Deloitte.

Tax News & Views
Capitol Hill briefing.
November 10, 2017

In this issue:

Finance Republicans chart their own course for tax reform 1
Tax reform proposal clears Ways and Means 21

Finance Republicans chart their own course for tax reform

Senate Finance Committee Chairman Orrin Hatch, R-Utah, on November 9 released his version of a comprehensive tax reform proposal aimed at reducing rates and providing other tax relief for corporations, individuals, and passthrough entities that would be paid for in large part by eliminating or paring back dozens of current-law deductions, credits, and incentives.

The Tax Cuts and Jobs Act was released as a technical summary rather than in legislative language. (The Finance Committee typically marks up "conceptual" language and releases a formal statutory proposal closer to the time a bill is ready to move to the Senate floor.) 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. (See separate coverage in this issue for more on the Ways and Means mark-up. For a detailed summary of the Ways and Means bill as originally released on November 2, see *Tax News & Views*, Vol. 18, No. 40, Nov. 3, 2017.)
URL: https://www.finance.senate.gov/imo/media/doc/11.9.17%20Chairman's%20Mark.pdf
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171103_1.html

But the Finance proposal also lives up to Hatch's oft-repeated promise that Senate Republican taxwriters would not simply "rubber stamp" any tax reform legislation put forward by their House counterparts. Most notably, the Finance Committee proposal, like the Ways and Means bill, would reduce the corporate tax rate to 20 percent; however the Finance proposal would delay implementation of the rate cut until 2019, while the Ways and Means provision would be effective beginning in 2018. The Finance bill provides significant relief from the estate tax but stops short of the full

Copyright © 2017 Deloitte Development LLC
All rights reserved.

repeal included in the Ways and Means package. It proposes no changes to the current-law deduction for mortgage interest on home purchases (which the Ways and Means bill would cap at interest paid on loan amounts of up to $500,000); but it would fully repeal the deduction for state and local taxes (something House taxwriters would retain, although only for property taxes and even then subject to a cap).

In a revenue estimate released in conjunction with the technical summary, the Joint Committee on Taxation (JCT) staff projects that the Finance Committee bill would increase the deficit by just under $1.5 trillion over the 10-year budget window (2018-2027). The recently approved unified budget resolution for fiscal year 2018 affords fast-track budget reconciliation protections to a tax bill that increases the federal deficit on net by up to $1.5 trillion over 10 years. Of note, the revenue loss in the last year of that window is more than $216 billion, suggesting the measure would not be compliant with the Byrd Rule (which requires reconciliation bills to not increase the deficit outside the current budget window), foreshadowing that major – and potentially unpopular – surgery will need to be done to the bill before it can be taken up by the full Senate.
URL: https://www.finance.senate.gov/download/tax-reform-jct-score

This discussion looks at the key ways in which the Finance proposal differs from the Ways and Means proposal and considers what's ahead as Hatch makes plans for a Finance Committee mark-up and eventual consideration on the Senate floor.

Corporate tax provisions

In general, the Finance Committee proposal contains corporate tax provisions similar to those in the Ways and Means bill. There would still be softening of the double taxation of much corporate income due to rate reduction, however, and more fundamental changes in the cross-border context (discussed elsewhere in this report), but without an adoption of a direct corporate integration measure, as may have been expected in the Senate version. Furthermore, similar to the Ways and Means bill, transactions with respect to stock of a corporation will generally be treated the same as under current law, and the proposal does not include changes to the consolidated return provisions.

Corporate rate reduction: The Finance Committee proposal would reduce the general corporate tax rate to 20 percent for taxable years beginning after December 31, 2018. This would appear to delay implementation of the reduction by one year, as compared to the Ways and Means bill. The Finance Committee proposal would eliminate the current brackets and the special tax rate for personal service corporations. As in the Ways and Means bill, the corporate alternative minimum tax would also be eliminated.

Dividends received deduction: The Finance Committee proposal would reduce the dividends received deduction (the DRD, applicable to corporate shareholders receiving a dividend from certain domestic corporations) for the 70 percent and 80 percent brackets, to 50 percent and 65 percent, respectively. The 100 percent DRD would remain intact for dividends from affiliated group members. This appears to be the identical provision in the Ways and Means bill, as amended, and would generally retain the current effective tax rate on such distributions after reducing the corporate tax rate. There are also DRD provisions related to the international tax provisions in the Finance Committee proposal (discussed elsewhere in this report).

Modification of the net operating loss deduction: As in the Ways and Means bill, the Finance Committee proposal would modify aspects of current law regarding net operating losses (NOLs).

Under current law, NOLs generally have a carryback period of two years and a carryforward period of 20 years. As in the Ways and Means bill, the NOL carryback period would generally be eliminated and the carryforward period would become indefinite. Similarly, the amount of the NOL deduction allowed would be limited to 90 percent of taxable income computed without regard to the NOL deduction.

In the Ways and Means bill, the amount of NOLs, or so-called indefinite NOLs, carried to a succeeding year would be increased by an annual interest factor. There is no mention of the increase in the Finance Committee proposal.

Conforming amendments would appear to include (1) the repeal of carrybacks of specified liability losses defined in section 172(f) and (2) excess interest losses related to corporate equity reduction transactions under section 172(g) (the so-called CERT rules), but this was not explicit in the Finance Committee proposal (although included in the Ways and Means bill).

Copyright © 2017 Deloitte Development LLC
All rights reserved.

In general, the effective date is December 31, 2017, with the amendments to carryback and carryforward periods applying to NOLs arising in taxable years beginning after December 31, 2017, and with the limitation to NOL utilization (tied to 90 percent of taxable income) applying to taxable years beginning after December 31, 2017.

Limitation on business interest: Under current law, section 163(j) limits the ability of certain corporations to deduct interest paid or accrued on indebtedness. In general, this limit applies to interest paid or accrued by certain corporations (where no US federal income tax is imposed on the interest income) whose debt-to-equity ratio exceeds 1.5 to 1.0, and where net interest expense exceeds 50 percent of its adjusted taxable income.

The Finance Committee proposal would expand interest deductibility consistent with the Ways and Means bill with certain adjustments (as described below). The general rule appears to remain the same: the new provision would generally limit the interest deduction on business interest to (1) business interest income plus (2) 30 percent of the taxpayer's adjusted taxable income. Business interest and business interest income appear to be defined in the same manner as in the Ways and Means bill (*i.e.*, generally, as allocable to a trade or business and not investment interest and income, within the meaning of section 163(d)). Adjusted taxable income is computed without regard to any (1) item of income, gain, deduction, or loss, which is not allocable to the trade or business; (2) business interest income or expense; (3) the 17.4 percent deduction for certain passthrough income (as described elsewhere in this report); and (4) the net operating loss deduction, but taking into account depreciation, amortization, and depletion (which would differ from the Ways and Means bill).

The limitation described above generally applies at the taxpayer level. There are special rules that apply to partnerships (see below). In the case of a group of affiliated corporations that file a consolidated return, the Finance Committee proposal appears to clarify that the limitation applies at the consolidated tax return filing level.

For partnerships, the limitation is applied at the partnership level, with business interest expense taken in account in determining the partnership's nonseparately stated taxable income or loss. A partner may also be subject to the new interest deduction limitation with respect to the partner's own business interest expense. If so, the adjusted taxable income of the partner will not include such partner's distributive share of the nonseparately stated income or loss of such partnership. This avoids double counting of adjusted taxable income to allow for interest deductibility twice for the same taxable income. The partnership, however, may have excess taxable income. This excess taxable income may be taken into account by the partner in computing the partner's limitation. This allows the partner to deduct more business interest if the partnership could have deducted more business interest.

The Finance Committee proposal would generally apply to all taxpayers. Consistent with the Ways and Means bill, an exception applies for certain small businesses (with a slightly different standard) and for interest allocable to performing services as an employee and businesses of certain regulated public utilities. While the Ways and Means bill exempted a real property trade or business (as defined in section 469(c)(7)(C)) in its entirety, the Finance Committee proposal allows, at the taxpayer's election, a taxpayer not to apply the limitation to certain real property-related businesses: real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business. The Ways and Means bill – but not the Finance Committee proposal – included, via amendment, a narrow exception for so-called "floor plan financing indebtedness" that, in general, would apply to certain financing of motor vehicle acquisitions.

Business interest that is not otherwise allowed as a deduction by reason of 163(j) would be treated as paid or accrued in the succeeding taxable year, and could be carried forward indefinitely. The Ways and Means bill would permit carryforwards only to the fifth taxable year following the year of the payment or accrual of interest. Similar to the Ways and Means bill, it appears that section 381(c) would be amended under the Finance proposal to include disallowed business interest as a tax attribute thereunder, and section 382 would be amended to treat disallowed business interest as a pre-change loss under subsection (d).

The Finance Committee proposal, like the Ways and Means bill, contains a separate interest deduction limitation provision that applies to domestic corporations that are members of worldwide affiliated groups (discussed elsewhere in this report). The separate interest deduction limitations can both apply, and the amount of interest expense carried forward would reflect the lesser of the amount deductible under the provisions.

