Associated Taxpayers of Idaho
Tax Reform Update

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Overview of Federal Tax Reform: Comparison of the House and Senate Bills

Tax Cuts and Jobs Act (HR 1)

Highlights/Common elements of House & Senate bills

- Reduces corporate tax rate from 35% to 20% (with delayed effective date in Senate)
- Implements 100% immediate expensing for 5 years (plus Senate multi-year phase-down)
- Limits business interest deductibility (with different tests of amount of allowable indebtedness)
- Modifies treatment of net operating losses
- Repeals §199 manufacturing deduction and repeals/limits various other business tax incentives
- Reduces corporate dividends received deduction
- Separates passthroughs from individual side of code and generally taxes them at a lower rate
- Moves from worldwide business taxation to territorial regime, with a deemed repatriation transition tax and base-erosion measures to ensure some level of US tax payment
- Changes individual tax rates and bracket thresholds
- Doubles standard deduction, eliminates personal exemptions, and increases child tax credit (by different amounts with different age threshold)
- Repeals Pease limitation
- Repeals or limits many individual tax incentives, including state and local tax deductions
- Adds holding period requirement for carried interest gains

* **Note: Most individual provisions in Senate bill sunset after 2025.**

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

House vs. Senate: Key areas of difference

Business taxation

- Corporate rate cut: effective 2018 (House) vs. effective 2019 (Senate)
- Business interest deduction: limited to business interest income + 30% of EBITDA vs. limited to business interest income + 30% of EBIT
- Passthrough business profits treatment: 25% tax rate on some income vs. 23% deduction through 2025
- Tax rates for deemed repatriation of foreign profits: 7% non-cash/14% cash vs. 7.49%/14.49%
- Different approaches to foreign profits/base-erosion measures
- House repeals or modifies more targeted business tax incentives, including for employer-provided child care
- House repeals work opportunity credit, new markets credit, private activity bonds, tax credit bonds, and tax-exempt bonds for professional stadiums
- House modifies energy production and investment credits
- Differing provisions related to life insurance industry

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

House vs. Senate: Key areas of difference

Individual taxation

- Individual rates: 4 brackets/39.6% top rate plus a bubble rate (House) vs. 7 brackets/38.5% top rate (Senate)
- Senate changes to individual taxation generally sunset after 2025
- Child tax credit: $1,600 under age 17 vs. $2,000 under age 18, with higher income phaseout level
- House implements new $300 family credit for each filer for 5 years
- Mortgage interest deduction: Limited, and repealed for 2nd home and home equity debt vs. repealed for home equity debt only
- House repeals many more targeted individual incentives, including those for medical expenses, personal business expenses, dependent care expenses, and some education expenses
- Estate tax: exemption doubled, then fully repealed effective 2024 vs. exemption doubled

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

Business taxation

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
Corporate income	*35% top rate*	20% flat rate; 25% for personal services corporations; effective for tax years after 12/31/17	20% flat rate; effective for tax years after 12/31/18	Higher than President Trump's proposal of 15%
Corporate dividends received deduction	*70% deduction; 80% if received from 20%-owned corporation*	Reduced to 50% deduction and 65% deduction	Same, effective after 12/31/18	
Corporate AMT	*20% on alternative minimum taxable income*	Repealed	N/A	With corporate income and AMT rates both set at 20% in Senate bill, AMT could be the default corporate rate for many companies, eliminating their ability to claim many credits, including for R&D
Manufacturing deduction (§199)	*9% deduction on lesser of qualified production activity income or taxable income*	Repealed	Repealed for tax years after 12/31/18	

Notes: These are general summaries, and many of the provisions include exceptions and effective dates that should be read carefully. Unless otherwise stated, provisions are generally effective for tax years beginning after 12/31/17.

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)
Business taxation (cont.)

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
Capital expensing	*MACRS/ADS with bonus depreciation; or accelerated use of AMT credits*	100% immediate expensing through 2022	100% immediate expensing through 2022, then phased down each year through 2026 (2023 = 80%, 2024 = 60%, 2025 = 40%, 2026 = 20%)	• Applies to qualifying property placed in service after 9/27/17 • Exemption for real estate and certain public utilities • Ability to use AMT in lieu of bonus depreciation repealed for tax years beginning after 1/1/18
Business interest payments	*Generally deductible*	Limited to business interest income + 30% of EBITDA • 5-year carryforward for disallowed amounts	Limited to business interest income + 30% of EBIT • Indefinite carryforward for disallowed amounts	• Exemption for real estate and certain public utilities • Exemption for retail floor planning indebtedness • Exemption for small business: <$25M in House <$15M in Senate
Net operating loss deduction	*2-year carryback and 20-year carryforward allowed to offset taxable income*	NOL use limited to 90% of taxable income deductible; carryforward period made indefinite; NOLs increased by interest factor	Limited to 90% of taxable income deductible through 2022, then 80%; carryforward period made indefinite	Generally repeals all carrybacks except for small businesses and farms in certain casualty and disaster situations

