CHILTON TRUST

Tax Bulletin:
Senate Tax Bill

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Dear Clients and Friends of the Firm:

As communicated in our last Tax Bulletin, the House Republicans recently released a proposal for tax reform titled the 'Tax Cuts and Jobs Act.' On November 16, 2017, the House of Representatives officially passed its version of the bill, overcoming a significant hurdle in the tax legislative process, which now advances onto the Senate. On that same day, the Senate Republicans approved their own version of the 'Tax Cuts and Jobs Act,' from the Senate Finance Committee. This proposed legislation has many key differences from its House counterpart that, if passed, would need to be reconciled with the House bill in a conference committee. Consequently, the final tax bill, if any, that is presented to the President, may be different from the existing House and Senate proposals. Therefore, we continue to recommend that you maintain your current tax planning strategies at least until the full Senate votes on its bill in the beginning of December. We have highlighted below some key differences between the House and Senate proposals.

Highlights of the proposed Senate legislation include:

<u>Individuals & Families</u>

- Maintains the current seven tax brackets, while lowering rates in most brackets. These brackets will be taxed at 10% (<$19,050 joint, <$9,525 single), 12% ($19,050-$77,400 joint, $9,525-$38,700 single), 22% ($77,400-$140,000 joint, $38,700-$70,000 single), 24% ($140,000-$320,000 joint, $70,000-$160,000 single), 32% ($320,000-$400,000 joint, $160,000-$200,000 single), 35% ($400,000-$1,000,000 joint, $200,000-$500,000 single), and 38.5% (>$1,000,000 joint, >$500,000 single). However, the Senate is now proposing to sunset these new tax rates after 2025. Absent any additional legislation, we would return to the current tax structure beginning in 2026.
    - **CTC Observation**: This proposal differs significantly from the House proposal of four streamlined tax brackets, while it also lowers the top bracket tax rate from the current 39.6% (which remains the top rate in the House proposal) to 38.5%. There is no sunset provision in the House legislation, meaning that their proposed rates would be made permanent if enacted.
- Increases the income-based percentage limitation on charitable contributions by an individual taxpayer of cash to public charities from 50% to 60% for contributions made starting in 2018.
- Preserves the mortgage interest deduction, but repeals the deduction for interest on home equity loans.
    - **CTC Observation:** The House bill also repeals the deduction of interest on second homes and home equity loans. Additionally, it reduces the mortgage interest deduction limitation from $1,000,000 to $500,000 on all new mortgages.

- Repeals the state and local tax itemized deduction.
  - **CTC Observation:** The House has proposed the repeal of the state and local income tax deduction, but preserves the state and local property tax deduction up to $10,000. The Senate proposal sunsets this repeal beginning in 2026, while the House bill makes their cut permanent.
- Maintains the medical expense deduction, but repeals all miscellaneous deductions.
  - **CTC Observation**: While the House repeals all miscellaneous deductions, their proposal also eliminates the medical expense deduction.
- Abolishes the Alternative Minimum Tax (AMT), while proposing to sunset this provision after 2025.
  - **CTC Observation:** There is no sunset provision in the House proposal, making the repeal of AMT permanent.
- Maintains the Estate and Generation-Skipping Transfer Taxes, but doubles the exemption.
  - **CTC Observation:** The House bill repeals the Estate and Generation-Skipping Transfer Taxes after 2024.
- Repeals the Individual Mandate of the Affordable Care Act, which requires all American taxpayers to have health insurance or pay a penalty.
  - **CTC Observation:** The House Republicans did not include any health care-related proposals in their tax bill. We will continue to monitor this key difference in the Senate proposal as it makes its way through the legislative process.
- Increases the waiting period for the exclusion of gain from the sale of a principal residence to once every 5 years, up from the current once every two years. The proposal maintains the current exclusion limitations at $500,000 for joint filers and $250,000 for single filers.
  - **CTC Observation:** The House bill does not increase the waiting period, but does phase out the benefit for the exclusion of gain, with the exclusion phasing out once AGI exceeds $500,000 for joint filers or exceeds $250,000 for single filers.
- Removes the carryback period for most net operating losses (NOL), imposes an 80% of taxable income limitation on the amount of a NOL carryforward that can be deducted currently, and provides for an unlimited carryforward period.
  - **CTC Observation:** The House proposal places a 90% of taxable income limitation on the amount of a NOL carryforward that can be deducted currently.
- Requires that the cost of any specified security sold, exchanged, or otherwise disposed of be determined on a first-in first-out (FIFO) basis except to the extent the average cost basis method is otherwise allowed (as in the case of stock of a regulated investment company).
  - **CTC Observation:** The House bill does not include language mandating the FIFO method of cost basis be utilized in security dispositions.

Business

- Lowers the corporate tax rate from 35% to 20%. The new tax rate would take effect in 2019 and be made permanent.
  - **CTC Observation:** The House bill lowers the corporate tax rate immediately upon the passage of the legislation.
- Creates a 17.4% tax deduction on all domestic qualified business income from a partnership, S-Corporation, or sole proprietorship. The deduction would not apply to service businesses, except when taxpayers have a taxable income of $150,000 or less if filing jointly, or $75,000 or less for single filers. Additionally, qualified business income does not include any income that is treated as reasonable compensation for services rendered.

- **CTC Observation:** This proposal differs significantly from the House plan, as their proposal calls for a 25% tax rate on all pass-through income. Therefore, this would only benefit taxpayers whose taxable income places them in a higher tax bracket than the 25% pass-through rate. The Senate proposal, structured as a deduction in tax, would benefit taxpayers with any level of taxable income, although those in the higher income brackets will receive a greater benefit from the proposed change.

- Creates a three-year holding period requirement for qualification as long-term capital gains with respect to certain partnership interests received in connection with the performance of services. This proposal matches the provisions in the House bill regarding carried interest.

Based on the differences between the House bill that passed and the Senate bill to be voted on, we do expect that a reconciliation of the two bills could be a time consuming process before any legislation would be enacted.

The Chilton Trust tax group will continue to monitor all proposed tax reform legislation throughout the Congressional bill process and will update our clients accordingly as changes in the bills begin to take firmer shape. While the House Republicans have met their deadline to pass their bill by Thanksgiving, the Senate may take longer, possibly into December, to vote on their bill as their legislative process is more methodical in nature. As always, please contact us with any questions or concerns as it relates to your individual or entity tax situation.

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