The modifications described above apply to taxable years beginning after December 31, 2017.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Contributions to capital: The Finance Committee proposal would not revoke current section 118, which generally provides that a corporation will not recognize gross income upon a contribution to its capital. The Ways and Means bill included a provision to revoke section 118 and to provide for certain other amendments (including the revocation of section 108(e)(6)). The language of the Ways and Means bill could be read to extend to shareholder contributions to capital, which would represent a stark and perhaps unintended departure from current law.

Alternative Minimum Tax

Like the Ways and Means bill, the Finance Committee proposal would repeal the alternative minimum tax (AMT) for individuals, estates, trusts, and corporations for tax years beginning after December 31, 2017. Also like the Ways and Means bill, taxpayers may claim a refund on any AMT credit carryovers. Under the Finance Committee proposal, taxpayers may claim 50 percent of remaining AMT credits in tax years 2018, 2019, and 2020. Taxpayers would be able to claim a refund on all remaining credits in the tax year 2021. This is in contrast to the Ways and Means bill, where the full amount of the AMT credit might not be taken until 2022.

Cost recovery

The Finance Committee proposal modifies section 168 bonus depreciation to allow for full expensing of qualified property placed into service after September 27, 2017, but before January 1, 2023 (with an additional year for longer production period property and certain aircrafts). The Finance Committee proposal's temporary full expensing provision is substantially similar to that of the Ways and Means bill. The Finance Committee proposal also excludes various public utility properties from the full expensing provision. It does not specify whether the full expensing provision applies only to original use property, or if this rule is eliminated (like it was in the Ways and Means bill).

Revenue recognition

The Finance proposal requires taxpayers to 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. However, long-term contract income to which section 460 applies is exempt from this rule. For example, any unbilled receivables for partially performed services must be recognized to the extent the amounts are taken into income for financial statement purposes. The bill also codifies the deferral method of accounting for advanced payments for goods and services currently provided under Rev. Proc. 2004-34. Thus the proposal is intended to override the exception in Treasury Reg. Section 1.451-5(c). Furthermore, the bill directs taxpayers to apply the revenue recognition rules under section 451 before applying the OID rules under section 1272. These provisions would be effective for the taxable year beginning after December 31, 2017. There was no such provision included in the Ways and Means bill.

Special rules for taxable year of inclusion

The Finance proposal contains an accounting method provision that would affect the timing of income recognition generally, including the timing of income with respect to a debt instrument. With regard to debt, the proposal would require inclusion of certain items based on the treatment of an item on the financial statements of the taxpayer. Otherwise, the effect of the provision on the tax accounting for debt is unclear.

Like-kind exchanges of real property

Like the Ways and Means bill, the Finance Committee proposal limits the scope of like-kind exchange nonrecognition treatment to real property not held primarily for sale. The Finance Committee proposal also provides for transition rules similar to that of the Ways and Means bill.

Deduction for local lobbying expenses

Unlike the Ways and Means bill, the Finance Committee proposal would not repeal the deduction for local lobbying expenses.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Section 199 Deduction

Like the Ways and Means bill, the Finance Committee proposal repeals the section 199 deduction. However, the effective date of the repeal in the Finance Committee proposal is for taxable years beginning after December 31, 2018, one year later than the Ways and Means bill.

Limitation on deduction by employers for fringe benefit expenses

Under the Finance Committee proposal, no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, (2) membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, or (3) a facility (such as an airplane) used in connection with any of the above items. Thus, the proposal repeals the current exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business, as well as the related rule applying a 50 percent limit to such deductions.

While the proposal retains the 50 percent deduction for food and beverage expenses associated with the operation of a taxpayer's trade or business (for example, meals consumed by employees on work travel), the proposal expands the 50 percent limitation to employer expenses associated with providing food and beverages to employees through an eating facility that meets the requirements to be considered a *de minimis* fringe benefit under current law.

The proposal also disallows the deduction for expenses associated with providing any qualified transportation fringe benefit to employees. In addition, the deduction for expenses incurred for providing transportation (or any payment or reimbursement) related to commuting between the employee's residence and place of employment, other than as necessary for ensuring the safety of an employee, is disallowed under the proposal.

These provisions would be effective taxable years beginning after 2017. These provisions are broadly similar to the proposals in the House bill although the extension of the 50 percent limitation on food and beverage expenses provided through an eating facility is new.

Treatment of self-created property

Unlike the Ways and Means bill, the Finance proposal does not exclude patents, inventions, models or designs, or secret formulas or processes as capital assets. Thus, as under current law, these assets would be treated as capital assets.

Sale or exchange of patents

Unlike the Ways and Means bill, the Finance Committee proposal does not include a provision to repeal section 1235, which treats any gain from the transfer of a patent from its creator to an unrelated individual as long-term capital gain.

Depreciation on luxury automobiles and personal use property

The Finance Committee proposal increases the depreciation limitation under section 280F, for property placed in service after December 31, 2017. The maximum amount allowable for listed property under section 280F, for which additional first-year depreciation deduction under section 168(k) is not claimed, is increased to $10,000 in the first year, $16,000 in the second year, $9,600 in the third year, and $5,760 for the fourth and later years. The Finance Committee proposal also removes computer or peripheral equipment from the definition of listed property under section 280F. The Ways and Means bill did not modify the provisions of section 280F.

Depreciation of farm property

The Finance Committee proposal shortens the recovery period from seven to five years for any machinery or equipment used in a farming business. The original use of such equipment must commence with the taxpayer and placed in service after December 31, 2017. The bill also repeals the required use of the 150 percent declining balance method for property used in a farming business, except for 15-year or 20-year property used in the farming business to which the straight line method does not apply, or for property which the taxpayer elects to use the 150-percent declining balance method. The Ways and Means bill did not modify the farming property recovery provisions.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Recovery period of real property

The Finance Committee proposal shortens the recovery period for nonresidential real and residential rental property to 25 years. The bill also eliminates the separate definitions of qualified leasehold improvements, qualified restaurants, and qualified retail improvement property, but rather provides for a general 10-year recovery period for qualified improvement property, and a 20-year ADS recovery period for such property. The bill also requires a real property trade or business that elects out of the limitation on the deduction for interest to use ADS to depreciate any of its nonresidential real property, residential rental property, and qualified improvement property. These provisions apply to property placed in service after December 31, 2017. A similar provision was not included in the Ways and Means bill.

Business credits

Orphan drug credit: The Finance proposal modifies the "orphan drug" credit, a tax credit for clinical testing expenses for certain drugs for rare diseases or conditions. Internal Revenue Code (IRC) section 45C currently provides a 50 percent credit for qualified clinical testing expenses incurred in the testing of certain drugs to treat rare diseases or conditions.

The Finance proposal limits the orphan drug credit to 50 percent of so much of qualified clinical testing expenses for the taxable year as exceeds 50 percent of the average qualified clinical testing expenses for the three taxable years preceding the taxable year for which the credit is being determined. In the case where there are no qualified clinical expenses during at least one of the three preceding taxable years, the credit is equal to 25 percent of qualified expenses. Aggregation and other special rules similar to those applicable to the research credit apply where there are controlled groups of corporations, estates and trusts claiming the credit, mergers and acquisitions of taxpayers, and short taxable years. Under the proposal, taxpayers may elect a reduced credit in lieu of reducing otherwise allowable deductions in a manner similar to the research credit under section 280C.

In addition, the proposal limits qualified clinical testing expenses to the extent the testing giving rise to such expenses is related to the use of a drug which has previously been approved under section 505 of the Federal Food, Drug, and Cosmetic Act for use in the treatment of any other disease or condition, if all such diseases or conditions in the aggregate (including the rare disease or condition with respect to which the credit is otherwise being determined) affect more than 200,000 persons in the United States.

The Finance Committee proposal applies to amounts paid or incurred in taxable years beginning after December 31, 2017. This provision is estimated to raise $29.7 billion over 10 years.

Rehabilitation credit: The Finance Committee proposal modifies the rehabilitation credit under IRC section 47 for the restoration of old and historic buildings. Currently, a 20 percent credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure, and a 10 percent credit is provided for qualified rehabilitation expenditures with respect to a qualified rehabilitated pre-1936 building.

The Finance proposal repeals the 10 percent credit for pre-1936 buildings. Under the proposal, a 10 percent credit (not 20 percent) is provided for qualified rehabilitation expenditures with respect to a certified historic structure.

The Finance proposal applies to amounts paid or incurred after December 31, 2017. A transition rule provides that in the case of qualified rehabilitation expenditures (for either a certified historic structure or a pre-1936 building), with respect to any building owned or leased by the taxpayer at all times on and after January 1, 2018, the 24-month period selected by the taxpayer (under section 47(c)(1)(C)) is to begin not later than the end of the 180-day period beginning on the date of the enactment of the Act, and the amendments made by the proposal apply to such expenditures paid or incurred after the end of the taxable year in which such 24-month period ends. This provision is estimated to raise $4.3 billion over 10 years.

Deduction for unused business credits: The Finance proposal would repeal the deduction for certain unused business credits under IRC section 196. Currently, section 196 allows a deduction to the extent that certain portions of the general business credit expire unused after the end of the carryforward period.