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

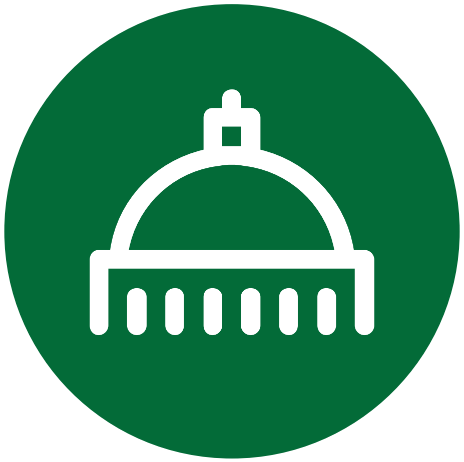
Business taxation (cont.)

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
Like-kind exchanges	*No gain or loss recognized for wide range of property held for productive use or investment*	Allowed only for real property		Exchanges of personal property permitted to be completed if begun before 12/31/17
Passthrough income	*Taxed at owner's individual rate*	25% rate on business profits, with assumed 70/30 split of wages to business profits • May elect to prove capital percentage >30% • 0% capital percentage assumed for personal services businesses; may elect to prove a higher percentage • 9% rate for smaller firms that wouldn't otherwise qualify for 25% rate	23% deduction for business profits through 2025, limited to 50% of W-2 wages • Personal services businesses not eligible, except for taxpayers with taxable income <$250k/$500k • Taxpayers with taxable income <$250k/$500k not subject to wage limitation	• Higher than President Trump's proposal of 15% • First serious attempt to separate passthrough entities from individual side of tax code

Tax Cuts and Jobs Act (HR 1)
Business taxation

Some other provisions of note:

- Repeal deduction for local lobbying expenses (both)
- Repeal deduction for certain unused business credits (House); and for entertainment, amusement or recreation activities, facilities, or membership dues, transportation fringe benefits, athletic facilities, or personal amenities provided to employees (both)
- Denial of deduction for certain fines, penalties, and settlement costs (Senate)
- Repeal (House) or modify (Senate) credit for orphan drug testing, and rehabilitation credit
- Repeal credit for employer-provided child care, work opportunity credit, and new markets credit (House)
- Allow credit for paid family and medical leave (Senate)
- Prohibition on cash/cash-equivalent employee achievement awards (Senate)
- Repeal private activity bonds, tax credit bonds, and tax-exempt bonds for professional stadiums (House), and advance refunding bonds (both)
- Create qualified opportunity zones (Senate)
- Modify energy production and investment credits (House)
- Modify rules for tax treatment of alcoholic beverages (Senate)
- Wide ranging proposals affecting life insurers (Senate); 8% life insurance profits surtax (House)
- Require certain R&D expenditures to be amortized over 5 years if done in US; 15 if done abroad (both; delayed effective date in Senate)
- Reduce depreciation life of buildings (Senate)
- Stronger limits on deduction for executive compensation >$1 million (both)



Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

International taxation

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
International taxation	*Worldwide regime with deferral and foreign tax credit offsets*	Territorial regime with 100% dividend exemption		Generally ends use of foreign tax credits
Foreign-held earnings & profits	*US tax deferred until repatriated*	Deemed repatriation of previously untaxed E&P at rate of 7% (non-cash) or 14% (cash & equivalents) • Applied to E&P as of 11/2/17 or 12/31/17, whichever is higher	Deemed repatriation of previously untaxed E&P at rate of 7.49% (non-cash) or 14.49% (cash & equivalents) • Claw-back of rate reduction if company inverts within 10 years after bill enactment	Payable over 8 years

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

International taxation (cont.)

