

KEY INDIVIDUAL PROVISIONS

Rule	Present Law (2018 Rate Schedule)	House	Senate	Differences and Observations
Rates – Single Filers	10% (under \$9,525) 15% (under \$38,700) 25% (under \$93,700) 28% (under \$195,450) 33% (under \$424,950) 35% (under \$426,700) 39.6% (above \$426,700)	12% (under \$45,000) 25% (under \$200,000) 35% (under \$500,000) 39.6% (over \$500,000)	10% (under \$9,525) 12% (under \$38,700) 22% (under \$70,000) 24% (under \$160,000) 32% (under \$200,000) 35% (under \$500,000) 38.5% (over \$500,000) Rates sunset after 12/31/2025	<ul style="list-style-type: none"> House top rate of 39.6% vs. Senate top rate of 38.5% for income above \$500K 4 rates vs. 7 rates Senate rates sunset after 2025 Senate rates more beneficial for incomes under \$160K
Rates – Joint Filers	10% (under \$19,050) 15% (under \$77,400) 25% (under \$156,150) 28% (under \$237,950) 33% (under \$424,950) 35% (under \$480,050) 39.6% (over \$480,050)	12% (under \$90,000) 25% (under \$260,000) 35% (under \$1 million) 39.6% (over \$1 million)	10% (under \$19,050) 12% (under \$77,400) 22% (under \$140,000) 24% (under \$320,000) 32% (under \$400,000) 35% (under \$1 million) 38.5% (over \$1 million) Rates sunset after 12/31/2025	<ul style="list-style-type: none"> House top rate of 39.6% vs. Senate top rate of 38.5% for income above \$1 million 4 rates vs. 7 rates Senate rates sunset after 2025 Senate rates more beneficial for incomes under \$400K
Alternative Minimum Tax	AMT imposed when minimum tax exceeds regular income tax	Repeals the AMT for individuals beginning in 2018	Retains AMT with increased exemption amounts in 2018 (\$109,400 for singles, \$208,400 joint filers); reverts to present law after 2025 (perfecting amendment)	<ul style="list-style-type: none"> Senate provision is estimated to raise \$132.9 billion (as compared to Senate Finance-passed bill) A key differences between House and Senate
Standard Deduction	\$6,500 for individuals and \$13,000 for joint filers	\$12,200 for individuals, \$18,300 for HOH, and \$24,400 for joint filers	\$12,000 for individuals, \$18,000 for HOH & \$24,000 for joint filers, sunsets after 2025	<ul style="list-style-type: none"> House version slightly more advantageous - and \$184.5 billion more costly
Personal Exemption	\$4,150 for each person, spouse, and dependents	Repeals deduction for personal exemptions	Repeals deduction for personal exemptions, the repeal sunsets after 2025	<ul style="list-style-type: none"> Temporary vs. permanent
Estate Tax	\$5.6 million exemption amount, transfers in excess subject to 40% rate	Increases exemption to \$10 million in 2018, repeals estate tax in 2024 (while retaining step-up in basis). Gift tax rate is 35%	Increases exemption to \$11 million beginning in 2018, sunsets after 2025	<ul style="list-style-type: none"> House repeal vs. Senate doubling exemption Senate increase sunsets after 2025 House version \$67.7 billion more costly
Child Tax Credit	\$1,050 per child	\$1,600 per child (\$1,000 refundable) and a \$300 credit for non-child dependents	\$2,000 per child (\$1,000 refundable) and \$500 for dependents, sunsets after 2025	<ul style="list-style-type: none"> Senate version more generous on credit and phase out rules
Mortgage Interest (MI) Deduction	MI deduction limited to acquisition debt of \$1 million and home equity debt of \$100K on a principal and second home	Retained for existing mortgages, curtailed to \$500,000 for newly purchased homes, no longer applicable to a second home	Retains current law but repeals interest on home equity debt, sunsets after 2025	<ul style="list-style-type: none"> House version significantly more limiting Should be evaluated with the 10K property tax deduction (discussed next)
State and Local Tax Deduction	State and local taxes are deductible as an itemized deduction	Deduction for state and local income and sales taxes eliminated, deduction for property taxes limited to \$10,000	Same as House (perfecting amendment), the repeal sunsets after 2025	<ul style="list-style-type: none"> Senate provision is estimated to lose \$148.4 billion in revenue (as compared to SFC bill) A “must have” for Members from high-tax areas
Medical Expenses	An itemized deduction for out-of-pocket medical expenses that exceed 10% of AGI	Repeals the medical expense deduction beginning in 2018	Maintains present law and restores (through 2018) a lower 7.5% of AGI threshold	<ul style="list-style-type: none"> One of the itemized deductions where House and Senate differ
Individual Mandate	ACA requires individuals be covered by health insurance or pay “penalty” (tax)	No proposal	Reduces the penalty to \$0 (repealing the individual mandate) effective 2019	<ul style="list-style-type: none"> A key difference b/w House and Senate Estimated to raise \$318.4 billion Appealing to House b/c of revenue and policy issues

