

Webinar Series: Tax Reform Updates

Overview of House and Senate Bills

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Agenda for Today's Webinar

- Individual Tax Reform
- Unincorporated Business Tax Reform
- Corporate Tax Reform
- International Tax Reform
- Combining the Two Bills
- The Process Going Forward

Individual Income Taxation

	Current Law	House Bill	Senate Bill
Top Rate	39.6%	39.6% (really 45.6%)	38.5% (2025 sunset)
Standard Deduction	\$12,700	\$24,000	\$24,000 (2025 sunset)
Personal Exemption	\$4,050	\$0	\$0 (2025 sunset)
Child Credit	\$1,000; phase-out beginning at \$110,000 of AGI	\$1,600; phase-out beginning at \$230,000 of AGI	\$2,000; phase-out beginning at \$500,000 of AGI

Individual Income Taxation

	Current Law	House Bill	Senate Bill
SALT Deduction	Fully deductible (subject to AMT)	\$10,000 for property taxes	\$0
Mortgage Interest	\$1,000,000 indebtedness	\$500,000 home acquisition indebtedness; no deduction for home equity loan interest	\$1,000,000 home acquisition indebtedness; no deduction for home equity loan interest
AMT	Yes	No	No
Gift/Estate Tax	\$14,000 annual gift tax exemption; \$5.49 million estate/gift tax exemption	Exemption threshold doubled until 2023; tax eliminated beginning in 2023	Double estate/gift tax exemption to ~\$11 million

Individual Tax Reductions

Current Law

- <19,050 – 10%
- <77,400 – 15%
- <156,150 – 25%
- <237,950 – 28%
- <424,950 – 33%
- <480,050 – 35%
- >480,050 – 39.6%

House Tax Brackets

- <90,000 – 12%
- <260,000 – 25%
- <1,000,000 – 35%
- >1,000,000 – 39.6%

Senate Tax Brackets

- <19,050 – 10%
- <77,400 – 12%
- <140,000 – 22%
- <320,000 – 24%
- <400,000 – 32%
- <1,000,000 – 35%
- >1,000,000 – 38.5%

Unincorporated Business Tax Reform

	Current Law	House Bill	Senate Bill
Rates	Business income earned through partnerships, S corporations and sole proprietorships (“passthroughs”) subject to tax in hands of owners at ordinary income rates	25% rate on qualified business income earned through passthroughs	17.4% deduction for qualified business income earned through passthroughs (sunset 2025)
Qualified business income		100% from passive activity; 30% from active activity (subject to election based on deemed return on capital)	Limited to 50% of W-2 wages paid by passthrough (exception for owner with income <\$500K /\$250K)

Unincorporated Business Tax Reform

	Current Law	House Bill	Senate Bill
Qualified business income (cont.)		Excludes incomes from specified service activities (subject to exception for capital-intensive businesses)	Excludes income from specified service activities
Carried interest	Character of income and gains at passthrough level flows through to owners	3-year holding period for gain to qualify as long-term capital gain	Same
Loss limitations	Excess passive activity losses, excess farm losses, suspended		Excess business losses suspended (exception for income up to \$500K /\$250K)

Corporate Taxation

	Current Law	House Bill	Senate Bill
Tax Rate	35%	20% (starting 2018)	20% (starting 2019)
Interest Expense	Generally fully deductible	Limited to lesser of 30% of “EBITDA” or 110% of pro rata share (based on EBITDA) of worldwide interest expense.	Limited to lesser of 30% of “EBIT” or 110% of pro rata share (based on debt/equity ratio) of worldwide interest expense.
NOLs	Fully usable (subject to AMT)	Limited to 90% of taxable income; interest factor for carryforwards.	Limited to 90% (reduced to 80% after 2022) of taxable income.

Corporate Taxation

	Current Law	House Bill	Senate Bill
Other Deductions and Credits	R&D credit; orphan drug credit; 199 deduction	R&D credit only	R&D and reduced orphan drug credit
Capital Expenses	Depreciable/ amortizable	Immediate expensing for a limited period	Immediate expensing for a limited period
R&D Expenses	Deductible	Amortized over a five-year period; 15-years for R&D conducted outside the U.S. Applies after 2023.	Amortized over a five-year period; 15-years for R&D conducted outside the U.S. Applies after 2025.
AMT	Yes	No	No

International Taxation

	Current Law	House Bill	Senate Bill
Taxation of Dividends from Foreign Subsidiaries	35% with a credit for foreign taxes paid	0% (no credits for allocable foreign taxes)	0% (no credit for allocable foreign taxes)
Transition Tax	N/A	One-time tax on accumulated foreign earnings. 14% cash; 7% non-cash	One-time tax on accumulated foreign earnings. 10% cash; 5% non-cash
Interest Expense	Generally fully deductible	Limited to pro rata share (by EBITDA) of WW debt (see slide 8 above)	Limited to pro rata share (by debt/equity ratio) of WW debt (see slide 8 above)

International Taxation

	House Bill	Senate Bill
Base Erosion Proposals	<ul style="list-style-type: none">• 10% tax on “foreign high return” income, with a credit for 80% of foreign taxes paid (effectively a minimum tax on low-taxed foreign earnings).• 20% excise tax on related-party foreign payments; ECI election available with a credit for 80% of foreign taxes paid.	<ul style="list-style-type: none">• 10% (12.5% after 2025) tax on “global intangible low-taxed income” (“GILTI”) with an 80% credit for foreign taxes paid.<ul style="list-style-type: none">• Reduced 12.5% (15.625% after 2025) tax on domestic corporation’s foreign intangible income (including royalties and exported goods).• BEAT Tax – 10% (12.5% after 2025) tax on “modified taxable income” – essentially taxable income + foreign related-party payments.