	Current law	**House bill 2017 (HR 1)**	**Senate bill 2017**	**Notes & observations**
"Base-erosion prevention" measures	*Subpart F rules for passive income*	20% tax on 50% of foreign high return amounts	20% tax on "global intangible low-taxed income" (GILTI) with 50% deduction for foreign-derived intangible income (FDII) through 2025, then 37.5%; and 20% tax on FDII with 37.5% deduction through 2025, then 21.875% • Opens path to tax-free repatriation of IP	
		Additional limits on deductions by US corporations of interest paid on related-party debt		
		Tax of up to 20% on payments made to related parties abroad from US operations unless treated as "effectively connected income" (ECI)	10% "minimum tax" on taxable income in excess of deductible payments to related foreign parties Deduction denied for interest or royalties paid abroad if no corresponding inclusion to related party or if related party is allowed deduction	Some are characterizing House provision as "mini BAT" (previously discarded border-adjusted tax) Senate does not apply to COGS – big difference (except in case of inverted companies)

Tax Cuts and Jobs Act (HR 1)

Individual taxation

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
Individual income	*7 brackets Top rate of 39.6% on income >$418.4k/$470.7k (single/joint); Plus 0.9% Medicare tax on income >$200k/$250k*	4 brackets Top rate of 39.6% on income >$500k/$1M Plus 6% bubble tax on income $1M-$1.2M Plus 0.9% Medicare tax on income >$200k/$250k	7 brackets Top rate of 38.5% on income >$500k/$1M Changes sunset 12/31/25 Plus 0.9% Medicare tax on income >$200k/$250k	• Income thresholds indexed for chained CPI instead of CPI • House bubble tax likely to draw debate
Standard deduction	*$6,350/$12,700*	$12k/$24k	$12k/$24k Sunsets 12/31/25	Indexed for chained CPI
Personal exemption	*$4,050 exemption for each member of household, phased out for higher AGIs*	Repealed	Repealed through 12/31/25	
Limitation on itemized deductions	*Pease limitation for AGI >$261k/$313.8k*	Repealed	Repealed through 12/31/24	
Child tax credit & Family tax credit	*$1k credit per child under age 17; phase out for AGI >$75k/$110k*	$1,600 credit per child under age 17 or $300 per non-child dependent; new $300 credit for each filer • $300 credits non-refundable and sunset 12/31/22 • Phase out increased to $115k/$230k • SSN required for entire credit	$2,000 credit per child under age 18 and $500 per non-child dependent; no family credit • Changes sunset 12/31/25 • Phase out increased to $250k/$500k • SSN required for refundable portion of credit	Refundable portion of child credit still limited to $1k, indexed for inflation based on chained CPI

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

Individual taxation (cont.)

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
AMT	*26%/28% on alternative minimum taxable income*	Repealed • 50% of AMT credit carryforwards refundable in 2019-2021; remaining credits refundable from 2022	Exemption increased through 12/31/25	
Estate tax, generation-skipping tax, and gift tax	40% estate and generation-skipping tax through 2022; both repealed in 2023; gift tax lowered to 35%; exemption for all increased to $10M/$20M	40% estate and generation-skipping tax through 2023; both repealed in 2024; gift tax lowered to 35%; exemption for all increased to $10M/$20M	40% after exemption of $10M/$20M; increased exemption sunsets 12/31/25	• Stepped-up basis maintained • Exemptions indexed for inflation after 2011
State and local tax (SALT) deduction	*State and local income and property taxes or sales taxes fully deductible*	Property taxes up to $10k deductible; other SALT generally non-deductible • Deduction still allowed for taxes accrued in business • $10k not inflation indexed	Same, through 12/31/25	One of the more contentious provisions in bill for a number of House Republicans from high-tax states
Mortgage interest deduction	*Deduction on first $1M of debt used to secure primary or secondary residence, or first $100k of home equity debt*	Interest deductible on first $500k of debt for primary residence only • Effective for debt incurred after 11/2/17	Home equity debt deduction repealed through 12/31/25	

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

Individual taxation (cont.)

