



Tax Cuts and Jobs Act: Mobility and Rewards

Comparison of current US tax reform proposals

December 4, 2017

Overview

The below summary highlights key provisions of current tax reform proposals that may impact company mobility and rewards programs.

- References to “House Proposal” refer to the House of Representatives tax bill H.R.1, which was passed by the House on November 16.
- References to “Senate Proposal” refer to the Senate version of the Tax Cuts and Jobs Acts (H.R.1), which was passed by the Senate on December 2.

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 | 67,500-229,999 | 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%. These rates will sunset after 2025.

| 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% | \$38,700-69,999 | \$51,800-69,999 | \$77,400-139,999 |
| 24% | \$70,000-159,999 | \$70,000-159,999 | \$140,000-319,999 |
| 32% | \$160,000-199,999 | \$160,000-199,999 | \$320,000-399,999 |
| 35% | \$200,000-499,999 | \$200,000-499,999 | \$400,000-999,999 |
| 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 U.S., 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, but both changes would sunset after 2025.

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 U.S. 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 U.S. on the first dollar of income earned in the U.S. As a result, more individuals travelling to the U.S. would be required to file a U.S. 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. This repeal would be in place through 2025.

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 proposal did not include a phase out and would expire after 2025. 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, except only through 2025.

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 for both international and domestic moves.

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

House Proposal: Under current law, housing 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 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.

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: Similar to the House proposal.

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 all foreign issuers trading through American depository receipts (ADRs). The Senate proposal also includes a transition rule related to certain pre-existing contracts.

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 years 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.

Deemed repatriation of deferred foreign income

House Proposal: U.S. shareholders of a foreign subsidiary that is at least 10% U.S.-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: U.S. 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.

Additional considerations

Affordable Care Act

Although not a direct impact to mobility or rewards programs, one additional noteworthy provision from the current Senate proposal is the reduction to zero of the penalty imposed on individuals who do not have adequate health insurance coverage (the "individual mandate" enacted in the Patient Protection and Affordable Care Act of 2010). This raises substantial revenue (the result of fewer people receiving tax credits and thereby making more revenue available for tax reform). This amendment would be effective for months beginning after December 31, 2018.

However, it is important to note that the proposal does not include changes to the employer mandate, which requires employers to offer healthcare coverage to 95% of full-time employees. Employer information reporting requirements (i.e., Forms 1095-B, 1095-C) will remain in-place.

Alternative Minimum Tax

An additional provision to note is the difference between the House and Senate proposals related to the Alternative Minimum Tax (AMT). The House proposes to repeal the individual AMT entirely, while the Senate proposal would retain AMT with an expanded exemption amount.

State and Local Taxes

The House and Senate proposals are now in-line with each other with regards to the treatment of state and local taxes paid by individuals. Both proposals would allow for a deduction for up to \$10,000 paid for state and local property taxes. No deduction would be allowed for state and local income taxes.

This document contains general information only and Deloitte is not, by means of this document, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This document is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this document.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the “Deloitte” name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.