KEY BUSINESS PROVISIONS

Rule	Present Law	House	Senate	Differences and Observations
Rates	Graduated corporate rate structure, top rate of 35%, personal service corporations taxed at 35%	Rate permanently reduced to 20% in 2018, personal service corporations taxed at 25%	Rate permanently reduced to 20% beginning in 2019 (no special rate for personal service corporations)	<ul style="list-style-type: none"> One-year delay in 20% corporate rate reduces cost by \$127 billion WH might accept slightly higher rate
Corporate Alternative Minimum Tax	Imposed to the extent a corporation's minimum tax exceeds its regular tax	Repealed with AMT credits refundable from 2019 through 2022	Retains present law (SFC proposal that would have repealed corporate AMT was deleted in perfecting amendment)	<ul style="list-style-type: none"> A key difference b/w House and Senate Senate approach will lead to many more corporate AMT taxpayers and severely restrict use of general business credits Estimated revenue at issue is \$40.3 billion
Taxation of Income from Pass-Through Entities	Income attributable to a pass-through (partnership, LLC, S corporation) generally taxed at the owner's individual rate	Pass-through rate of 25%, lower 9% for small businesses, capital percentage election (70% wage income and 30% business income) with higher percentage for qualified capital income	23% deduction qualified business income (s/t 50% of wage limit), determined separately for each business. No wage limit if taxable income less than \$250K/\$500K. Service income eligible (only for income under \$250K/\$500K, eliminated for incomes above \$300K/\$600K). Determined at the partner/shareholder level. Does not apply to trusts or estates. Sunsets after 2025 (perfecting amendment)	<ul style="list-style-type: none"> A key difference b/w House and Senate Should be evaluated with new limitation on pass-through losses (discussed next) NFIB favors Senate approach
Limitation on Losses from Pass-Through Entities	Owners of pass-through entities can deduct active losses from a trade or business	No proposal	Beginning in 2018, owners of pass-through businesses cannot deduct more than \$250K (\$500K for joint filers) of active losses from the pass-through, disallowed losses carried forward as NOLs (sunsets after 2025)	<ul style="list-style-type: none"> For the first time would limit active losses from a pass-through business Estimated to raise \$137.4 billion (10 years)
Capital Expensing and Cost Recovery for Real Estate	Costs of business property recovered over time via depreciation deductions (39 years for nonresidential real and 27.5 years for residential rental)	Immediate expensing of 100% of qualified property (new and used tangible personal property) through 2022 (placed in service after 9/27/17)	Immediate expensing of 100% of qualified property (new tangible personal property plus film, TV, and theater) through 2022 (placed in service after 9/27/17); 80% bonus in 2023, 60% bonus in 2024, 40% bonus in 2025, and 20% bonus in 2026. 25-year period for residential rental and nonresidential real property and 10 years (straight line) for improvement property (perfecting amendment)	<ul style="list-style-type: none"> House includes used property Senate includes entertainment property Senate provides 4 year phase-down Senate proposal more beneficial to the real estate industry
Business Interest Deduction	Deduction for business interest paid or accrued	Caps net interest deduction at 30% of earnings before interest, taxes, depreciation, and amortization (EBITDA); disallowed interest carried forward 5 years	Caps net interest deduction at 30% of earnings before interest and taxes (EBIT); disallowed interest carried forward indefinitely. Exception for floor plan financing and expansion of farming exception (added by perfecting amendment)	<ul style="list-style-type: none"> House provides a more favorable "thin cap" formula; Senate provides more favorable carryforward period Senate raises \$135.8 billion more revenue
Net Operating Loss Deduction	NOLs may be carried back two years and carried forward 20 years to offset taxable income	NOL deduction limited to 90% of taxable income with indefinite carryforward, carrybacks generally eliminated	NOL deduction limited to 90% of taxable income (80% after 2022) with indefinite carryforward, carrybacks generally eliminated	<ul style="list-style-type: none"> Senate proposal imposes greater limits than House (80% vs. 90%) in 2023
Like-Kind Property	Allows deferral of gain from an exchange of "like-kind" property	Retained for real property but eliminated for all other property	Same as House	N/A
Research and Development Credit	Certain research and development expenditures can be currently deducted (reduced by the R&D tax credit)	R&D expenditures must be capitalized and amortized over a 5-year period for expenditures paid or incurred after 2023 (15 years for foreign expenditures)	Same as House except it applies to expenditures paid or incurred after 2025	<ul style="list-style-type: none"> The two-year difference (2023 vs. 2025) equates to \$46.5 billion in revenue

