Tax Cuts and Jobs Act
RESOURCE GUIDE

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Tax Planning & Practice Guide

Thomson Reuters Checkpoint Special Study: Highlights of the Tax Cuts and Jobs Act (12/2017)

On December 22, President Trump signed into law the "Tax Cuts and Jobs Act" (P.L. 115-97), a sweeping tax reform law that will entirely change the tax landscape. The legislation reflects the largest major tax reform in over three decades.

The "Tax Cuts and Jobs Act" has largely taken shape at a breakneck speed over a two-month period, with the House passing its version of the bill on November 16 and the Senate passing its version on December 2. The two versions were then reconciled into a single piece of legislation which, due to a procedural complication, underwent a number of small revisions prior to final passage by the Senate and House. Among the few last-minute revisions to the bill was a new title: "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018." This article refers to the law by its commonly used name: "Tax Cuts and Job Act" (or simply, the "Act").

This comprehensive tax overhaul dramatically changes the rules governing the taxation of individual taxpayers for tax years beginning before 2026, providing new income tax rates and brackets, increasing the standard deduction, suspending personal deductions, increasing the child tax credit, limiting the state and local tax deduction, and temporarily reducing the medical expense threshold, among many other changes. The legislation also provides a new deduction for non-corporate taxpayers with qualified business income from pass-throughs.

For businesses, the legislation permanently reduces the corporate tax rate to 21%, repeals the corporate alternative minimum tax, imposes new limits on business interest deductions, and makes a number of changes involving expensing and depreciation. The legislation also makes significant changes to the tax treatment of foreign income and taxpayers, including the exemption from U.S. tax for certain foreign income and the deemed repatriation of off-shore income.

This Tax Planning & Practice Guide provides a comprehensive summary of the new law covering individual, business, business entities, and foreign provisions.

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New income tax rates & brackets.

To determine regular tax liability, an individual uses the appropriate tax rate schedule (or IRS-issued income tax tables for taxable income of less than $100,000). The Code provides four tax rate schedules for individuals based on filing status-i.e., single, married filing jointly/surviving spouse, married filing separately, and head of household-each of which is divided into income ranges which are taxed at progressively higher marginal tax rates as income increases. Under pre-Act law, individuals were subject to six tax rates: 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, seven tax rates apply for individuals: 10%, 12%, 22%, 24%, 32%, 35%, and 37%. The Act also provides four tax rates for estates and trusts: 10%, 24%, 35%, and 37%. (Code Sec. 1(i) , as amended by Act Sec. 11001) The specific application of these rates, and the income brackets at which they apply, is shown below.

For Married Individuals Filing Joint Returns and Surviving spouses	
If Taxable income is:	**The Tax is:**
Not over $19,000	10% of taxable income
Over $19,050 but not over $77,400	$1,095 plus 12% of the excess over $19,050
Over $77,400 but not over $165,000	$8,907 plus 22% of the excess over $77,400
Over $165,00 but not over $315,000	$28,179 plus 24% of the excess over $165,000
Over $315,000 but not over $400,000	$64,179 plus 32% of the excess over $315,000
Over $400,000 but not over $600,000	$91,379 plus 35% of the excess over $400,000
Over $600,000	$161,379 plus 37% of the excess over $600,000

For Single Individuals (Other than Heads of Households and Surviving Spouses):	
If Taxable Income is:	**The Tax is:**
Not over $9,525	10% of taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,000
Over $200,000 but not over $500,000	$45,689.50 plus 35% of the excess over $200,000
Over $500,000	$150,689.50 plus 37% of the excess over $500,000

For Heads of Households:	
If Taxable income is:	**The Tax is:**
Not Over $13,600	10% of taxable income
Over $13,600 but not over $51,800	$1,360 plus 12% of the excess over $13,600
Over $51,800 but not over $82,500	$5,944 plus 22% of the excess over $51,800
Over $82,500 but not over $157,500	$12,698 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$30,698 plus 31% of the excess over $157,500
Over $200,000 but not over $500,000	$44,298 plus 37% of the excess over $200,000
Over $500,000	$149,298 plus 37% of the excess over $500,000