The Finance Committee proposal repeals the deduction for certain unused business credits, effective for taxable years beginning after December 31, 2017. This provision is estimated to have a negligible revenue effect.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Other general business credits: Notably, the Finance proposal does not modify current law as it relates to other general business credits, including the new markets tax credit, work opportunity tax credit, production tax credit and energy credit. The Finance proposal also retains the current-law research and development tax credit and the low-income housing credit. The House proposal included a provision that would repeal the 4 percent low-income housing credit coupled with tax-exempt bond financing.

Small business provisions

Section 179 expensing: The Finance Committee proposal increases the section 179 expense election threshold to $1 million, which is significantly lower than the $5 million limit provided under the Ways and Means bill. The phase-out of this expense election begins at $2.5 million, which is also significantly lower than the $20 million provided in the Ways and Means bill. The Finance Committee proposal expands the definition of section 179 property to include certain property used in furnishing lodging, and roofs, heating, ventilation, air-conditioning property, fire protection and alarm systems, and security systems for nonresidential real property that are placed in service after December 31, 2017. In contrast, the Ways and Means bill only expanded section 179 property to include certain energy efficient heating and air-conditioning property.

Accounting methods: The Finance Committee proposal expands the scope of eligible taxpayers who may use the cash method of accounting. The Finance Committee proposal allows taxpayers with annual average gross receipts of $15 million or less to use the cash method. This gross receipt limit would also would apply to farming C corporations. In contrast, the Ways and Means bill increased the average gross receipts threshold to $25 million.

The Finance Committee proposal also generally exempts taxpayers that meet the $15 million gross receipts test from the requirement to keep inventories. Rather, these taxpayers can treat inventories as either nonincidental materials and supplies or conforming to its financial accounting treatment. Taxpayers qualifying under the $15 million gross receipts test are also excluded from the uniform capitalization rules under section 263A. These exemptions are similar to that of the Ways and Means bill, except the Ways and Means bill's gross receipts threshold is $25 million.

The bill also expands the exception for small construction contracts from using the percentage-of-completion method under section 460 for contracts that are expected to be completed within two years of commencement of the contract, and that are performed by a taxpayer that meets the $15 million gross receipts test. In contrast, the Ways and Means bill exempts taxpayers from the percentage-of-completion method under a $25 million gross receipts threshold.

Transition to territoriality

Dividends received deduction: The proposal provides for a 100 percent dividends received deduction for the foreign-source portion of dividends received from specified 10-percent-owned foreign corporations by domestic corporations that are United States shareholders. For this purpose, an amount received by a domestic corporation that is treated as a dividend under section 1248, is treated as a dividend for purposes of the DRD (provided the holding period requirements are satisfied). In addition, if the gain is recognized by a lower tier controlled foreign corporation (CFC) and characterized as a dividend under section 964(e), then such amount is included in subpart F income for the year of the sale but the US shareholder can claim a DRD with respect to such amount.

No foreign tax credit or deduction is allowed for taxes paid or accrued with respect to such dividend that qualifies for the DRD.

Similar to the Ways and Means Committee bill, a specified foreign corporation is any foreign corporation with a domestic corporation as a United States shareholder. However, key differences with the Ways and Means Committee bill include: (1) a limitation on the DRD for any dividend received if the foreign corporation receives a deduction (or other tax benefit) from taxes imposed by a foreign country (hybrid dividend) and (2) an expanded holding period requirement (double that included in the Ways and Means Committee bill).

In addition, the explanation provides that any hybrid dividend received by a controlled foreign corporation is treated as subpart F income for the taxable year such dividend was received.

Limitation on losses with respect to 10-percent-owned foreign corporations: Similar to the Ways and Means Committee bill, the basis in foreign corporations with respect to which the dividends received deduction applies is

Copyright © 2017 Deloitte Development LLC
All rights reserved.

reduced by the amount of any such dividend, but only for purposes of computing loss on the sale or exchange of that stock.

Taxation of deferred foreign income upon transition: Similar to the Ways and Means Committee bill, a US shareholder of a foreign corporation must include in income for the subsidiary's last tax year beginning before January 1, 2018, the shareholder's pro rata share undistributed, nonpreviously taxed post-1986 foreign earnings. Earnings and profits (E&P) is only taken into account to the extent it was accumulated during periods when the foreign corporation had at least one US shareholder.

The amount of such E&P is determined as of November 9, 2017, or other applicable measurement date as appropriate (and as of yet unspecified), unreduced by distributions during the taxable year to which the provision applies.

The mandatory inclusion generally may be reduced by foreign earnings and profits deficits that are properly allocable to that person.

For purposes of this provision, the E&P is classified as either E&P that has been retained in the form of cash or cash equivalents, or E&P that has been reinvested in the foreign subsidiary's business (for example, property, plant, and equipment). The portion of the E&P comprising cash or cash equivalents is taxed at a reduced rate of 10 percent, while any remaining E&P is taxed at a reduced rate of 5 percent. Rules will be provided to avoid the double counting of cash assets.

Limitation on assessment extended: The Finance Committee proposal extends the assessment statute of limitations for taxpayers reporting a mandatory inclusion. The assessment statute of limitations is extended to six years from the date upon which the return was filed that initially reflects the mandatory inclusion.

Consistent with the Ways and Means Committee bill: Like the Ways and Means bill, the Finance Committee proposal provides that: (1) foreign tax credit carryforwards are fully available, and foreign tax credits triggered by the deemed repatriation are partially available, to offset the US tax; (2) at the election of the US shareholder, the tax liability would be payable over a period of up to eight years; and (3) special rules would apply with respect to S corporations and their shareholders.

Rules related to passive and mobile income

Global intangible low-taxed income: The Finance Committee bill includes a provision designed to tax currently global intangible low-taxed income (GILTI). For purposes of this bill, GILTI is the excess of the shareholder's net tested income over the deemed tangible income return, which is defined as 10 percent of the shareholder's basis in tangible property used to produce tested income.

Similar to the House FHRA provision, tested income for this purpose is the gross income of the corporation determined without regard to the following exceptions: (1) the corporation's effectively connected income under section 952(b); (2) any gross income taken into account in determining the corporation's subpart F income; (3) any gross income excluded from foreign base company income or insurance income by reason of the high-tax exception under section 954(b)(4); (4) any dividend received from a related person (as defined in section 954(d)(3)); and (5) any foreign oil and gas extraction income and foreign oil related income, over deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5).

The proposal requires that the amount of GILTI included by a US shareholder be allocated across all of such shareholder's CFCs, based on the CFC's proportionate share of tested income. In addition, the shareholder can claim a foreign tax credit for 80 percent of the taxes paid or accrued with respect to the tested income of each CFC from which the shareholder has an inclusion.

Deduction for foreign derived intangible income: In addition to the immediate inclusion of GILTI, the proposal allows a domestic corporation a deduction for 37.5 percent of the lesser of the shareholder's GILTI plus foreign derived intangible income or its taxable income.

Foreign derived intangible income is an amount equal to the corporation's deemed intangible income multiplied by an amount equal to the corporation's foreign deduction eligible income over its total deduction eligible income.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Deduction-eligible income is the gross income of the corporation determined without regard to: (1) the subpart F income of the corporation under section 951; (2) the GILTI of the corporation; (3) any dividend received from a CFC with respect to which the corporation is a US shareholder; and (4) any domestic oil and gas income of the corporation; and (5) any foreign branch income (as defined in section 904(d)(2)(J)) of the corporation, over the deductions (including taxes) properly allocable to such gross income.

Deemed intangible income is the excess of a corporation's deduction eligible income over 10 percent of the basis in its tangible depreciable property used to produce deduction eligible income.

Foreign-derived deduction eligible income means with respect to a taxpayer for its taxable year, any deduction-eligible income of the taxpayer that is derived in connection with (1) property that is sold by the taxpayer to any person who is not a United States person and that the taxpayer establishes to the satisfaction of the Secretary is for a foreign use or (2) services provided by the taxpayer that the taxpayer establishes to the satisfaction of the Secretary are provided to any person, or with respect to property, not located within the United States.

Finally, the bill provides a rule presumably intended to incentivize the onshoring of IP, by providing that if a CFC holds intangible property on the date of enactment, the fair market value of the property on the date of any distribution is treated as not exceeding its adjusted basis.

Treatment of hybrid transactions

The Finance proposal includes a provision not in the Ways and Means Committee bill that would deny the deduction for any disqualified related-party amount paid pursuant to a hybrid transaction or by or to a hybrid payment. A disqualified related-party amount is any interest or royalty paid or accrued to a related party to the extent that: (1) there is no corresponding inclusion to the related party under the tax law of the country of which such related party is a resident for tax purposes, or (2) such related party is allowed a deduction with respect to such amount under the tax law of such country.

A hybrid transaction is any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for federal income tax purposes and which are not so treated for purposes of the tax law of the foreign country of which the recipient of such payment is resident for tax purposes or is subject to tax.

A hybrid entity is any entity which is either: (1) treated as fiscally transparent for federal income tax purposes but not so treated for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax, or (2) treated as fiscally transparent for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax but not so treated for federal income tax purposes.

Base erosion proposals

Under the Finance bill, a corporation with excess base erosion payments for the taxable year must pay a tax equal to the excess of 10 percent of its taxable income (determined without regard to deductions attributable to base erosion payments) over its regular tax liability reduced by the general business credit and the research credit.