	Current law	House bill 2017 (HR 1)	Senate bill 2017	Notes & observations
Exclusion of gain from sale of principal residence	*Up to $250k/$500k of gain on sale excluded from gross income; must have been principal residence 2 of past 5 years; allowed once every 2 years*	Residency required 5 of past 8 years; exclusion allowed once every 5 years	Residency required 5 of past 8 years; exclusion allowed once every 5 years; changes sunset 12/31/25	Exclusion reduced dollar for dollar as income exceeds $500k in House bill
Affordable Care Act	*Those who fail to maintain health coverage owe penalty of 2.5% of AGI, or $695 per adult/$347.50 per child in 2017*	N/A	Penalty lowered to $0	Proposed Senate change to "individual mandate" brings healthcare debate into tax reform arena
Carried interest	*Taxed as long-term investment income*	Adds holding period requirement of 3 years for gains on carried interest in an investment or real estate interest		

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Tax Cuts and Jobs Act (HR 1)

Individual taxation

Some other provisions of note:

- Consolidation of some education credits and of education savings rules; repeal of some education credits (House)
- Increase in charitable giving deduction from 50% of income to 60% (both)
- Repeal of deductions for most personal casualty losses, tax preparation, and moving expenses (both)
- Repeal of deductions for medical expenses, personal business expenses, and alimony payments (House)
- Temporarily lower floor for medical expense deduction (Senate)
- Limitation on exclusion for employer-provided housing (House)
- Repeal of exclusion for employer-provided dependent-care programs (after 2022), and employee achievement awards (House)

Information current as of 12/2/17

Tax Cuts and Jobs Act (HR 1)

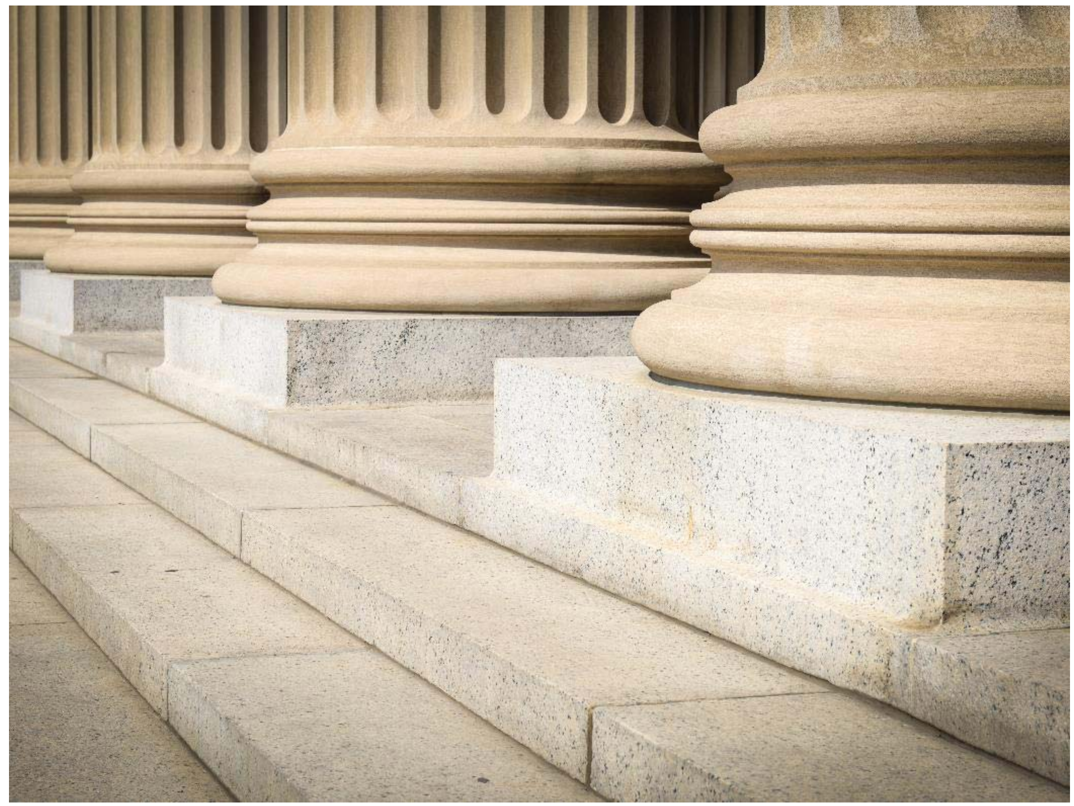
Notable current law provisions unchanged

Business

- R&D tax credit
- Amortization of advertising expenditures
- LIFO and Lower cost of market accounting methods
- Corporate state and local tax deduction
- Mark to market rules for derivatives
- Affordable Care Act (ACA) tax provisions, i.e., medical device tax, “Cadillac tax”

Individual

- Ability to file as Head of Household
- Treatment of investment income, i.e., capital gains and dividends



