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Private Wealth Management

Comparing the House and Senate Tax Reform Proposals

Both plans have similar themes, but the details have many differences

Both the House and Senate have passed tax reform plans titled Tax Cuts and Jobs Act. But how do they compare to each other and to the laws in place today?

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Both the House of Representatives and the Senate have passed tax reform bills, and while they follow many of the same overall philosophies – lower tax rates on individuals and businesses, simplified itemized deductions, increased child credits, etc. – they are far from identical. For example, nearly all the provisions in the House plan are permanent, while most Senate provisions affecting individuals expire in 2025. And while the House plans to permanently repeal the AMT and estate tax, the Senate simply expands the exemptions from those taxes, and only temporarily.

The two houses now move to a conference committee where they will try to reconcile the differences into one bill that both sides can agree on. There is also the possibility that the House decides to vote on the Senate version, rather creating a new bill. Both sides are hoping to resolve all of this by Christmas, so the next few weeks should be interesting to watch. The following table compares the key provisions in both, along with the current-law position on those same issues.

INDIVIDUAL TAX RATES, BRACKETS AND CREDITS

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Ordinary income tax brackets	• Currently 7 different brackets – 10%, 15%, 25%, 28%, 33%, 35% and 39.6%. The top tax rate applies to taxable income over $470,700 ($418,400 for singles).	• Consolidate the brackets to just four: 12%, 25%, 35% and 39.6%. The top rate would apply to income over $1 million ($500,000 for singles), with most income levels below that having a reduced marginal tax rate. • Couples over $1.2 million (singles over $1 million) would be subject to a “bubble tax”. This extra tax would increase any income that was taxed at 12% to 39.6%.	• Reconfigure current 7 brackets to new income levels and new rates: 10%, 12%, 22%, 24%, 32%, 35% and 38.5%. The top tax rate would apply to income over $1 million ($500,000 for singles), with most income levels below that having a reduced marginal tax rate.
Capital gain tax brackets	• Currently 3 different brackets that are tied to the ordinary brackets. A 0% rate applies to those in the 15% bracket or lower, a 20% rate to those in the 39.6% bracket, and a 15% rate for those in the middle.	• The 0%, 15% and 20% rates would stay the same, but would be tied to specific dollar amounts equivalent to 2017 levels rather than adjusting to the new tax brackets.	• Matches the House proposal.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Child credit	• $1,000 credit per child under age 17 • Phaseout begins for couples with AGI over $110,000 ($75,000 for singles).	• Credit increased to $1,600 per child under age 17. • Add a new $300 credit for any taxpayer not eligible for the $1,600 credit. • Phaseout begins for couples with AGI over $230,000 ($115,000 for all others).	• Credit increased to $2,000 per child under age 18. • Add a new $500 credit for any dependent not eligible for the $2,000 credit. • Phaseout begins for all taxpayers with AGI over $500,000.
Kiddie Tax	• A child's unearned income over $2,100 is taxed as if it belonged to the parent. • Applies to children under age 18, or under age 24 if a full-time student. • The child's earned income is taxed using the tax rates and brackets for a single person.	• No change to current law.	• Unearned income of these same children would be taxed using the income tax rates and brackets that apply to trusts and estates. • Earned income would continue to be taxed using the single taxpayer rates and brackets.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 but would expire after 2025.

INDIVIDUAL ALTERNATIVE MINIMUM TAX

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Alternative Minimum Tax exemption	• No scheduled changes to overall structure of AMT. • The AMT exemption is $78,750 for couples and $50,600 for singles. • These would be phased out beginning at AMTI of $150,000 (couples) and $112,500 (singles).	• AMT would be completely repealed.	• The AMT exemption for couples would increase to $109,400 and $70,300 for singles. • These would be phased out beginning at AMTI of $208,400 (couples) and $156,300 (singles).
AMT credit	• In some cases, tax paid due to the AMT can be recovered as a tax credit in future years. • The credit can only be used to reduce a regular tax liability down to the AMT liability.	• With AMT repealed, AMT credits could be used to fully eliminate a regular tax liability. • In addition, 50% of any excess credit could be recovered in 2019-2021, with any remaining credit recovered in 2022.	• No change to current law.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• The above proposal would be effective in 2018 but would expire after 2025, at which point the AMT exemption would return to the 2017 level, adjusted for inflation.