For purposes of this provision, a base erosion payment generally means any amount paid or accrued by a taxpayer to a foreign person that is a related party of the taxpayer and with respect to which a deduction is allowable, including any amount paid or accrued by the taxpayer to the related party in connection with the acquisition by the taxpayer from the related party of property of a character subject to the allowance of depreciation (or amortization in lieu of depreciation). A base erosion payment also includes any amount that constitutes reductions in gross receipts of the taxpayer that is paid to or accrued by the taxpayer with respect to: (1) a surrogate foreign corporation which is a related party of the taxpayer, and (2) a foreign person that is a member of the same expanded affiliated group as the surrogate foreign corporation. A surrogate foreign corporation has the meaning given in section 7874(a)(2).

Information reporting requirement: The Finance Committee proposal provides for increased information reporting under sections 6038A and 6038C to require certain taxpayers subject to the new base erosion provisions to report information such as base erosion payments, information for determining the base erosion minimum tax, and other information deemed necessary by the Secretary of the Treasury. In addition, it proposes to increase the penalty from

Copyright © 2017 Deloitte Development LLC
All rights reserved.

$10,000 to $25,000 for failure to comply with Section 6038A and increases the penalty for failure to comply within 90 days after IRS notification to $25,000 for each 30 day period thereafter.

Additional provisions not included in Ways and Means Committee bill

Codification of Rev Rul. 91-32: Under the Finance Committee proposal, gain or loss from the sale or exchange of a partnership interest is effectively connected with a US trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. The proposal requires that any gain or loss from the hypothetical asset sale by the partnership be allocated. In addition, the transferee of a partnership interest is required to withhold 10 percent of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation.

The provision would apply to partnership taxable years beginning after December 31, 2017.

Other international provisions unique to the Finance Committee bill would:

- Modify the definition of a US shareholder to include any US person who owns 10 percent or more of the total value of the foreign corporation (as opposed to vote);
- Modify the definition of section 936(h)(3)(B) to include workforce in place, goodwill, and going concern value;
- Terminate DISC;
- Impose a limitation on claiming lower rates on dividends from certain corporations subject to 7874;
- Impose a separate foreign tax credit limitation category for branch income;
- Accelerate the election to allocate interest on a worldwide basis;
- Repeal the fair market value method for allocating interest expense; and
- Create a category of income defined as "passenger cruise gross income," provide specific rules for determining the extent to which such income is effectively connected with the conduct of a trade or business in the United States, and remove such income from eligibility for the reciprocal exemptions of sections 873 and 883. As a result, effectively connected passenger cruise income is subject to net basis taxation.

Other international tax modifications also included in the Ways and Means bill

The Finance proposal incorporates other provisions from the Ways and Means bill that would:

- Eliminate foreign base company oil related as a category of subpart F income;
- Provide for an inflation adjustment to the *de minimis* rule;
- Repeal subpart F inclusions based on the withdrawal of previously excluded subpart F income invested in foreign base company shipping operations;
- Eliminate the limitation on attribution of stock from a foreign person to a US shareholder;
- Eliminate the requirement that a foreign corporation must be a CFC for an uninterrupted period of 30 days for subpart F to apply;
- Permanently extend the section 954(c)(6) lookthrough rule;
- Repeal section 956 as applied to domestic corporations that own stock directly or indirectly through domestic partnerships;
- Repeal the section 902 credit and application of the section 960 credit on a current-year basis; and
- Change the source rules for the sale of inventory property.

Modification of insurance exception to the passive foreign investment company rules: The proposal also would modify the requirements for a corporation the income of which is not included in passive income for purposes of the PFIC rules. The proposal replaces the test based on whether a corporation is predominantly engaged in an insurance business with a test based on the corporation's insurance liabilities.

Passthrough provisions

17.4 percent deduction of domestic qualified business income: Under the Finance Committee proposal, an individual taxpayer generally may deduct 17.4 percent of domestic qualified business income from a partnership, S corporation, or sole proprietorship.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Unless a taxpayer's income is below a threshold ($75,000 for single filers, $150,000 for joint filers), the deduction does not apply to "specified service businesses" (any trade or business activity involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or 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). This term is similar to the Ways and Means Committee bill's definition of "specified service activity" and reference to section 1202(e)(3)(A).

In the case of a taxpayer who has qualified business income from a partnership or S corporation, the amount of the deduction is limited to 50 percent of the W-2 wages of the taxpayer. W-2 wages of a person is the sum of wages subject to wage withholding, elective deferrals, and deferred compensation paid by the person during the calendar year ending during the taxable year. Only those wages that are properly allocable to qualified business income are taken into account.

Qualified business income for a taxable year means the net amount of domestic qualified items of income, gain, deduction, and loss with respect to the taxpayer's qualified businesses (that is, any trade or business other than specified service trades or businesses, defined above).

Dividends from a REIT (other than any portion that is a capital gain dividend) are treated as qualified items of income, but certain investment-related income, gain, deductions, or loss are not treated as qualified business income.

Qualified business income does not include any amount paid by an S corporation that is treated as reasonable compensation of the taxpayer. Similarly, qualified business income does not include any amount allocated or distributed by a partnership to a partner who is acting other than in his or her capacity as a partner for services, and does not include any amount that is a guaranteed payment for services actually rendered to or on behalf of a partnership to the extent that the payment is in the nature of remuneration for those services.

The provision would apply to taxable years beginning after December 31, 2017.

Tax gain on the sale of a partnership interest on lookthrough basis: Under Rev. Rul. 91-32, 1991-1 C.B. 107, in determining the source of gain or loss from the sale or exchange of an interest in a foreign partnership, the IRS applied the asset-use test and business activities test at the partnership level to determine the extent to which income derived from the sale or exchange is effectively connected with that US business. Under the ruling, if there is unrealized gain or loss in partnership assets that would be treated as effectively connected with the conduct of a US trade or business if those assets were sold by the partnership, some or all of the foreign person's gain or loss from the sale or exchange of a partnership interest may be treated as effectively connected with the conduct of a US trade or business. However, a 2017 Tax Court case rejects the logic of the ruling and instead holds that, generally, gain or loss on sale or exchange by a foreign person of an interest in a partnership that is engaged in a US trade or business is foreign-source (*Grecian Magnesite Mining v. Commissioner*, 149 T.C. No. 3 (July 13, 2017).

Under the proposal, gain or loss from the sale or exchange of a partnership interest is effectively connected with a US trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. The proposal requires that any gain or loss from the hypothetical asset sale by the partnership be allocated to interests in the partnership in the same manner as nonseparately stated income and loss.

The proposal also requires the transferee of a partnership interest to withhold 10 percent of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation. If the transferee fails to withhold the correct amount, the partnership is required to deduct and withhold from distributions to the transferee partner an amount equal to the amount the transferee failed to withhold.

The proposal would provide Treasury and the IRS with specific regulatory authority to address coordination with the nonrecognition provisions of the Code.

The proposal is effective for sales and exchanges of partnership interests after December 31, 2017.

Modification of the definition of substantial built-in loss in the case of transfer of partnership interest: Under current law, a partnership does not adjust the basis of partnership property following the transfer of a

Copyright © 2017 Deloitte Development LLC
All rights reserved.

partnership interest unless either the partnership has made a one-time election under section 754 to make basis adjustments, or the partnership has a substantial built-in loss immediately after the transfer. Under section 743(d), a substantial built-in loss exists if the partnership's adjusted basis in its property exceeds by more than $250,000 the fair market value of the partnership property.

The proposal modifies the definition of a substantial built-in loss for purposes of section 743(d), affecting transfers of partnership interests. Under the proposal, in addition to the present-law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest. Therefore, the test for a substantial built-in loss under the proposal applies both at the partnership level and at the transferee partner level.

The proposal applies to transfers of partnership interests after December 31, 2017.

Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss: Under current law, a partner's basis in its partnership interest is increased by its distributive share of income (including tax-exempt income) and is decreased (but not below zero) by distributions by the partnership and its distributive share of partnership losses and expenditures of the partnership not deductible in computing partnership taxable income and not properly chargeable to capital account. In the case of a charitable contribution, a partner's basis is reduced by the partner's distributive share of the adjusted basis of the contributed property.

A partnership computes its taxable income in the same manner as an individual with certain exceptions. The exceptions provide, in part, that the deductions for foreign taxes and charitable contributions are not allowed to the partnership. Instead, a partner takes into account its distributive share of the foreign taxes paid by the partnership and the charitable contributions made by the partnership for the taxable year.

The Finance Committee proposal modifies the basis limitation on partner losses to provide that a partner's distributive share of items that are not deductible in computing the partnership's taxable income, and not properly chargeable to capital account, are allowed only to the extent of the partner's adjusted basis in its partnership interest at the end of the partnership taxable year in which the expenditure occurs. Thus, the basis limitation on partner losses applies to a partner's distributive share of charitable contributions and foreign taxes.

The proposal applies to partnership taxable years beginning after December 31, 2017.

Loss limitation rules applicable to individuals: Under current law, a limitation on excess farm losses applies to taxpayers other than C corporations. If a taxpayer other than a C corporation receives an applicable subsidy for the taxable year, the amount of the excess farm loss is not allowed for the taxable year, and is carried forward and treated as a deduction attributable to farming businesses in the next taxable year.