For Marrieds Filing Separately	
If Taxable income is:	**The Tax is:**
Not over $9,525	10% of taxable income
Over $9,525 but not over $38,700	$952.50 plus 12% of the excess over $9,525
Over $38,700 but not over $82,500	$4,453.50 plus 22% of the excess over $38,700
Over $82,500 but not over $157,500	$14,089.50 plus 24% of the excess over $82,500
Over $157,500 but not over $200,000	$32,089.50 plus 32% of the excess over $157,500
Over $200,000 but not over $300,000	$45,689.50 plus 35% of the excess over $200,000
Over $300,000	$80,689.50 plus 37% of the excess over $300,000

For Estates and Trusts:	
If taxable income is:	**The Tax is:**
Not over $2,550	10% of taxable income
Over $2,550 but not over $9,150	$255 plus 24% of the excess over $2,550
Over $9,150 but not over $12,500	$1,839 plus 35% of the excess over $9,150
Over $12,500	$3,011.50 plus 37% of the excess over $12,500

Standard deduction increased.

Taxpayers are allowed to reduce their adjusted gross income (AGI) by the standard deduction or the sum of itemized deductions to determine their taxable income. Under pre-Act law, for 2018, the standard deduction amounts, indexed to inflation, were to be: $6,500 for single individuals and married individuals filing separately; $9,550 for heads of household, and $13,000 for married individuals filing jointly (including surviving spouses). Additional standard deductions may be claimed by taxpayers who are elderly or blind.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the standard deduction is increased to $24,000 for married individuals filing a joint return, $18,000 for head-of-household filers, and $12,000 for all other taxpayers, adjusted for inflation in tax years beginning after 2018. No changes are made to the current-law additional standard deduction for the elderly and blind. (Code Sec. 63(c)(7) , as added by Act Sec. 11021(a))

Personal exemptions suspended.

Under pre-Act law, taxpayers determined their taxable income by subtracting from their adjusted gross income any personal exemption deductions. Personal exemptions generally were allowed for the taxpayer, the taxpayer's spouse, and any dependents. The amount deductible for each personal exemption was scheduled to be $4,150 for 2018, subject to a phaseout for higher earners.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the deduction for personal exemptions is effectively suspended by reducing the exemption amount to zero. (**Code Sec. 151(d)** , as modified by Act Sec. 11041(a)) A number of corresponding changes are made throughout the Code where specific provisions contain references to the personal exemption amount in **Code Sec. 151(d)** , and in each of these instances, the dollar amount to be used is $4,150, as adjusted by inflation. These include **Code Sec. 642(b)(2)(C)** (exemption deduction for qualified disability trusts), **Code Sec. 3402** (wage withholding, subject to an exception below for 2018), and **Code Sec. 6334(d)** (property exempt from levy).

Withholding rules. The Conference Agreement specifies that IRS may administer the withholding rules

under **Code Sec. 3402** for tax years beginning before Jan. 1, 2019 without regard to the above amendments-i.e., wage withholding rules may remain the same as present law for 2018. (Act Sec. 11041(f)(2))

New measure of inflation provided.

Tax bracket amounts, standard deduction amounts, personal exemptions, and various other tax figures are annually adjusted to reflect inflation. Under pre-Act law, the measure of inflation was CPI-U (Consumer Price Index for all urban customers).

New law. For tax years beginning after Dec. 31, 2017 (Dec. 31, 2018 for figures that are newly provided under the Act for 2018 and thus won't be reset until after that year, e.g., the tax brackets set out above), dollar amounts that were previously indexed using CPI-U will instead be indexed using chained CPI-U (C-CPI-U). (**Code Sec. 1(f)** , as amended by Act Sec. 11002(a)) This change, unlike many provisions in the Act, is permanent.

Kiddie tax modified.

Under pre-Act law, under the "kiddie tax" provisions, the net unearned income of a child was taxed at the parents' tax rates if the parents' tax rates was higher than the tax rates of the child. The remainder of a child's taxable income (i.e., earned income, plus unearned income up to $2,100 (for 2018), less the child's standard deduction) was taxed at the child's rates. The kiddie tax applied to a child if: (1) the child had not reached the age of 19 by the close of the tax year, or the child was a full-time student under the age of 24, and either of the child's parents was alive at such time; (2) the child's unearned income exceeded $2,100 (for 2018); and (3) the child did not file a joint return.