INDIVIDUAL DEDUCTIONS AND EXEMPTIONS

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Personal exemption deductions	• A $4,050 personal exemption deduction is allowed for each taxpayer, spouse and any dependents. • The deduction is phased out for couples with AGI over $313,800 ($261,500 for singles).	• Personal exemption deductions would be fully repealed.	• Matches the House proposal.
Standard deduction	• Married couples may claim a standard deduction of $13,000 ($6,500 for singles). • An additional deduction of $1,250 may be claimed for each spouse age 65 or older or if they are blind ($1,550 for singles).	• The standard deduction for married couples would increase to $24,000, and to $12,000 for singles (in 2017 dollars, adjusted for inflation). • The additional deductions for those age 65 or older or blind would be repealed.	• The standard deduction for married couples would increase to $24,000, and to $12,000 for singles (in 2018 dollars). • The additional deductions for those age 65 or older or blind would not change.
Phaseout of itemized deductions (Pease limitation)	• Married couples with AGI over $313,800 (singles over $261,500) are subject to a phaseout of itemized deductions. • The amount of deductions lost equals 3% of AGI over the threshold.	• The phaseout of itemized deductions would be repealed.	• The phaseout of itemized deductions would be temporarily repealed, returning in 2024.
State income and sales taxes	• Fully deductible.	• Deduction would be fully repealed.	• Matches the House proposal.
Real estate and personal property taxes	• Fully deductible.	• Deduction for taxes on real estate would be limited to $10,000, while the deduction for personal property taxes would be repealed.	• Matches the House proposal.
Medical expenses	• Deductible to the extent they exceed 10% of AGI.	• Deduction would be fully repealed.	• Would allow a deduction for medical expenses to the extent they exceed 7.5% of AGI, for 2017 and 2018 only. • The AGI floor would return to 10% for 2019 and beyond.
Mortgage interest	• Interest on debt up to $1.1 million used to acquire a residence can be deducted. • Up to $100,000 of the debt can be a home equity loan. • The debt can be used for a primary residence and one other home.	• The debt limit would fall to $500,000 for new loans after November 2, 2017. • Interest on home equity loans would no longer be deductible. • Only debt used for a primary residence would be deductible. No second home debt.	• Interest on home equity loans would no longer be deductible. • All other mortgage interest provisions would stay the same.
Miscellaneous itemized deductions	• A variety of expenses are combined in this category, and are deductible only to the extent the total exceeds 2% of AGI. These include tax preparation fees, unreimbursed business expenses, investment fees, union dues, safety deposit box rental, etc.	• The miscellaneous deductions for tax preparation fees and unreimbursed business expenses would be repealed.	• All miscellaneous deductions would be repealed.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Casualty losses	• Losses due to theft, vandalism, weather, fire, accidents, etc. are deductible. Each loss has a $100 deductible, and the remaining total loss must exceed 10% of AGI.	• Only losses due to events covered under special disaster relief legislation would be deductible. • Other limitations would remain the same.	• Matches the House proposal.
Charitable contributions	• Donations of cash to public charities can be deducted up to 50% of AGI.	• The 50% threshold would be increased to 60%.	• Matches the House proposal.
Moving expenses	• A deduction is allowed for job-related moving expenses when the new job is more than 50 miles further from the old home than the old job was.	• Moving expenses would only be deductible by active-duty military members who are moving pursuant to a military order.	• Matches the House proposal.
Gambling losses	• Gambling losses are only deductible to the extent of gambling winnings. Other expenses related to gambling can deducted regardless of gambling winnings.	• All gambling-related expenses, including losses, would only be deductible to the extent of gambling winnings.	• Matches the House proposal.
Alimony	• Alimony payments are deductible for the payor and are taxable to the recipient.	• Alimony payments would no longer be deductible by the payor or taxable to the recipient. Effective for divorce agreements entered into or modified after 2017.	• No change to current law.
Archer Medical Savings Accounts (MSAs)	• Contributions to Archer MSAs are tax deductible, and withdrawals used for qualified medical expenses are tax-free.	• Contributions would no longer be tax deductible. • MSA balances could be rolled over to a Health Savings Account (HSA) tax-free.	• No change to current law.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• Except where noted (medical expenses, phaseout of deductions), all the above proposals would be effective in 2018 but would expire after 2025.

