ROPES & GRAY

ALERT

Tax

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House and Senate Legislators Take Significant Steps Toward Tax Reform

On Thursday, November 16, 2017, House and Senate legislators took significant steps towards achieving the most extensive tax reform in over a decade, with the passage of the Tax Cuts and Jobs Act by the House of Representatives (the "House Bill") and the approval of the Senate Republican tax reform proposal by the Senate Finance Committee (the "SFC Proposal"). The legislative process now moves to the floor of the Senate for consideration by the full chamber.

Although the details vary, both the House Bill and the SFC Proposal would make dramatic changes to the tax code, including:

- **Business Taxes**: The maximum federal corporate tax rate would be reduced to 20% (but not until 2019 in the SFC Proposal), interest deductions for certain businesses would be capped, and many investments in tangible personal property would be deductible when made. The tax burden on many individuals' business income from partnerships, S corporations, and sole proprietorships would also be reduced.
- **International Taxes**: Taxation of U.S. multinationals would move towards a territorial system. Certain distributions of foreign earnings to a U.S. corporation would be exempt from tax, though a new minimum tax would be imposed on certain undistributed foreign earnings. Multinationals' interest deductions would be subject to additional limitations, as would deductions for certain cross-border related-party payments. There would be a one-time mandatory deemed repatriation of post-1986 foreign earnings at reduced rates.
- **Carried Interest**: Carried interests in investment partnerships (including private equity, real estate and venture capital funds) would be eligible for long-term capital gains treatment only if a three-year holding period requirement is met.
- **Executive Compensation**: The existing $1 million per-executive deduction limitation for a publicly traded corporation's pay to top officers would be strengthened, and the tax treatment of certain common retirement, health, and welfare benefits would be altered.
- **Individual Taxes**: Tax rates applicable to individuals would be altered and generally reduced; the standard deduction would increase; personal exemptions would be eliminated; the deduction for state and local taxes would be largely eliminated (although the House Bill would allow a deduction for up to $10,000 of property taxes); and the AMT would be eliminated.

Although the House Bill and the SFC Proposal are similar in these ways, there are many key differences between the two measures, including:

- **ACA Individual Mandate**: The SFC Proposal would repeal the individual shared responsibility provisions of the Affordable Care Act, commonly known as the "individual mandate" for health coverage status for months beginning after December 31, 2018.
- **Reduced Tax on Export Income**: The SFC Proposal would tax U.S. corporations on certain export income above a normal return at 12.5%.

- **Mortgage Interest Deduction**: The House Bill would limit the loan size for the mortgage interest deduction to $500,000 for new mortgages.
- **Estate Taxes**: Both the House Bill and the SFC Proposal would double the exemption amount for gift and estate taxes and the GST. However, the House Bill, unlike the SFC Proposal, would eliminate the estate tax and the GST tax starting in 2024, and would reduce the top gift tax rate to 35%. Unlike the House Bill, the SFC Proposal would restore current-law exemption levels for tax years starting after 2025.

To view a grid showing a full comparison of the House Bill and the SFC Proposal, please click here.

We will be following developments closely as the legislative process moves forward. Please contact the Tax Group with any questions you may have.