Information current as of 12/2/17

Multistate Tax Considerations

Tax Reform: Multistate Considerations

Provision	"To-Do"	Impact	Observation
Federal Corporate Rate Reduction (House (eff. 1/1/18) and Senate (eff. 1/1/19)	• Analyze state deferred tax asset inventory • Evaluate impact of proposed federal accounting method changes/other decisions to accelerate deductions/defer income and update plans to enhance utilization of state deferred tax assets • Consider accelerating payment of state taxes: - Voluntary disclosure/amnesty - Resolve state tax disputes - RAR reporting	• Strategic utilization of deferred state tax assets • Pay state taxes under higher federal tax rate	• State tax deferred assets will grow in relative importance due to declining federal tax rates and are often overlooked in federal tax planning • Resolving of state tax disputes during period of higher federal tax rates may yield other non-tax benefits (e.g., eliminate ASC 740 reserves for state tax liabilities resolved through VDA; state audit resolution may free up resources, etc.)
Repatriation (House and Senate; House rates @ 14%/7% for cash/non-cash; Senate rates @ 14.49%/7.49% for cash/non-cash)	• Model impact of increased Subpart F income recognition for state taxes; develop plan for managing state exposure • Calculate inventory of pre-deemed repatriation and post-repatriation foreign E&P • Develop plan for actual repatriation	• Strategic plan for Subpart F income recognition may mitigate state tax exposure on deemed recognition • Strategic plan for repatriation of after-tax foreign E&P may mitigate state tax exposure on actual repatriation • Credits & incentives for domestic investment of foreign E&P	• State tax treatment of Subpart F income varies • States that are unable to tax deemed repatriation may seek avenues to impose tax on actual repatriation • State and local C&I opportunities may be significant upon reinvestment
Limitations on federal income tax deduction for interest (House and Senate)	• Evaluate state conformity to proposed amendments to IRC Sec. 163(j) and new IRC Sec. 163(n) imposing limits on deductions for interest expense • Evaluate state impact of taxpayers shifting away from debt (e.g., franchise taxes)	• States generally anticipated to support interest expense limitation though conformity may not be automatic • Limitation on interest expense may lead to more equity financing, which could have an impact on state capital taxes	• If limitation on interest expense deduction leads to less lending, this could impact on whether specific entities qualify as financial institutions for state tax purposes • States expected to continue to scrutinize taxpayer interest expense

Information current as of 12/2/17

Tax Reform: Multistate Considerations

Provision	"To-Do"	Impact	Observation
State and Local C&I Leading to Taxable Contributions to Capital (House Only)	• Identify taxpayer assets subject to state and local C&I incentives • Calculate potential federal income tax exposure that could result if inventoried assets transferred via capital contribution • Evaluate state conformity to new IRC Section 76 • Consider whether contributions to capital could be made prior to enactment of HR 1	• Federal income tax imposed on such capital contributions could erode state and local C&I benefits • Strategic plan for future capital contributions of assets may preserve state and local C&I benefits	• New IRC Section 76 would apply to contributions made and transactions entered into after enactment of HR 1; could apply to assets that receive state and local C&I incentives prior to enactment but contributed to capital after enactment • States would presumably not be in favor of conforming to this provision as it undermines incentives
Immediate Federal Expensing (House and Senate)	• Evaluate state conformity to IRC Section 168(k)(1)(A) • Coordinate taxpayer planning re immediate expensing and repatriation of foreign E&P • Identify state and local C&I opportunities	• State conformity to immediate expensing expected to vary • Complexity in tracking conformity may require technology solutions • State and local C&I opportunities should remain available	• Need to monitor state legislative response to amended IRC Section 168(k)(1)(A) • Negotiated incentives can have long lead time
Elimination of Federal Deductions/Credits (House and Senate)	• Evaluate state conformity to repeal of/limitations on federal incentives • Evaluate state-specific opportunities for similar incentives (e.g., state-specific WOTC)	• States generally anticipated to conform to federal base-broadening measures, but isolated opportunities may remain	• States may preserve state-only application of repealed/limited federal incentives by conforming to old version of law (e.g., Oregon R&D credit does not conform to federal R&D credit expiration)