TAXABILITY OF PASS-THROUGH BUSINESS INCOME

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Tax treatment of pass-through business income	• Income from a pass-through business (partnership, S Corporation or sole proprietorship) is taxed at the same individual tax rates that apply to all other income earned by the owner.	• Qualifying business income would be taxed at a top rate of 25%. • A lower rate would apply to the first $75,000 of qualifying income. This rate would be 11% in 2018, gradually falling to 9% in 2022. o This lower rate begins phasing out once business income reaches $150,000. o For singles, these amounts are $37,500 and $75,000. • Any other income from the business would be taxed at the individual tax rates.	• The first 23% of qualifying business income would be exempt from tax. • The exemption would be capped at 50% of the wage income paid by the business. o Couples with income below $500,000 would be exempt from this requirement (all others below $250,000). • The remaining 77% of income from the business would be taxed at the individual tax rates.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Qualifying business income – passive activities	• The individual tax rates apply to all pass-through businesses, including passive activities.	• Generally, all income from a passive activity would be eligible for this lower rate.	• The exemption described above applies to passive activities.
Qualifying business income – active activities	• The individual tax rates apply to all pass-through businesses, including active activities.	• In most cases, a default of 30% of net business income would be taxed at the 25% maximum rate. • Alternatively, a capital percentage formula could result in a higher amount of qualifying business income. The formula would be based on the capital investments of the business. • The remaining income would be taxed at the individual tax rates.	• The exemption described above applies to active activities.
Qualifying business income – service corporations	• The individual tax rates apply to all pass-through businesses, regardless of the nature of the business.	• Certain personal services businesses (law, accounting, consulting, etc.) would default to 0% of their income being eligible for the lower rate. • However, the business could elect to use the capital percentage formula as well.	• Certain personal services businesses (law, accounting, consulting, etc.) would generally not be eligible for this exemption. o However, couples with taxable income up to $500,000 would be eligible for the exemption. It would then be phased out over the next $100,000 of income. o For all other taxpayers, these amounts would be $250,000 and $50,000.
Qualifying business income – REITs	• The individual tax rates apply to all pass-through businesses, including REITs.	• Certain dividends from REITs would qualify for the maximum 25% tax rate.	• Certain dividends from REITs would qualify for the 23% exemption.
Qualifying business income – publicly traded partnerships (PTPs)	• The individual tax rates apply to all pass-through businesses, including PTPs.	• Partners in PTPs would qualify for the lower based on their active or passive status.	• The exemption described above applies to PTPs.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 but would expire after 2025.

OTHER BUSINESS TAX CHANGES

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Tax rate on C Corporation income	• C Corporations are subject to a graduated tax system, but effectively pay a 35% tax rate.	• The tax rate on most C Corporations would be lowered to 20%. • Personal service corporations would be taxed at 25%.	• The tax rate on all C Corporations would be lowered to 20%. • This change would not be effective until 2019
Corporate Alternative Minimum Tax	• The corporate AMT is scheduled to continue unchanged.	• The corporate AMT would be repealed.	• No change to current law.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Accelerated depreciation deductions	• Businesses can immediately deduct 50% of the cost of qualified property, with that amount decreasing to 40% in 2018, 30% in 2019 and then to 0% in 2020. • The balance of the cost is depreciated over the useful life of the asset.	• Businesses could deduct 100% of the cost of qualified property placed in service after September 27, 2017 and before January 1, 2023. • For assets acquired in 2023 and beyond, the cost is depreciated over the useful life of the asset.	• Businesses could deduct 100% of the cost of qualified property placed in service after September 27, 2017 and before January 1, 2023. • The 100% is then reduced to 80% for 2023, 60% for 2024, 40% for 2025 and 20% for 2026. • For assets acquired in 2023 and beyond, the cost is depreciated over the useful life of the asset.
Section 179 deduction	• Businesses can immediately deduct up to $500,000 for purchasing qualified property. • This amount is phased out for those that purchase more than $2 million of such property in one year.	• The expense amount would be increased to $5 million, and the phaseout would apply when purchases exceed $20 million. • Both amounts would be indexed for inflation.	• The expense amount would be increased to $1 million, and the phaseout would apply when purchases exceed $2.5 million. • Both amounts would be indexed for inflation.
Depreciation of real property	• Nonresidential real property can be depreciated over 39 years. • Residential rental property can be depreciated over 27.5 years.	• No change to current law.	• Both types of property could be depreciated over 25 years.
Like-kind exchanges	• Real estate and other assets can be exchanged for “like kind” assets with any gain being deferred until the new asset is sold.	• These exchanges would be limited to real property only (including rental property), and not be allowed for vehicles, equipment, etc.	• Matches the House proposal.
Interest expense	• Businesses can generally deduct any interest paid, although a number of specific limitations exist.	• The interest deduction for all businesses, regardless of form, would be limited to 30% of earnings (defined as EBITDA). • This limitation is determined at the entity level, rather than the owner level for pass-throughs. • Excess interest could carryforward for 5 years. • Businesses with less than $25 million of revenue would be exempt from this change.	• The interest deduction for all businesses, regardless of form, would be limited to 30% of earnings (defined as EBIT). • This limitation is determined at the entity level, rather than the owner level for pass-throughs • Excess interest could carryforward indefinitely • Businesses with less than $15 million of average revenue over the prior 3 years would be exempt from this change.
Net operating losses (NOLs)	• Businesses with net operating losses can carryback those losses for 2 years and forward 20 years to offset income in those years.	• NOLs arising after 2017 could generally no longer be carried back, but could be carried forward indefinitely. • NOLs could only be used to offset up to 90% of a business’s income in any year.	• NOLs arising after 2017 could generally no longer be carried back, but could be carried forward indefinitely. • NOLs could only be used to offset up to 90% of a business’s income in any year, falling to 80% after 2022.
Family Medical Leave credit	• Not part of current law.	• No change to current law.	• Employers could claim a credit for 12.5% of any wages paid to an employee on leave that exceeds 50% of the employee’s normal wage. • The credit increases gradually to 25% as FML wages increase to 100% of normal wages.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Deduction for employer-paid fringe benefits	• Employers are able to deduct 50% of the cost of entertainment or recreation activities or facilities, club dues, etc. if directly related to the business. • Employers can deduct the full cost of transportation fringe benefits provided to employees.	• Repeal the deduction for the cost of entertainment or recreation activities, club membership dues or the cost of providing a facility for any of those activities. • Repeal the deduction for transportation or other primarily personal benefits provided to employees.	• Matches the House proposal.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 (other than the new lower tax rate on C Corporations) and would be permanent.