The Finance Committee proposal expands the limitation on excess *farm* losses to apply to excess *business* losses of a taxpayer. Under the proposal, excess business losses of a taxpayer other than a C corporation are not allowed for the taxable year. Such losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years. NOL carryovers are allowed for a taxable year up to the lesser of the carryover amount or 90 percent of taxable income determined without regard to the deduction for NOLs.

An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer, over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount for a taxable year is $500,000 for married individuals filing jointly, and $250,000 for other individuals. The $500,000 and $250,000 thresholds are indexed for inflation.

In the case of a partnership or S corporation, the proposal applies at the partner or shareholder level. Each partner's or S corporation shareholder's share of items of income, gain, deduction, or loss of the partnership or S corporation are taken into account in applying the limitation under the proposal for the taxable year of the partner or S corporation.

The proposal is effective for taxable years beginning after December 31, 2017.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Insurance company proposals

The Finance Committee proposal includes eight provisions that are expressly applicable to insurance companies. Many of these were initially introduced in similar form in early 2014 by then-Chair of the House Ways and Means Committee, Dave Camp (R-Mich.).

Some of the provisions are substantially similar to those in the bill that was approved in the Ways and Means Committee on November 9. The Ways and Means bill currently does not include provisions pertaining to life reserves, life proration, or deferred acquisition costs under section 848 (DAC), which are included in the Finance proposal; instead, the amended Ways and Means bill would impose an 8 percent surtax on life insurance company taxable income which the committee indicated was a placeholder while they further explore these issues.

Notably, the Finance proposal (1) would add a life insurance product reporting and basis clarification provision, (2) does not include life reserves changes, (3) does not include changes to the insurance company dividends received deduction, *i.e.*, proration, (4) does not include a provision addressing nonlife insurance company unpaid losses, and (5) does not include a 20 percent excise tax provision for “specified amounts” paid from US companies to foreign affiliates.

General corporate NOL carryback and carryover periods would apply to life insurers: This proposal is the same as the proposal in the Ways and Means bill.

Repeal of small life insurance company deduction: This proposal is the same as the proposal in the Ways and Means bill.

Repeal of change in basis 10-year-spread under IRC section 807(f): This proposal is the same as the proposal in the Ways and Means bill.

Repeal special rule for distributions from policyholders surplus accounts: This proposal is the same as the proposal in the Ways and Means bill.

Modification of proration rules for property-casualty insurance companies: The Finance Committee provision is substantially the same as the one in the Ways and Means bill but delays the effective date of this change. The Senate proposal would increase the proration percentage for property and casualty companies from the current 15 percent rate to 26.25 percent beginning in 2019.

The proration percentage will be automatically adjusted in the future if the top corporate tax rate is changed, so that the product of the proration percentage and the top corporate rate equals 5.25 percent.

Repeal of special estimated tax payments: This proposal is the same as the proposal in the Ways and Means bill, but adds transition rules.

Increase DAC capitalization rates: The Senate proposal would retain the current three categories of specified insurance contracts in section 848 (that is, annuities, group life, and “other” contracts), increase capitalization rates, and extend the amortization period for capitalized DAC amounts.

The proposal would increase the capitalization rate for annuity contracts to 3.17 percent (currently, 1.75 percent), the rate for group life insurance contracts to 3.72 percent (currently, 2.05 percent), and the rate for all other specified insurance contracts to 13.97 percent (currently, 7.7 percent). According to the summary language, the amortization period for capitalized DAC amounts would be extended from the current 120-month period to a 600-month period. (We are wondering whether this 50-year amortization period was intended, or is a typographical error.)

A similar proposal was included in the Ways and Means bill as originally introduced but it was subsequently deleted during the committee mark-up process.

Require tax reporting for life settlement transactions: This proposal, which is not in the Ways and Means bill, would impose a tax reporting requirement for certain purchases of existing life insurance contracts (reportable policy sales) and on the insurance company upon payment of death benefits in certain situations (reportable death benefits).

Copyright © 2017 Deloitte Development LLC
All rights reserved.

The acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured would be treated as a reportable policy sale. In the event of such sale, the buyer would be required to report information about the purchase to the IRS, to the insurance company that issued the contract, and to the seller. Upon payments of death benefits, reporting would be required by the insurance company that issued the relevant contract.

The reporting requirement would be effective for reportable policy sales occurring after December 31, 2017, and reportable death benefits paid after December 31, 2017.

Clarify tax basis of life insurance contracts: This proposal, which was included in the Camp bill introduced in 2014, clarifies that an annuity or life insurance contract's owner determines basis in the contract without reduction for the cost of insurance or mortality charges. This provision would reverse the IRS's recent views on reduction of basis for purposes of determining gain or loss on the disposition of a life or annuity contract.

The proposed clarification of the basis rules for life insurance and annuity contracts would be effective for transactions entered into after August 25, 2009.

Narrow the exception to transfer-for-value rules: This Finance proposal provides that the exceptions to the transfer for value rules in section 101(a)(2) do not apply in the case of a transfer of a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale.

The modification of exception to the transfer-for-value rules would be effective for transfers occurring after December 31, 2017.

Tax rate modifications for individuals

Unlike the Ways and Means-approved bill, the Finance Committee proposal does not reduce the number of individual rate brackets. Instead, it maintains the seven brackets in current law but reduces the percentages for the six upper brackets, including reducing the highest tax bracket from 39.6 percent to 38.5 percent for joint taxpayers with taxable income over $1 million. However the thresholds at which the reduced rates are applicable are narrower than under current law. Notably, the Senate version also does not incorporate the so-called "bubble tax" proposed in the House bill, which would reduce the benefits of the lowest tax bracket for high-income taxpayers.

As with the Ways and Means bill, the Finance proposal retains the 20 percent special tax rate for long-term capital gains and qualified dividend income, the 3.8 percent tax rate on certain levels of net investment income and the .9 percent FICA-HI tax rate on certain levels of earned income.

This chart shows how the Finance and Ways and Means proposals compare.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171110_1_suppA.pdf

Passthrough taxation on individual returns

In a significant departure from the Ways and Means bill, the Finance Committee proposal does not provide the reduced 25 percent tax rate for passthrough business income from partnerships, LLCs, and S Corporations. However, it does provide a new deduction equal to 17.4 percent of "domestic qualified business income" from a partnership, S corporation, or sole proprietorship.

The Finance Committee proposal would also adopt new rules with respect to "excess business losses" of taxpayers other than C corporations. Under the proposed rules, an "excess business loss" is defined as the net loss from trades or businesses of the taxpayer (presumably nonpassive net losses) over a certain threshold amount ($500,000 for individuals filing jointly). Excess losses would be disallowed for the taxable year incurred but would be carried forward and treated as part of the taxpayer's net operating loss. As with the Ways and Means bill, the Finance Committee proposal precludes NOL carrybacks and limits utilization of the carryover NOL to 90 percent of taxable income.

(See the passthroughs section of this report for additional discussion of these two issues.)

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Individual itemized deductions and personal exemptions

Consistent with the Ways and Means bill, the Senate bill substantially increases the standard deduction to $24,000 for married couples filing jointly. However, unlike the Ways and Means bill, it maintains the current-law additional standard deduction for the blind and elderly. Increased standard deductions would allow many individuals to avoid itemizing their deductions. However, for those individuals who would still itemize, the Finance proposal contains notable differences on a number of items:

- **Mortgage interest deduction retained:** In contrast to the reduction on mortgage interest deductions in the Ways and Means bill, the Finance proposal would maintain the home mortgage interest deduction for existing mortgages and allow a deduction for newly purchased homes up to $1 million. However, as with the Ways and Means bill, the Finance proposal would repeal the deduction for home equity indebtedness.
- **Medical and dental expense deduction retained:** While the medical and dental expense deduction would be repealed under the Ways and Means bill, it would be retained under the Finance Committee proposal.
- **State and local income and property tax deductions:** The Finance Committee proposal would eliminate the current-law deductions for state and local property taxes. The Ways and Means bill, in contrast, would provide a $10,000 maximum deduction for property taxes. Both bills would repeal the current-law deduction for state and local income taxes.
- **2 percent deductions eliminated:** The Finance Committee proposal expands upon the Ways and Means bill and eliminates all miscellaneous itemized deductions that are subject to the 2 percent floor.
- **Personal casualty losses modified:** The Finance Committee proposal modifies the deduction for personal casualty and theft losses by allowing such losses to be deducted pursuant to current-law rules only if the losses were incurred in federally declared disaster areas. The Ways and Means bill generally would eliminate this deduction.
- **Student loan interest deduction retained:** Unlike the bill approved by the House Ways and Means Committee, the Senate bill does not affect the ability of borrowers to deduct interest on student loan indebtedness

Consistent with the Ways and Means bill, the Finance Committee proposal:

- Increases the AGI limit for gifts of cash to public charities and certain other organizations from 50 percent to 60 percent; and
- Repeals the overall limitation (Pease limitation) on itemized deductions.

See this chart for a comparison of how the two proposals address itemized deductions.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171110_1_suppB.pdf

Personal exemptions: Finally, as with the Ways and Means bill, the Finance Committee proposal repeals the deduction for personal exemptions. Additionally, the Finance Committee proposal clarifies that an individual is not required to file an income tax return if the taxpayer's gross income for the taxable year does not exceed the applicable standard deduction. Under current law, a return is required to be filed if an individual has income which equals or exceeds the personal exemption amount plus the standard deduction applicable to such individual.