KEY INTERNATIONAL PROVISIONS

Rule	Present Law	House	Senate	Differences and Observations
Tax Regime	Worldwide tax regime (corporations headquartered in U.S. generally pay U.S. tax on worldwide income with exceptions)	Adoption of a territorial tax regime (foreign-source portion of a dividend received by 10% U.S. corporate shareholders exempt from U.S. tax). No foreign tax credit. Applies after 2017	Same as House proposal	<ul style="list-style-type: none"> One of key proposals in tax reform
Repatriation Rate	No provision	Deemed repatriation of deferred foreign profits, 14% for cash assets and 7% for non-cash assets	Deemed repatriation of deferred foreign profits – essentially 14.49% for cash and 7.49% for non-cash assets	<ul style="list-style-type: none"> Higher rates than in previous proposals Both proposals raise approximately \$290+ billion
Current Year Inclusion of Passive and Mobile Income	Current U.S. tax paid on pro rata share of CFC income, with transfer pricing rules to determine proper allocations of cross-border income and deductions	50% of U.S. shareholder’s “foreign high return income” of a CFC (excess of net income over [7% plus Federal short-term rate]) is subject to current U.S. tax (an effective 10% minimum tax). FTC limited to 80% of foreign tax paid (and subject to a separate FTC limitation)	50% (reduced to 37.5% after 2025) of U.S. shareholder’s “global intangible low-taxed income” (excess of aggregate income over 10% of its share of depreciable tangible property) is subject current U.S. tax (an effective 10% minimum tax); grossed up for 100% of foreign taxes paid but FTC limited to 80% (and subject to separate FTC limitation)	<ul style="list-style-type: none"> Senate approach must be evaluated in tandem with the deduction for foreign-derived intangible income (discussed next)
Deduction for Certain Foreign Intangible Income	No provision	No provision	Allows a 37.5% deduction (21.875% after 2025) for a U.S. corporation’s “foreign-derived intangible income” (determined in a similar manner as global intangible low-taxed income), but the income must be derived from sales, leases, licenses (or services provided) by a U.S. person to an unrelated foreign person	<ul style="list-style-type: none"> The Senate proposal, coupled with the minimum tax on global intangible income, is designed to incent corporations to keep (or bring back) IP in the United States
Inbound Base Erosion	No provision	A domestic corporation that makes related-party outbound payments (for companies with over \$100 million in outbound payments) that are deductible, includible in COGS, or capitalized, is subject to non-deductible 20% excise tax. Alternatively, the foreign affiliate may elect to treat the payment as effectively connected income (“ECI election”) with a U.S. trade or business (subjecting the income from the cross-border payment to U.S. tax on a net basis).	A domestic corporation (with annual gross receipts in excess of \$500 million) that makes deductible foreign related-party payments would be subject to a minimum tax to the extent that 10% (12.5% beginning in 2026) of the deductible foreign-related party payments (excluding COGS) exceeds the corporation’s regular tax. De minimis exception applies if the foreign-related party payments are less than 4% of the corporation’s total expenses. Higher rates (11%, becoming 13.5% in 2026) for certain financial institutions.	<ul style="list-style-type: none"> The House proposal is structured to encourage the ECI election The House proposal is estimated to raise \$94.5 billion; the Senate proposal is estimated to raise \$140 billion
Look-through Rule	“Look-through” rule allowing a U.S. parent to exclude passive income received by one CFC from related CFC (expires after 2019)	Makes permanent the “look-through” rule	Same as House	N/A