EDUCATION-RELATED CHANGES

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Student loan interest deduction	• Taxpayers can deduct up to $2,500 in interest paid on student loans, subject to income limitations.	• This deduction would be repealed.	• No change to current law.
Coverdell Education Savings accounts	• Coverdell accounts allow for tax-deferred growth and tax-free withdrawals if used to fund certain college expenses. • Can also be used to fund K-12 expenses. • Balances can also be rolled to a 529 account.	• No future contributions to Coverdell accounts would be allowed, but existing balances would maintain their current-law treatment.	• No change to current law.
529 accounts	• 529 accounts allow for tax-deferred growth and tax-free withdrawals if used to fund certain college expenses.	• 529 accounts would be expanded to allow for up to $10,000 per year to be used for K-12 expenses. • An unborn child could be named the beneficiary of a 529 plan.	• 529 accounts would be expanded to allow for up to $10,000 per year to be used for K-12 expenses.
Education-related tax credits	• The following tax credits are available for those paying higher-education expenses: o American Opportunity Credit (AOTC) o Lifetime Learning Credit (LLC) o Hope Scholarship Credit (HSC)	• The LLC and HSC would be repealed, leaving just the AOTC. • The AOTC would be expanded to allow for a 5th year of expenses, but at half the rate of the first four years.	• No change to current law.
Interest on US savings bonds	• Interest on some US savings bonds can be excluded from income if used to pay for college expenses, subject to income qualifications.	• This exclusion would be repealed.	• No change to current law.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Employer-provided education assistance	• Employers can provide their employees with up to $5,250 of education assistance benefits tax-free.	• This exclusion would be repealed.	• No change to current law.
Qualified Tuition Reduction programs	• Educational institutions can provide reduced tuition or cash payments to employees, spouses or dependents that are excluded from income.	• This exclusion would be repealed.	• No change to current law.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 and would be permanent.

ESTATE AND GIFT TAX CHANGES

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Estate tax exemption	• A decedent can pass up to $5.49 million to someone other than a spouse or charity without owing any estate tax. This amount would increase to $5.6 million in 2018. A tax of 40% is assessed on transfers over that amount. • Any unused exemptions can be transferred to a surviving spouse under the portability provision.	• The 2018 exemption would be doubled to $11.2 million. • Portability rules would remain unchanged, meaning families could transfer $22.4 million at death with no estate tax.	• Matches the House proposal.
Gift tax	• Gifts in excess of the lifetime exemption amount are subject to a 40% tax.	• The gift tax rate would be lowered to 35%.	• No change to current law.
Estate tax and generation skipping tax repeal	• The estate tax and GST are scheduled to continue unchanged.	• The estate tax and GST would be permanently repealed for deaths after 2024.	• No change to current law.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 (except for the estate and GST tax repeal) and would be permanent.	• All the above proposals would be effective in 2018 but would expire after 2025. The estate exemption would then revert back to the 2017 level, adjusted for inflation.