Deductions and exclusions for employer-provided benefits: The Finance Committee proposal would modify the current-law exclusions for these employer-provided fringe benefits:

- **Qualified bicycle commuting reimbursement:** The Finance proposal repeals the income and employment tax exclusion for qualified bicycle commuting reimbursements provided by an employer as payment for reasonable expenses such as bicycle purchase, repair, and storage. The proposal is effective for taxable years beginning after 2017. No similar provision was included in the Ways and Means bill.
- **Qualified moving expense reimbursement:** The exclusion for qualified moving expense reimbursements provided by an employer to an employee would be repealed under the proposal. The repeal applies for both income and employment tax purposes. The provision would be effective for taxable years beginning after 2017. A similar provision was included in the Ways and Means Committee bill.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

AMT repeal and other items of note

AMT: Consistent with the Ways and Means bill, the Finance Committee proposal provides for simplification of individual income tax return preparation with the repeal of the alternative minimum tax (AMT).

Family tax credits: The Finance proposal also increases the child tax credit to $1,650 (compared to a $1,600 credit in the Ways and Means bill and $1,000 under current law) and substantially increases the modified AGI limitation, allowing more taxpayers to benefit from the credit. In addition to the credit for qualifying children, the Finance proposal also would provide for a $500 nonrefundable credit for qualifying dependents other than children (compared to the $300 credit proposed in the Ways and Means bill).

Further family oriented provisions in the Finance Committee proposal include the retention of the dependent care credit and the adoption credit, which also would be retained under the Ways and Means bill.

Other notable provisions: The Finance proposal includes several other provisions not discussed in the Ways and Means bill. The Finance Committee package provides that the cost basis of any security sold is to be determined on a first-in first-out basis except to the extent average basis method is allowable (as in the case of a RIC). In addition, the proposal provides that the basis in a life insurance policy or annuity contract on the sale of the cash value of the policy is determined without an adjustment for the cost of insurance (mortality expense under the contract), reversing the IRS position in Rev. Rul.2009-13.

Several other provisions that are consistent between the Ways and Means and Finance Committee proposals include:

- The ability for parents to contribute to section 529 plans for their unborn children.
- The deduction from earned income of contributions to qualified retirement savings vehicles such as 401(k) plans and Individual Retirement Accounts.
- The exclusion of up to $500,000 ($250,000 for other taxpayers) of gain from the sale of a primary residence if the home is used as the taxpayer's principal residence for five of the previous eight years. (The Finance proposal does not include the Ways and Means language phasing out the exclusion for higher-income taxpayers).
- The repeal of moving expense deductions other than for members of the Armed Forces of the United States and the repeal of the exclusion from gross income and wages for qualified moving expense reimbursements.

Unlike the Ways and Means bill, the Finance Committee proposal does not modify the taxation or deduction of alimony payments.

Paid preparer due diligence requirement for head of household status: The Finance Committee proposal requires paid preparers to evaluate whether a taxpayer qualifies to file as the head of household and imposes a penalty of $500 for failure to comply. The proposal directs the Secretary of Treasury to establish the specific requirements.

Personal exemption repeal and requirements: The Finance Committee proposal modifies the income tax filing requirements for nonmarried and married individuals to reference the standard deduction, as compared to the exemption. The proposal requires nonmarried individuals to file a return if the taxpayer's gross income exceeds the standard deduction. Married individuals are required to file returns if their combined gross income is more than the joint return standard deduction and they meet the other requirements, such as neither spouse is a dependent of another taxpayer with income over $500.

Estate and gift tax provisions

The Finance Committee proposal, unlike the Ways and Means bill, would not repeal the estate and generation-skipping transfer taxes for persons dying after December 31, 2023, or for generation-skipping transfer occurring after December 31, 2023; neither would it reduce the gift tax rate to 35 percent (from the current 40 percent) for transfer made after December 31, 2023.

The Finance proposal, like the Ways and Means bill, would increase the applicable exclusion (the amount that each citizen is entitled to transfer either during life or, if otherwise unused, at death without incurring a current tax) and the generation-skipping transfer tax (GST) exemption (the amount that may be transferred to skip-persons outright or in

Copyright © 2017 Deloitte Development LLC
All rights reserved.

trust without giving rise to a present or future GST tax) to $10 million. The Finance proposal makes it clear that the $10 million exclusion/exemption is indexed from 2011, thus making the applicable exclusion amount $11.2 million per taxpayer ($22.4 million per couple) for transfers occurring after December 31, 2017. After 2018, the $10 million exclusion/exemption amounts would be indexed based on the Chained-CPU Index, an index that will result in smaller adjustments than has historically been the case.

Under both proposals, for income tax purposes, the adjustment of basis to the fair market value of inherited property on the date of death would continue as under current law.

Compensation

The bill would make several changes to the tax treatment of nonqualified deferred compensation, the limitation on excessive employee remuneration, and the executive compensation paid by tax-exempt organizations.

Nonqualified deferred compensation: The Finance Committee 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. Under the provision as drafted, options and stock appreciation rights, other than incentive stock options, would also be subject to taxation once no longer subject to service-based vesting conditions. The provision does not address how compensation would be calculated or situations in which the amount in fact paid is less than an amount previously included in income. As drafted, the provision would apply to individuals, business and payments from partnerships to partners, without regard to method of accounting.

The proposal would be effective for amounts attributable to services performed after 2017, and so would apply to existing arrangements to the extent that services are required in 2018 or later to earn the compensation. Other arrangements would continue under existing law until the last tax year beginning before 2027.

A substantially similar provision that was included in the Ways and Means bill when it was unveiled on November 2 was subsequently eliminated in a manager's amendment from Chairman Kevin Brady, R-Texas.

Modification of limitation on excessive employee remuneration: This proposal, which is very similar to one in the Ways and Means bill, would expand the current limitation on deduction of compensation 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, (3) providing that status as a covered employee continues after separation from service, and (4) expanding the definition of corporation covered by the provision to include foreign issuers trading through ADR and other traded entities The provision would be effective for tax years beginning after 2017, without exception for existing arrangements.

Excise tax on excess tax-exempt organization executive compensation: This provision likewise is similar to the Ways and Means proposal, and would impose a 20 percent excise tax on compensation paid by a tax-exempt organization to any of its five highest paid employees – a "covered person" – to the extent the compensation exceeds $1 million, taking into account all compensation, other than contributions to qualified retirement plans and amounts excluded from income. The excise tax would allow apply to any "excess parachute payments" to a covered person. Excess parachute payments are defined as payments contingent on a separation from employment with an aggregate present value of three times the employee's base compensation (without reference to whether the amounts exceed $1 million). Any employee designated as a covered person for a year would continue to be a covered person for all future years. The provision would be effective for tax years beginning after 2017.

Retirement savings

The Finance Committee proposal includes three distinct provisions affecting employers who maintain tax-favored retirement savings plans, and the employees who participate in them. The Ways and Means bill also included provisions affecting retirement savings plans, but those provisions are completely different from the ones proposed in the Finance package.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Conformity of contribution limits for employer-sponsored retirement plans: The code provides for a number of different employer-sponsored tax-favored retirement plans. These include qualified plans under section 401(a), tax-deferred annuities under section 403(b), and "eligible" deferred compensation plans under section 457. Qualified plans include 401(k) plans. Tax-deferred annuities under section 403(b) may only be sponsored by educational organizations or charities exempt from tax under section 501(c)(3). Eligible deferred compensation plans under section 457 can be sponsored only by state and local governments or tax-exempt entities. Any employer may sponsor a qualified plan under section 401(a), even if that employer is eligible to have a tax-deferred annuity arrangement or an eligible deferred compensation arrangement. Most employers may include a 401(k) as part of their defined contribution 401(a) plan. (Certain state and local governments are prohibited from having 401(k) arrangements, but not other types of 401(a) plans.)

All types of tax-favored retirement plans have annual limits on the amount that may be contributed to the plan. For a qualified plan, the overall limit for 2017 is $54,000 (or 100 percent of an employee's compensation, if less). If the employer has a 401(k) feature that permits elective deferrals, an employee's elective deferrals are limited to $18,000 per year, and those contributions count toward the overall $54,000 limit. For a tax-deferred annuity, the overall limit is the same as the qualified plan limit. A tax-deferred annuity may allow elective deferrals, and those elective deferrals are limited to $18,000 per year, which also counts toward the qualified plan limit. Contributions to an eligible deferred compensation plan are limited to $18,000. A 401(k) plan is permitted to allow employees who are age 50 and over to contribute additional "catch-up" contributions of $6,000. Catch-up contributions are also permitted to tax-deferred annuities and eligible deferred compensation arrangements. There are additional types of catch up contributions for these arrangements.

In some cases, the limits described above for some plans operate independently of the limits for other plans. In other cases, the limits are coordinated. The annual $18,000 limit on deferrals applies to both 401(k) and 403(b) plans. Thus, if an employee participates in both types of plans and both offer deferrals, the employee has a single $18,000 deferral limit. However, deferrals made to either a qualified plan or a 403(b) plan do not count against the limit for an eligible deferred compensation plan. Thus, an employee who defers to a 401(k) or 403(b) plan up to the maximum limit may contribute up to $18,000 to a 457(b) plan. In the case of the overall contribution limit of $54,000, an employee can receive an allocation of this amount under a qualified plan sponsored by the employer, and, if that same employer is eligible to maintain a 403(b) plan, that employee may receive an additional allocation up to $54,000 to that 403(b) plan.