EMPLOYER EMPLOYEE-RELATED

Rule	Present Law	House	Senate	Differences and Observations
Moving Expense Deduction	Deduction for qualified moving expenses	Repeals deduction starting in 2018 except for members of the Armed Forces	Same as House but sunsets after 2025	<ul style="list-style-type: none"> • Permanent vs. temporary
Exclusion of Moving Expense Reimbursement	Reimbursements for employer-provided moving expenses excluded from income	Repeals exclusion starting in 2018 except for members of the Armed Forces	Same as House but sunsets after 2025	<ul style="list-style-type: none"> • Permanent vs. temporary
Deduction for Employee Expenses	Employee business expenses may be claimed as an itemized deduction above certain thresholds	Repeals employee business expense deduction starting in 2018	Same as House but sunsets after 2025	<ul style="list-style-type: none"> • Permanent vs. temporary
Employer Deduction of Certain Fringe Benefits	Employers may deduct 50% of the cost of certain fringe benefits and other amenities, including transportation and membership dues	Repeals the employer deduction for fringe benefits starting in 2018	Repeals the employer deduction for transportation fringe benefits starting in 2018	
Educator Expense Deduction	A teacher can claim a deduction from gross income up to \$250 of non-reimbursed educator expenses	Repeals the deduction starting in 2018	Increases the deduction to \$500 beginning in 2018 but sunsets after 2025	<ul style="list-style-type: none"> • House repeals the deduction, whereas the Senate doubles the deduction
Entertainment/Meal Deduction	Employers may deduct 50% of the cost of business-related entertainment and meals	Beginning in 2018, eliminates the deduction for entertainment expenses but preserves the deduction for certain meals	Same as the House except that, after 2025, the Senate repeals the deduction for meals provided for employer's convenience	
Exclusion for Dependent Care Assistance Programs	Up to \$5,000 may be excluded from AGI for employer-provided dependent care programs	Provision would sunset the exclusion for dependent care programs, repealing it beginning in 2023	No provision	<ul style="list-style-type: none"> • House proposal estimated to raise \$3.4 billion
Employer Credit for Family/Medical Leave	No credit for employers for compensation paid to employees while on leave	No proposal	Employers may claim a general business credit equal to 12.5% of wages paid to qualifying employees while they are on family and medical leave if the rate of payment is 50% of the wages normally paid to the employee (an increased credit for higher wage payments) sunsets after 2019	<ul style="list-style-type: none"> • An important proposal for the Trump administration
Other Business Incentives	Present law allows various business incentives, including a 9% deduction for domestic production income (section 199), a Work Opportunity Tax Credit (WOTC), a New Markets Tax Credit (NMTC), and a Historic Rehabilitation Credit (among others)	HR 1 repeals <ul style="list-style-type: none"> • The section 199 deduction • WOTC • NMTC • The Historic Rehabilitation Credit 	SFC <ul style="list-style-type: none"> • Repeals the section 199 deduction • Modifies the Historic Rehabilitation credit • Creates "Qualified Opportunity Zones" (which allows for deferral of capital gains invested in qualified opportunity funds (QOF) and exclusion of gains from sale of QOF interests 	<ul style="list-style-type: none"> • The section 199 deduction was viewed as a proxy for a three percentage point reduction in the corporate rate • SFC retains more of the industry-specific incentives