New law. For tax years beginning after Dec. 31, 2017, the taxable income of a child attributable to earned income is taxed under the rates for single individuals, and taxable income of a child attributable to net unearned income is taxed according to the brackets applicable to trusts and estates (see above). This rule applies to the child's ordinary income and his or her income taxed at preferential rates. (**Code Sec. 1(j)(4)** , as amended by Act Sec. 11001(a))

Capital gains provisions conformed.

The adjusted net capital gain of a noncorporate taxpayer (e.g., an individual) is taxed at maximum rates of 0%, 15%, or 20%.

Under pre-Act law, the 0% capital gain rate applied to adjusted net capital gain that otherwise would be taxed at a regular tax rate below the 25% rate (i.e., at the 10% or 15% ordinary income tax rates); the 15% capital gain rate applied to adjusted net capital gain in excess of the amount taxed at the 0% rate, that otherwise would be taxed at a regular tax rate below the 39.6% (i.e., at the 25%, 28%, 33% or 35% ordinary income tax rates); and the 20% capital gain rate applied to adjusted net capital gain that

exceeded the amounts taxed at the 0% and 15% rates.

New law. The Act generally retains present-law maximum rates on net capital gains and qualified dividends. It retains the breakpoints that exist under pre-Act law, but indexes them for inflation using C-CPI-U in tax years after Dec. 31, 2017. (**Code Sec. 1(j)(5)(A)** , as amended by Act Sec. 11001(a))

For 2018, the 15% breakpoint is: $77,200 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $51,700 for heads of household, $2,600 for trusts and estates, and $38,600 for other unmarried individuals. The 20% breakpoint is $479,000 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $452,400 for heads of household, $12,700 for estates and trusts, and $425,800 for other unmarried individuals. (**Code Sec. 1(h)(1)** , as amended by Act Sec. 11001(a)(5))

AMT retained, with higher exemption amounts.

The alternative minimum tax (AMT) is a tax system separate from the regular tax that is intended to prevent a taxpayer with substantial income from avoiding tax liability by using various exclusions, deductions, and credits. Under it, AMT rates are applied to AMT income determined after the taxpayer "gives back" an assortment of tax benefits. If the tax determined under these calculations exceeds the regular tax, the larger amount is owed.

In computing the AMT, only alternative minimum taxable income (AMTI) above an AMT exemption amount is taken into account. The AMT exemption amount is set by statute and adjusted annually for inflation, and the exemption amounts are phased out at higher income levels.

Under pre-Act law, for 2018, the exemption amounts were scheduled to be:

(i) $86,200 for marrieds filing jointly/surviving spouses;
(ii) $55,400 for other unmarried individuals;
(iii) 50% of the marrieds-filing-jointly amount for marrieds filing separately, i.e., $43,100;

And, those exemption amounts were reduced by an amount equal to 25% of the amount by which the individual's AMTI exceeded:

(i) $164,100 for marrieds filing jointly and surviving spouses (phase-out complete at $508,900);
(ii) $123,100 for unmarried individuals (phase-out complete at $344,700); and
(iii) 50% of the marrieds-filing-jointly amount for marrieds filing separately, i.e., $82,050 (phase-out complete at $254,450).

Additionally, married persons filing separately must add the lesser of the following to AMTI: (1) 25% of the excess of AMTI (determined without regard to this adjustment) over the minimum amount of income at which the exemption will be completely phased out, or (2) the exemption amount. So, for 2018, a married person filing separately would have had to add the lesser of the following to AMTI: (1) 25% of the excess of AMTI over $254,450, or $43,100.

For trusts and estates, for 2018, the exempt amount was scheduled to be $24,600, and the exemption was to be reduced by 25% of the amount by which its AMTI exceeded $82,050 (phase-out complete at $180,450).

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the Act increases the AMT exemption amounts for individuals as follows:

. . . For joint returns and surviving spouses, $109,400.

. . . For single taxpayers, $70,300.