Generally, an individual may receive allocations as long as he or she remains an employee of the employer sponsoring the plan. However, in the case of a 403(b) plan, the plan sponsor may provide allocations for up to five years after the individual no longer performs services for the employer. The Finance Committee proposal would change how these limits are applied in situations involving multiple plans sponsored by the same employer, as follows:

- First, the $18,000 deferral limit will be applied to all types of plans maintained by the employer. Thus, an employee cannot make additional deferrals to a 457(b) plan if the employee has already made $18,000 of deferrals to either a 401(k) or a 403(b) plan for the year (either entirely to one such plan or in combination to both).
- Second, both qualified plans and 403(b) plans will be combined for purposes of the overall $54,000 annual allocation limit. If an employer sponsors both a qualified plan and a 403(b) plan, the employee will be able to receive no more than $54,000 of allocations to both plans, determined on a combined basis.
- Third, a single catch-up limit will apply to all plans. Catch-up contributions will be limited to an aggregate of $6,000. Separate catch up contribution limits that are specific to 403(b) and 457(b) plans will be eliminated in favor of a single catch up limit.
- Fourth, participants in 403(b) plans will no longer be permitted to receive allocations after they terminate employment.

Application of 10 percent early withdrawal tax to governmental section 457(b) plans: Benefits in most types of tax-favored retirement plans are subject to a 10 percent addition to tax in the event an employee takes a withdrawal prior to attaining age 59-1/2, unless an specific exception applies. This rule does not apply to benefits under eligible 457(b) deferred compensation plans. The Finance proposal would extend that rule to benefits under such plans.

Elimination of catch-up contributions for high-wage employees: Under current law, employees who are age 50 or over may make additional, catch-up contributions to their 401(k) plans. Any employee is eligible for catch-up

Copyright © 2017 Deloitte Development LLC
All rights reserved.

contributions, provided that catch-up contributions are provided for under the plan. The Finance proposal would prohibit certain "high-wage" employees from making catch-up contributions. A "high wage" employee is defined as an employee who received wages in excess of $500,000 in the preceding year.

Worker classification and information reporting requirements

The Finance Committee proposal addresses several areas related to worker classification and information reporting. No similar provisions were included in the House bill. The proposal provides a safe harbor for worker classification. The safe harbor provides the circumstances under which: (1) a service provider is not treated as an employee, (2) a service recipient is not treated as an employer, (3) a payor is not treated as an employer, and (4) compensation paid or received for a service is not treated as paid or received with respect to employment. The proposal defines who is considered to be a service provider and a service recipient and includes various service provider, contract and reporting requirements. The proposal provides for the prospective application of reclassification if certain requirements are met. The proposal imposes income tax withholding and reporting obligations on contracts between non-employee service providers and service recipients.

This proposal increases the reporting threshold for two categories of reportable payments from aggregate payments of $600 or more to $1000 or more: (1) payments of fixed or determinable income or compensation not including payments for goods or certain enumerated types of payments subject to other reporting requirements and (2) payments for services received from any service recipient engaged in a trade or business paying for such services.

The proposal changes the *de minimis* rule for aggregate third-party network transactions with a participating payee. Under the proposal, certain third-party settlement organizations may elect to report third-party network transactions with a participating payee that either exceed $5,000 or exceed 50 in number, whichever occurs first. Third-party settlement organizations that are marketplace platforms may opt to report using the higher threshold if substantially all of the participating payees to which it makes reportable payments are primarily engaged in the sale of goods on such platform. Third-party settlement organizations that are not marketplace platforms may opt to report using the higher threshold third-party network transactions with participating payees who are primarily engaged in the sale of goods in these transactions.

Currently, Section 530 generally prohibits Treasury and the IRS from publishing regulations and revenue rulings with respect to the employment status of any individual for employment tax purposes. Under the proposal, the Secretary of the Treasury is directed to issue such regulations as the Secretary determines are necessary to carry out the purposes of the proposal.

The proposal is generally effective for services performed after December 31, 2017, and amounts paid for such services after such date. However, a contract, and a service recipient or payor, will not be treated as failing to meet the requirements under the proposal with respect to compensation paid to a service provider before 180 days after the date of enactment of the proposal. For reporting requirements, the proposal applies to payments made after December 31, 2018.

Tax-exempt organizations

Although the Finance Committee proposal and the Ways and Means bill include a number of revenue offsets targeting tax-exempt organizations, there is very little overlap between the two sets of proposals.

Finance provisions not in the Ways and Means proposal: The Finance proposal includes several proposals that are not part of the Ways and Means bill. For example:

- Royalty income earned from licensing an exempt organization's name or logo would be considered unrelated business income.
- Unrelated business income will be calculated for each unrelated activity and losses from one activity may not offset income from another. Losses from an activity will carry forward and offset future income from the activity.
- Professional sports leagues would no longer qualify for exemption under section 501(c)(6).

The Finance proposal also includes a number of modifications to the current-law intermediate sanctions rules under section 4958:

Copyright © 2017 Deloitte Development LLC
All rights reserved.

- If a tax is imposed on a disqualified person, the organization is subject to a 10 percent excise tax on the transaction unless it can establish that its participation is not willful and is due to reasonable cause. Reasonable cause is demonstrated through following due diligence procedures (see below) or establishing to the satisfaction of the Secretary that the organization followed other reasonable procedures to ensure no excess benefit occurred.
- The Rebuttable Presumption of Reasonableness is eliminated. Instead, those procedures if followed will establish a minimum standard of due diligence to determine the transaction is reasonable. But they will not establish a presumption of reasonableness.
- The proposal would eliminate the rule that a manager's participation in the transaction was not "knowing" if he/she relied on professional advice. However, relying on advice is relevant in determining whether the manager excise tax should be assessed.
- College and university athletic coaches would be treated as per se disqualified persons.
- The donor advised fund rules regarding investment advisors being considered disqualified persons would be expanded to apply to all organizations that are subject to intermediate sanctions.
- The intermediate sanction rules would be expanded to apply to section 501(c)(5) and (6) organizations.

The proposal also would apply the 10 percent early withdrawal rules to section 457(b) plans.

Ways and Means provisions not in the Finance proposal: The Finance Committee proposal does not include provisions in the Ways and Means bill that would repeal private activity bonds, tax credit bonds and bonds for professional sports stadiums. (Advanced refunding bonds would be repealed in both proposals, however.)

Also excluded from the Finance package are Ways and Means provisions that would:

- Clarify so-called "dual status" organizations are subject to the unrelated business income tax provisions;
- Increase unrelated business income for disallowed transportation fringe benefits (and on-premises athletic facilities);
- Modify the unrelated business income rules for research activities;
- Modify the private foundation net investment income tax rates;
- Modify the excess business holdings rules;
- Impose restrictions on private operating foundations operating art museums;
- Repeal of the Johnson Amendment, permitting section 501(c)(3) organizations to engage in political activity; and
- Impose additional reporting requirements for donor advised funds.

Next steps

The Finance Committee is scheduled to begin its mark-up of the tax reform proposal on November 13 – a process that is likely to consume the following several days. Senate Majority Leader Mitch McConnell has said he would keep the Senate in session into the week of November 20 – which is currently slotted for the Thanksgiving recess – to ensure that it receives a floor vote before the holiday, although he has not as yet made any official announcement about the upcoming floor schedule.

Senators on the Finance Committee acknowledged that they were at an advantage by releasing their version of tax reform after the Ways and Means Committee's mark-up, providing taxwriters in the upper chamber a view of – and the opportunity to avoid – some pitfalls. While they will could face criticism from opponents that their legislation favors wealthier taxpayers and large corporations, the different approach that the committee took towards international taxation, the estate tax, and individual incentives for mortgage interest, medical expenses, student loans are all calculated to forestall the opposition of specific senators who have made their priorities clear.

"I like it better than what I saw in the House version," said Sen. Mike Rounds, R-S.D. "The Senate was able to learn a lot from what the House found."

With a narrow party split of 14-12 on the Finance Committee, Chairman Hatch cannot lose a single Republican member's vote to move the bill forward, and nearly the same is true for the full Senate, where Republicans hold only 52 seats. If more than two members of the GOP vote against the bill, Republicans will be in the same losing situation they were during multiple attempts to repeal and replace the Patient Protection and Affordable Care Act (PPACA) earlier this year.

Copyright © 2017 Deloitte Development LLC
All rights reserved.

Changes are still expected to the Senate proposal before Finance Committee consideration begins on November 13, so it is not yet clear whether current GOP detractors will be placated. Sens. Ted Cruz of Texas and Mike Lee of Utah have said the Finance Committee's proposed increase to the child tax credit is not enough; Sens. Bob Corker of Tennessee, Jeff Flake of Arizona, and Jim Lankford of Oklahoma have all raised concerns about increasing the deficit to pay for tax cuts; and some conservative members, including Cruz, and Sens. Tom Cotton of Arkansas, Rand Paul of Kentucky, and Jerry Moran of Kansas are pushing hard for the bill to include a repeal of the individual mandate in the Affordable Care Act.

