $89,999 for Married Filing Jointly (MFJ)
- **25%:** Additional income up to $199,999 for single/MFS and $$259,999 for MFJ
- **35%:** Additional income up to $499,999 for single/MFS and $999,999 for MFJ
- **39.6%:** Income over the 35% bracket, with some modifications

**Observation:** As a result, tax reimbursement costs for tax equalized assignments would change, depending on the mix of assignees inbound and outbound to the US, and also to high or low-tax countries. Companies may consider projecting the overall impact of this compression of brackets and lowering of rates on their projected tax reimbursement costs.

### Increased standard deduction and repeal of personal exemptions

**House Proposal:** Increase standard deduction to $12,000 for single individuals, $18,000 for single filers with a qualifying child, and $24,000 for joint filers, and repeal all personal exemptions.

**Observation:** The repeal of personal exemptions would potentially result in increased tax reimbursement and tax preparation costs for companies sending employees on business travel or assignments to the US Nonresident and dual-status resident taxpayers are not entitled to a standard deduction, and without a personal exemption, a nonresident or dual-status resident individual will be taxable in the US on the first dollar of income earned in the US As a result, more individuals traveling to the US would be required to file a US tax return. Companies should consider the impact of any additional tax reimbursement and compliance costs on their global mobility program.

### Reduced mortgage interest deduction

**House Proposal:** The bill limits the deduction for mortgage interest to only the taxpayer's principal residence, as opposed to the current law which allows mortgage interest to be deducted on the principal residence and one other property. Further, the maximum amount of indebtedness to be considered acquisition indebtedness is reduced from $1 million to $500,000. Finally, interest on home equity indebtedness incurred after the effective date of the bill will no longer be deductible.

**Observation:** Taxpayers on assignment who maintain homes in both their home and host countries would see limits on the amount of interest that can be deducted further increasing tax costs. Companies should consider how these increased costs would impact current and future international assignments.

### Modified IRC Sec. 121 gain from sale of a principal residence

**House Proposal:** The exclusion of gain from the sale of a principal residence is still available, but the provisions and conditions have changed. To exclude the gain, an individual would have to own and use a home as the individual's principal residence for five out of the previous eight years. Further, the exclusion would only be available once every five years. Finally, the exclusion is phased out by one dollar for every dollar by which a taxpayer's adjusted gross income exceeds $500,000 ($250,000 for single filers).

**Observation:** This provision requires taxpayers to live in their homes for a longer period in order to exclude gain, and additional provisions may lower the benefit of this exclusion. As a result, fewer taxpayers would qualify to exclude the full gain on the sale of their home. Companies should recognize that this provision may impact an employee's decision on whether to accept a global assignment and may need to review their tax reimbursement policies to address this situation.

### Repeal of deduction for moving expenses and exclusion for qualified moving expense reimbursement

**House Proposal:** The provision repeals moving expense deduction and exclusion for qualified moving expense reimbursements.

**Observation:** Moving expense reimbursements paid by an employer to an employee that in the past were not taxable to the employee will now be taxable. Companies may see an increased tax cost relating to the gross-up of these reimbursements.

### Limitation on exclusion for employer-provided housing (not housing exclusion under Sec. 911)

**House Proposal:** Under current law, housing and meals provided to an employee living on a property provided by the employer and for the convenience of the employer are excluded from income if the meals are on the business premises of the employer and the employee is required to accept lodging on the premises of the employer as a condition of employment.

The bill limits the exclusion for housing provided for the convenience of the employer and for employees of education institutions to $50,000 ($25,000 for a married individual filing a joint return) and would phase out for highly compensated individuals.

**Observation:** The limitation on the exclusion for employer-provided housing could have a greater impact in certain industries where companies send individuals to work in remote locations (such as, oil and gas, construction or engineering). These employees live in campsites provided by the employer for the convenience of the employer and for security purposes. Under the proposed tax bill, employers in these types of industries may see an increase in tax reimbursement costs for the housing provided.

## Key provisions impacting Rewards programs

### Reduced corporate tax rates

**House Proposal:** The bill reduces the corporate tax rate from 35% to a flat rate of 20% for tax years beginning after 2017.

**Observation:** Companies may want to consider accelerating corporate tax deductions into 2017 to increase the value of their deductions in the event of a future rate decrease. With respect to a company's rewards programs, there may be opportunities to accelerate deductions relating to bonus programs, restricted stock units, pension contributions, and VEBAs. Some of the accelerations require that companies take action before year end.