Information current as of 12/2/17

Tax Reform: Multistate Considerations

Provision	"To-Do"	Impact	Observation
Net Operating Loss Modifications (House and Senate)	• Both provisions limit NOL deductions to 90% of taxpayer's (pre-NOL) taxable income (80% under Senate proposal after 2022) • Most carrybacks eliminated • House: post-2017 NOL carryforwards accrue interest to preserve value	• States generally already impose state-specific carryforward and carryback provisions • State conformity to other modifications expected to vary	• These changes could cause states that allow carrybacks to revisit allowing carrybacks
Passthrough Income (House applies 25% rate*; Senate creates new 23% deduction for business profits)	• Evaluate state conformity to new passthrough provisions, including calculation of capital percentages • Consider state impact of restructuring that could follow corporate rate reduction below passthrough income rates • Evaluate opportunities for tax payment acceleration and increasing capital percentages	• State budgetary pressures may limit state conformity to federal changes to passthrough income • Taxpayers may consider restructuring to enhance beneficial capital percentages for profitable passthroughs	• Need to monitor state legislative response to new federal passthrough treatment
Federal "base erosion minimum tax" on taxable income in excess of deductible payments to related foreign parties (Senate Only)	• Evaluate state conformity to new IRC Section 59A • For states that conform to new tax, apportionment calculations required • Consider state add-back provisions on calculation of state-specific taxes in conforming states • Consider structuring and other tax planning options	• If recipient of base erosion payments is already included in state returns (e.g., WW, 80/20, tax haven), state taxation of base erosion payment could be double-taxation • May lead to more comprehensive restructuring discussions	• Need to monitor state legislative response to new federal minimum tax

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Tax Reform: Multistate Considerations

Provision	"To-Do"	Impact	Observation
Federal Taxation of Foreign High Returns via Subpart F (House Only)	• Evaluate state conformity to new IRC Section 951A • Evaluate state income tax treatment of Foreign High Return Income (e.g., deemed dividend, available state DRD, etc.) • Evaluate current state taxation of Foreign High Return income (e.g., WW, 80/20, tax haven filings, etc.) • Consider structuring and other tax planning options	• State conformity to Subpart F and treatment of Subpart F income varies; may generate planning considerations • Prevention of double-taxation of foreign income • May lead to more comprehensive restructuring discussions	• State taxation of Foreign High Returns may lead to more complex state apportionment calculations and unitary business determinations
Federal Excise Tax on Payments to Foreign Affiliates/ECI Election (House Only)	• Evaluate state conformity to new IRC Section 4491 • Identify taxpayer payments that may be subject to new excise tax • Identify taxpayers that may opt for ECI election by foreign affiliates in lieu of excise tax • Evaluate nexus/unitary business/apportionment for foreign affiliates making ECI election	• State conformity to IRC Section 4491 expected to vary; budgetary pressures likely to encourage conformity where possible • Federal ECI election by foreign affiliates could impact existing state tax add-back provisions for related party payments	• Need to monitor state legislative response to new IRC Section 4491 • Ability/desire of states to impose state-specific excise tax on payments to foreign affiliates unclear
Federal Tax on "Global Intangible Low-Taxed Income" ("GILTI") (Senate Only)	• Evaluate state conformity to new IRC Section 951A • Evaluate state income tax treatment of GILTI • Evaluate current state taxation of GILTI (e.g., WW, 80/20, etc.) • Consider structuring and other tax planning options	• State conformity to Subpart F and treatment of Subpart F income varies; may generate planning considerations • Prevention of double-taxation of foreign income • May lead to more comprehensive restructuring discussions	• State taxation of GILTI may lead to more complex state apportionment calculations and unitary business determinations • Coordinate GILTI with state tax provisions for deductibility (or not) of payments to related parties for intangibles

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Questions?

Speaker bio

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Scott Schiefelbein has practiced business and tax law for over 20 years. Scott is a member of the firm’s Washington National Tax practice for Multistate Tax and currently leads Deloitte’s Portland multistate tax practice. Scott also serves as the firm’s Technical Lead for all Oregon, Alaska and Idaho tax questions. Scott manages a wide variety of tax consulting engagements, including tax opinions and controversy matters. Scott also is a member of Deloitte’s multistate tax controversy practice and represents taxpayers in audits and also before the Oregon Tax Court (Magistrate Division).

Scott joined Deloitte in 2008 after spending several years with Portland-area law firms where he practiced tax and business law. Scott represented clients in disputes with both the Internal Revenue Service and state tax agencies.

Scott is a frequent speaker at Deloitte-sponsored seminars and trainings as well as external speaking events in addition to writing articles for various tax publications. Scott also serves on the Oregon State Bar Laws Committee.

Prior to diving into a career in tax and business law, Scott earned a Bachelor of Arts in History with Honors and Highest Distinction from the University of North Carolina at Chapel Hill and his Juris Doctor from the Duke University School of Law.

Information current as of 12/2/17

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