One of the biggest stumbling blocks in the House, the repeal of the state and local tax deduction for individuals, isn't an issue in the Senate as there are no Republicans representing the highest-taxed states that would be most impacted by the provision (*i.e.*, California, Illinois, New York, and New Jersey). This could present a challenge if the two bills make it to conference. The Senate is able to use the revenue that would be raised by full repeal of the SALT deduction as a larger offset than the House, which was forced to compromise and keep a property deduction in place (albeit at a reduced cap) to gain the support of some of its northeastern members.

The biggest challenge the Senate may face relates to the procedural limits of the Byrd Rule. Under the FY 2018 budget resolution and underlying law, the reform bill can increase the deficit by up to $1.5 trillion over the next decade, but it cannot increase projected deficits outside that 10-year budget window. Though we don't have a long-term score for the proposal released on November 9 by Chairman Hatch, it is likely to have a multi-trillion dollar revenue loss in the second decade.

Thus, at some point in the process, Senate Republicans will need to add back into the bill a curative amendment to ensure Byrd Rule compliance. That is all but certain to mean some of the tax relief in the proposal will have to sunset and some additional revenue raisers will be added. Those changes may make the bill less appealing to those members who will need to vote for it and can be expected to complicate the path to passage.

— Prepared by the tax policy professionals in the Washington National Tax practice
Deloitte Tax LLP

Tax reform proposal clears Ways and Means

The House Ways and Means Committee on November 9 approved comprehensive tax reform introduced last week by Chairman Kevin Brady, R-Texas, that would, among other things, lower the corporate tax rate to 20 percent and the rate for passthrough entities to 25 percent; compress the individual rate brackets from seven to three; provide a more generous business expensing regime; boost the individual standard deduction and the child tax credit; repeal the estate tax and the corporate and individual alternative minimum tax; and shift to a territorial system for taxing foreign-source income of US multinationals.

(For a detailed summary of the bill as introduced, see *Tax News & Views*, Vol. 18, No. 40, Nov. 3, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/171103_1.html

Notable changes

As approved, the Tax Cuts and Jobs Act also includes provisions in two separate – and substantial – manager's amendments that Brady offered during the committee mark-up. Brady added those provisions to address specific concerns that Republican taxwriters raised about the original draft and to ensure that the revenue score of the final package would stay at or below the $1.5 trillion cap that was adopted as part of the unified congressional budget resolution for fiscal year 2018. (The budget resolution authorizes the congressional taxwriting committees to move tax legislation under budget reconciliation protections that increases the federal deficit on net by up to $1.5 trillion over 10 years.)

Highlights of some of the more significant modifications to the bill follow. Summaries of the two manager's amendment packages – one released November 6 and the other released November 9 – are available from the Ways and Means Committee staff.
URL: https://waysandmeansforms.house.gov/uploadedfiles/summary_of_chairman_amendment.pdf
URL: https://waysandmeansforms.house.gov/UploadedFiles/Summary_of_Chairman_Amendment_2.pdf

Copyright © 2017 Deloitte Development LLC
All rights reserved.

International provisions: Among the international provisions, Chairman Brady modified the deemed repatriation tax on foreign-source income held by US multinationals by increasing the rate on cash assets to 14 percent and the rate on noncash assets to 7 percent. The 110 percent and 30 percent interest limitation provisions were modified to exclude interest on floor plan indebtedness, used by retailers to acquire high-cost inventory. Firms opting for this would be ineligible for the bill's provisions on expensing. The excise tax on payments to related foreign corporations was modified to allow for a foreign tax credit for 80 percent of tax paid and computed under section 906. There would be no deemed expense mark-up.

Other amendments: Among the other amendments added to the bill were proposals to:

- Reduce the 80 percent corporate dividends received deduction to 65 percent and the 70 percent deduction to 50 percent to reflect the lower corporate income tax rate (bill section 3001);
- Require certain research and experimentation expenses to be amortized over five years for domestic research and 15 years for research performed abroad (section 3315);
- Retain current-law treatment of nonqualified deferred compensation (striking section 3801);
- Increase the holding period to three years for carried interest partnership interests (section 3314);
- Permit certain employees who receive stock options or restricted stock units as compensation for the performance of services and who later exercise those options or units to defer income recognition for up to five years if the corporation's stock is not publicly traded (section 3804).
- Preserve the current-law rules on the application of payroll taxes to amounts received through a passthrough entity (section 1004);
- Provide a 9 percent tax rate, in lieu of the ordinary 12 percent rate, for the first $75,000 in net business taxable income of an active owner or shareholder earning less than $150,000 in taxable income through a qualifying passthrough business, subject to a phase-out (section 1004);
- Preserve capital asset treatment for self-created musical works (section 3311);
- Expand the application of the excise tax on investment income of a private college or university to include endowment assets that are held by organizations related to the institution and not merely those that are held directly by the institution (section 4969);
- Preserve the current-law tax treatment of insurance company deferred acquisition costs, life insurance company reserves, and pro-ration, and instead impose an 8 percent surtax on life insurance income (section 3703 – intended as a placeholder to pave the way for further discussions); and
- Preserve the current-law nonrefundable credit for qualified adoption expenses (section 1102).

Democratic amendments rejected

Dozens of amendments proposed by Ways and Means Democrats during the mark-up were defeated along party lines. Among these were proposals to:

- Strike all the international provisions in H.R. 1, retain worldwide taxation, and end the deferral of taxation on income earned overseas;
- Retain the tax deduction for state and local taxes (SALT) paid by individuals;
- For the sake of parity, eliminate the current-law SALT deduction for businesses;
- Include a so-called circuit breaker provision that would sunset the bill if economy does not hit projected growth targets; and
- Require the Joint Committee on Taxation to certify that the bill would not increase taxes on the middle class.

Moving toward a floor vote

The Ways and Means-approved bill is expected to be taken up by the Rules Committee by the middle of next week and considered by the full House before the week is out. Republicans can afford to lose only 22 votes from their own party, as no Democrats are expected to support the legislation.

In late October, a vote on the fiscal year 2018 budget resolution – which provided the legislative vehicle for a moving tax reform under fast-track budget reconciliation protections – lost 20 Republicans, many of whom sought to send a message to the party's leaders and taxwriters about the importance of maintaining the SALT deduction. The bill as approved by Ways and Means includes a scaled-back deduction for state and local property taxes but eliminates the deduction for state income and sales taxes. The concession on property taxes was intended to placate rebelling Republicans from high-cost districts – mostly in New York and New Jersey – who threatened to withhold support for

Copyright © 2017 Deloitte Development LLC
All rights reserved.

the budget blueprint because of the burden they believed this change would impose their constituents. But while there is less opposition to the modified version of the repeal and several members have said the compromise is acceptable, at least four GOP members of the New York delegation – Reps. Dan Donovan, Pete King, Elise Stefanik, and Lee Zeldin – have declared that they will still vote against H.R. 1 over this issue. Two members from New Jersey – Reps. Leonard Lance and Frank Lobiondo – have also aligned themselves in the "no" column.

Arguing that tax reform should lower taxes for all individuals, Rep. Darrell Issa of California – another high-cost state – has also come out against the bill; but in addition to the SALT deduction, he also opposes the lower cap for the mortgage interest deduction and is said to favor lowering the top individual rate (from the proposed 39.6 percent for joint filers with income over $1 million plus a bubble rate on some income above those amounts). Issa told NBC on November 9 that House leaders' "theory that everyone will get a tax cut doesn't work" and added that the charts members have been shown are "inaccurate."

Rep. Jim Jordan, R-Ohio, a leading voice within the ultra-conservative House Freedom Caucus, was among those who pressed GOP leaders this week to include a provision in H.R. 1 repealing the Patient Protection and Affordable Care Act's individual insurance mandate, arguing that this would provide tax relief to households that might otherwise see tax hikes. However, the repeal provision was not included in the Ways and Means bill (or in a separate Finance Committee proposal unveiled in the Senate this week), and it is not yet clear whether this will push Jordan or other members to vote against H.R. 1 when it reaches the House floor.

Rep. Walter Jones of North Carolina, a frequent thorn in the side of Republican leaders, has said he will oppose the bill because it will increase the deficit.

The restoration of the adoption credit in Chairman Brady's second manager's amendment package was targeted at appeasing Republicans who criticized the elimination of the benefit as contrary to their pro-life agenda. Religious and pro-life groups expressed deep concern over the repeal of the provision in the bill released last week and lobbied conservative taxwriters – including Mike Kelly of Pennsylvania and Diane Black of Tennessee – to push for its reinstatement.

Another amendment added late in the Ways and Means process that would reduce the rate for some passthrough entities to as low as 9 percent won support for the bill from the National Federation of Independent Businesses, a leading advocacy group for small businesses that had declared its opposition to the original text.

It is not expected that House members will be allowed to offer amendments to H.R. 1 during floor consideration next week, although Brady could offer an additional manager's amendment with additional changes before the bill is brought to the floor.

— Jacob Puhl and Storme Sixeas
Tax Policy Group
Deloitte Tax LLP

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.

Copyright © 2017 Deloitte Development LLC. All rights reserved.
36 USC 220506