Anti-Inversion Proposals

	House Bill	Senate Bill
Anti-Inversion Rules	<ul style="list-style-type: none">• Unchanged	<ul style="list-style-type: none">• Transition tax on accumulated earnings increased to 35% for domestic corporations that become “expatriated entities” within ten years of enactment of legislation.• COGS added-back to modified taxable income for purposes of BEAT tax for “expatriated entities.”• No QDI treatment for dividends paid by inverted companies.• Increased section 4985 excise tax on stock-based compensation of “insiders.”

Timeline for Final Congressional Action

- Possible Senate passage Thursday, November 30 and conference week of December 4th
- Alternatively the Senate could negotiate changes with House prior to Senate passage and pass final bill the week of December 11th
- House final passage the week of December 11th
- President signs into law the week of December 18th

Major Compromise Issues

1. Expiration of Individual Provisions
2. Individual Tax Rates
3. Itemized Deductions
 - Property taxes
 - Mortgage interest
 - Medical expense
 - Student loan interest
4. Child/Family Credit
5. Pass-through Business Income
 - Rate
 - Loss limitation
6. Timing of 20% Corporate Rate

Major Compromise Issues

7. Measure of Interest Disallowance
 - EBIT v. EBITDA
 - Debt/Equity v. Interest/EBITDA
8. Transition Tax Rate
9. Export/Royalty Incentive Tax Rate
10. Inbound Base Erosion Provision

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Paul Oosterhuis has extensive experience in the area of international tax including mergers and acquisitions, post-acquisition integration, spin-offs, internal restructurings and joint ventures. He also represents multinational companies in nontransactional international tax planning and assists clients in resolving high-stakes, complex tax controversies.

Mr. Oosterhuis has been ranked in the top tier of *Chambers USA* each year since the guide was first released in 2003. He also has been ranked in the top tier of *Chambers Global* each year since 2002. In addition, he repeatedly has been selected for inclusion in *Tax Directors Handbook*, *The Legal 500 U.S.*, *Who's Who Legal: Corporate Tax*, *IFLR1000* and *The Best Lawyers in America*. He also was named as a 2017 BTI Client Service All-Star.

Having worked for decades in complex and high-profile cross-border tax matters, he also frequently testifies on international tax policy matters before congressional committees, including the U.S. House Committee on Ways and Means at its 2013 hearing on "Tax Reform: Tax Havens, Base Erosions and Profit Shifting."

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Pamela Lawrence Endreny represents clients in a range of federal income tax matters, including domestic and international mergers, acquisitions, joint ventures, spin-offs, financings and restructurings. She has particular experience in transactions involving publicly traded partnerships (PTPs), master limited partnerships (MLPs), real estate investment trusts (REITs), regulated investment companies (RICs), structured finance and derivatives. Ms. Endreny advises on the formation and operation of private equity and hedge funds and their investments, as well as transactions involving fund managers and sponsors. She has obtained private letter rulings from the IRS on spin-offs and other transactions and has represented clients in tax controversies with the Internal Revenue Service.

Ms. Endreny regularly advises on tax reporting, disclosure and withholding requirements, including foreign bank account reporting (FBAR) and the Foreign Account Tax Compliance Act (FATCA). She has advised financial institutions, asset managers and others on cross-border tax controversies and compliance issues, including representation of Swiss banks participating in the Department of Justice settlement program. Her experience includes developing policies and guidelines and leading training programs for financial institutions with respect to tax reporting, disclosure and compliance.

Ms. Endreny is a co-author of the private equity treatise, "Private Equity Funds: Business Structure and Operations."

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Moshe Spinowitz represents clients on a range of tax matters related to corporate transactions, including public and private company mergers and acquisitions, with a particular emphasis on international tax matters, cross-border acquisitions, and post-acquisition integration and restructuring transactions.

He also advises clients on a range of tax controversy matters during all phases of IRS audits and appeals.

Mr. Spinowitz's experience includes advising a multinational pharmaceutical company in connection with the integration and restructuring of its operations following a large cross-border acquisition, advising pharmaceutical and technology companies in connection with the structuring of their intellectual property holdings, and successfully representing several multinational corporations before IRS appeals in connection with intercompany financing transactions.

Prior to joining Skadden, Mr. Spinowitz served as a law clerk to Judge Michael Boudin on the United States Court of Appeals for the First Circuit, and Justice Antonin Scalia on the United States Supreme Court.



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