COMPENSATION AND EXEMPT ORGANIZATIONS

Rule	Present Law	House	Senate	Differences and Observations
Excessive Employee Compensation for Covered Officials (CEO + Three Highest)	\$1 million cap on deduction for corporate salaries of “covered officials” with exceptions for performance based compensation	The proposal repeals the performance-based exception. It also expands the definition of “covered employee” to include the CEO, CFO, and the 3 other highest-paid employees. Once an employee is a covered employee, he/she remains a covered employee forever. Applies for taxable years beginning after 2017.	Substantially similar to the House (Senate version defines “covered employee” to include the principal executive officer, principal financial officer, and the 3 other highest paid employees). Applies for taxable years beginning after 2017, with transition relief for compensation pursuant to written binding contracts in effect on 11/2/17 and that which is not modified in any material respect after such date.	<ul style="list-style-type: none"> House version is estimated to raise \$9.3 billion (10 years) while the Senate version is estimated to raise \$6.9 billion
Excise Tax for Tax-Exempt Organization Excessive Compensation	Limits on the deduction for executive compensation do not affect a tax-exempt organization	The tax-exempt employer is liable for an excise tax of 20% on compensation in excess of \$1 million	The tax-exempt employer is liable for an excise tax of 20% on compensation in excess of \$1 million	<ul style="list-style-type: none"> Aligns the rules for tax-exempt organizations with for-profit entities
Non-qualified Deferred Compensation (NQDC)	Compensation may be received currently or may be deferred. NQDC is taxed when the right to the income vests and when it is actually/constructively paid	No proposal	No proposal	<ul style="list-style-type: none"> House and Senate bills initially included proposals that would have limited NQDC – but both were stricken in Chairman’s Amendments
Treatment of Qualified Equity Grants	An employee generally recognizes on the transfer of employer stock (for services rendered) when the employee’s stock is transferable or not subject to a substantial risk of forfeiture (i.e., vested). An employee who receives non-vested stock can elect within 30 days to recognized income in the year of transfer (sec. 83(b) election).	A “qualified employee” can elect (w/in 30 days) to defer income from “qualified stock” to the earliest year in which (i) the stock is transferable, (ii) the employee becomes ineligible (or revokes election), (ii) the stock becomes tradable, or (iv) within five years of when employee’s right is vested. Qualified employees does not include 1% owners or CEO/CFO. Qualified stock includes stock received from options/RSUs and certain options.	Same as House proposal	<ul style="list-style-type: none"> Designed to provide a limited deferral benefit for employees of closely held companies that receive employer stock on the exercise of option/RSU. Estimated to reduce revenues by \$1.2 billion
Higher Education Excise Tax	Private foundations that are exempt from federal income tax are subject to a 2% excise tax on net investment income, universities and colleges are treated as public charities rather than private foundations and thus are not subject to the excise tax	1.4% excise tax on net investment income of an applicable educational institution	Same as House proposal	<ul style="list-style-type: none"> Proposal is estimated to raise \$2.5 billion
Carried Interest	Must hold an asset for one year to be eligible for the long-term capital gains top rate of 20%	Extends the holding period to three years	Same as House proposal	<ul style="list-style-type: none"> Proposal is estimated to raise \$1.2 billion

Have Questions? Contact our [Tax and Wealth Planning Group](#) to discuss the legislation in greater detail.



Sam Olchyk
Partner
+1 202.344.4034
SOlchyk@Venable.com



Jeff Gonya
Partner
+1 410.244.7507
JKGonya@Venable.com



Brian O'Connor
Partner
+1 410.244.7863
BJOconnor@Venable.com



Lisa Tavares
Partner
+ 1 202.344.4075
LATavares@Venable.com



Friedemann Thomma
Partner
+1 415.653.3751
FThomma@Venable.com