### Additional qualified retirement plan choices

**House Proposal:** The bill allows additional flexibility with respect to in-service distributions (while employees are still actively working), hardship distributions, and loan repayments for terminated employees. The bill also makes certain modifications to the so-called "nondiscrimination" testing rules that would allow certain "closed" defined benefit plans to more easily satisfy the nondiscrimination testing rules. These provisions would generally be effective for plan years beginning after 2017.

**Observation:** Plan sponsors may want to revisit their plans and determine whether they wish to take advantage of these new design choices. Alternatively, plan sponsors may want to rethink their older defined benefit plans in light of the greater ability of frozen plans to pass discrimination testing.

### Limitation on nonqualified deferred compensation programs

**House Proposal:** The bill provides that employees are subject to tax on compensation (including equity compensation such as options and stock appreciation rights) once no longer subject to a requirement to provide future service. The bill would be effective for amounts attributable to services performed after 2017 and would apply to existing arrangements to the extent that services are required in 2018 or later to earn previously deferred compensation. Other arrangements could continue to defer compensation under existing law until the last tax year beginning before 2026.

**Observation:** The bill would significantly curtail an employee's ability to defer vested compensation in a tax-efficient manner. Companies may want to review existing executive compensation programs to determine potential impact.

### Modification of limitation on excessive employee remuneration

**House Proposal:** The bill expands the current limitation on deduction of compensation paid to 'covered employees' under section 162(m) by (1) eliminating the exclusions for commissions or performance-based compensation, including performance-based bonus plans, stock options, and stock appreciation rights, (2) including the CFO as a covered employee subject to limitation, along with the CEO and three most highly compensated officers as shown in SEC disclosures, and (3) providing that status as a covered employee continues to apply if the person was ever a covered employee. The provision would be effective for tax years beginning after 2017.

**Observation:** Companies may want to consider the impact of potentially lost deductions and reconsider the structure of compensation packages provided to covered employees.

### Repeal of exclusion for certain fringe benefit programs

**House Proposal:** The bill repeals the exclusion for certain benefit programs typically offered by employers, such as dependent care assistance programs, adoption assistance programs, and employee achievement awards. These provisions would be effective for tax years beginning after 2017.

**Observation:** Companies may wish to review the impact these changes would have on their total rewards strategy and determine whether alternative programs or modifications would help meet employee needs.

**Deemed repatriation of deferred foreign income**

**House Proposal:** US shareholders owning at least 10% of a foreign subsidiary, generally, would include in income for the subsidiary's last year beginning before 2018, the shareholder's pro rata share of historical earnings and profits ("E&P") of the subsidiary to the extent such amounts have not previously been subject to US tax. This income will be taxed at special rates and may be spread over a period of 8 years.

**Observation:** As companies calculate their E&P under this new provision, one complex area that is often overlooked and may have a significant impact on the determination of E&P relates to the deduction of foreign pensions under IRC Sec. 404A. Generally, these rules allow employers to reduce their E&P for contributions made, or liabilities accrued, with respect to certain foreign retirement plans.

**Deloitte's view**

Although tax reform has been a key focus of political discussion since the presidential campaign and throughout President Trump's first year in office, the release of the Tax Cuts and Jobs Act draft bill represents one of the most significant steps towards passage that we have seen yet.

Procedurally, it is important to note that the legislation is only a draft presented by the Ways & Means Committee. There are still several steps that must be completed before this bill becomes law. Nevertheless, it represents the first substantive release from Congress that articulates potential tax reform provisions. Congress and the President remain committed to passing tax reform before the end of the year and global organizations should continue to stay aware of developments to be able to plan for potential changes.

The impact to global mobility and rewards programs should not be overlooked. Although the Act is aimed at reducing tax burdens for individuals and organizations, certain benefits or deductions must also be reduced to meet Congressional budgetary requirements and certain company departments or individuals may actually see an increase in overall tax burdens. These changes could have a significant impact on mobility and rewards programs and may motivate companies to revisit their current policies.

— Joel Eisenreich (Parsippany)
Principal
Deloitte Tax LLP, United States
jeisenreich@deloitte.com

Elizabeth Drigotas (Washington, DC)
Principal
Deloitte Tax LLP
edrigotas@deloitte.com

Michael Loskove (Chicago)
Managing Director
Deloitte Tax LLP
mloskove@deloitte.com

Gregory LaBorde (New Orleans)
Managing Director
Deloitte Tax LLP
glaborde@deloitte.com

Michael Haberman (Parsippany)
Senior Manager
Deloitte Tax LLP
mhaberman@deloitte.com

Elizabeth Karcher (Milwaukee)
Manager
Deloitte Tax LLP
ekarcher@deloitte.com

Trisha Ocampo (Los Angeles)
Manager
Deloitte Tax LLP
tocampo@deloitte.com