CHANGES AFFECTING EMPLOYER RETIREMENT PLANS AND IRAS

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Roth recharacterizations	• Contributions to either a Traditional or Roth IRA can be recharacterized as a contribution to the other type of IRA. • Roth conversions can also be recharacterized back to a Traditional IRA. • IRA owners have until October 15 of the year after the year of conversion to recharacterize.	• Recharacterizations of Traditional or Roth contributions and conversions would no longer be allowed.	• Matches the House proposal.
Plan loan payback requirements	• If an employer-sponsored retirement plan with an outstanding loan balance is rolled to an IRA, the loan must be repaid within 60 days of the rollover or be considered a taxable distribution.	• The loan repayment period would be extended to the due of the tax return for the year in which the rollover occurred.	• Matches the House proposal.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 and would be permanent.

OTHER PROVISIONS *(NOT SUBJECT TO SENATE EXPIRATION)*

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Penalty for not purchasing health insurance	• Individuals who do not maintain "minimum essential health insurance coverage" are subject to a tax. This is referred to as the "individual mandate".	• No change to current law.	• The amount of tax assessed would be reduced to $0, effectively repealing the mandate.
Selecting tax lot when selling investments	• If a taxpayer has acquired shares of stock at different times and prices, shares that are sold, gifted, transferred, etc. are assumed to come from the oldest tax lot first. • A taxpayer can also specifically choose the tax lot being disposed of if done at the time of the transaction. • Investors in mutual funds can elect to use an average-basis method to calculate the basis of shares sold.	• No change to current law.	• Taxpayers who sell part of an entire position would be deemed to sell the shares on a first-in, first-out basis. They would no longer be able to specifically identify the shares being sold. • This change would not apply to any position where the average cost basis option is available.
Private activity bond interest	• Interest on these bonds is exempt from the federal regular tax, but is taxable under the Alternative Minimum Tax.	• Interest on private activity bonds issued after 2017 would become taxable under the federal regular tax.	• No change to current law.
Deduction for educator expense	• Eligible educators can deduct the cost of up to $250 spent to provide classroom supplies or to participate in professional development courses.	• No change to current law.	• The educator expense deduction would increase to $500.

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Dependent care assistance programs	• Employees can defer up to $5,000 to a reimbursement account to pay for the care of a child under age 13 while the parent works.	• Deferrals would no longer be allowed after 2022.	• No change to current law.
Taxability of employer-paid fringe benefits	• Employers are able to provide various fringe benefits to employees tax-free.	• The following fringe benefits would be taxable to employees: o Moving expense reimbursements o Employee achievement awards o Adoption assistance programs • Dependent Care Flexible Spending Accounts would no longer be allowed.	• The following fringe benefits would be taxable to employees: o Moving expense reimbursements o Bicycle commuting reimbursements
Charitable gifts to college or universities	• Donors who give to a college or university and in turn receive the right to purchase athletic tickets can claim a deduction for 80% of the amount given.	• This provision would be repealed.	• Matches the House proposal.
Excise tax on private foundations	• Income earned by private foundations is subject to a 2% excise tax. In some cases the tax is decreased to 1%.	• The tax would change to 1.4% for all foundations.	• No change to current law.
Excise tax on college endowment income	• Income earned by colleges and university endowments is exempt from income tax.	• Private colleges and universities with more than 500 students and large endowments would be subject to a 1.4% excise tax on their investment income.	• Matches the House proposal.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 and would be permanent.

OTHER PROVISIONS *(SUBJECT TO SENATE EXPIRATION)*

Description	2017 Law	2018 House Proposal	2018 Senate Proposal
Sale of a personal residence	• Couples can exclude up $500,000 of gain (singles $250,000) if they meet the holding requirements. • Must have been their primary residence for 2 of the last 5 years. • Exclusion can be claimed once every 2 years.	• Gain exclusion would be phased out for couples with income over $500,000 (singles over $250,000). • Holding period requirement increased to 5 out of 8 years.	• No change to exclusion amount. • Holding period requirement increased to 5 out of 8 years.
ABLE accounts	• ABLE accounts are a tax-favored savings plan for disabled individuals. Contributions are capped at $14,000 for 2017.	• 529 account balances could also be rolled to ABLE accounts, subject to some limitations.	• 529 account balances could also be rolled to ABLE accounts, subject to some limitations. • ABLE beneficiaries could contribute their own funds to the account after the $14,000 limit has been reached via gifts from others. Subject to some limitations.
Effective date/ Expiration date		• All the above proposals would be effective in 2018 and would be permanent.	• All the above proposals would be effective in 2018 but would expire after 2025.