. . . For marrieds filing separately, $54,700. (**Code Sec. 55(d)(4)** , as amended by Act Sec. 12003(a))

Under the Act, the above exemption amounts are reduced (not below zero) to an amount equal to 25% of the amount by which the AMTI of the taxpayer exceeds the phase-out amounts, increased as follows:

. . . For joint returns and surviving spouses, $1 million.

. . . For all other taxpayers (other than estates and trusts), $500,000.

For trusts and estates, the base figure of $22,500 and phase-out amount of $75,000 remain unchanged. All of these amounts will be adjusted for inflation after 2018 under the new C-CPI-U inflation measure. (**Code Sec. 55(d)(4)** , as amended by Act Sec. 12003(a))

Repeal of Obamacare individual mandate.

Under pre-Act law, the Affordable Care Act (also called the ACA or Obamacare) required that individuals who were not covered by a health plan that provided at least minimum essential coverage were required to pay a "shared responsibility payment" (also referred to as a penalty) with their federal tax return. Unless an exception applied, the tax was imposed for any month that an individual did not have minimum essential coverage.

New law. For months beginning after Dec. 31, 2018, the amount of the individual shared responsibility payment is reduced to zero. (**Code Sec. 5000A(c)** , as amended by Act Sec. 11081) This repeal is permanent.

State and local tax deduction limited.

Under pre-Act law, taxpayers could deduct from their taxable income as an itemized deduction several types of taxes paid at the state and local level, including real and personal property taxes, income taxes, and/or sales taxes.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, subject to the exception described below, State, local, and foreign property taxes, and State and local sales taxes, are deductible only when paid or accrued in carrying on a trade or business or an activity described in **Code Sec. 212** (generally, for the production of income). State and local income, war profits, and excess profits are not allowable as a deduction.

However, a taxpayer may claim an itemized deduction of up to $10,000 ($5,000 for a married taxpayer filing a separate return) for the *aggregate* of (i) State and local property taxes *not* paid or accrued in carrying on a trade or business or activity described in **Code Sec. 212** ; and (ii) State and local income, war profits, and excess profits taxes (or sales taxes in lieu of income, etc. taxes) paid or accrued in the tax year. Foreign real property taxes may not be deducted. (**Code Sec. 164(b)(6)** , as amended by Act Sec. 11042)

Prepayment provision. For tax years beginning after Dec. 31, 2016, in the case of an amount paid in a tax year beginning before Jan. 1, 2018 with respect to a State or local income tax imposed for a tax year beginning after Dec. 31, 2017, the payment will be treated as paid on the last day of the tax year for which such tax is so imposed for purposes of applying the above limits. (**Code Sec. 164(b)(6)** , as amended by Act Sec. 11042) In other words, a taxpayer who, in 2017, pays an income tax that is imposed for a tax year after 2017, can't claim an itemized deduction in 2017 for that prepaid income tax.

Mortgage & home equity indebtedness interest deduction limited.

Under pre-Act law, a taxpayer could deduct as an itemized deduction qualified residence interest, which included interest paid on a mortgage secured by a principal residence or a second residence. The underlying mortgage loans could represent acquisition indebtedness of up to $1 million ($500,000 in the case of a married individual filing a separate return), plus home equity indebtedness of up to $100,000.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the deduction for interest on home equity indebtedness is suspended, and the deduction for mortgage interest is limited to underlying indebtedness of up to $750,000 ($375,000 for married taxpayers filing separately). (**Code Sec. 163(h)(3)(F)** , as amended by Act Sec. 11043(a)) For tax years after Dec. 31, 2025, the prior $1 million/$500,000 limitations are restored, and a taxpayer may treat up to these amounts as acquisition indebtedness regardless of when the indebtedness was incurred. The suspension for home equity indebtedness also ends for tax years beginning after Dec. 31, 2025.

Treatment of indebtedness incurred on or before Dec. 15, 2017. The new lower limit doesn't apply to any acquisition indebtedness incurred before Dec. 15, 2017.

"Binding contract" exception. A taxpayer who has entered into a binding written contract before Dec. 15, 2017 to close on the purchase of a principal residence before Jan. 1, 2018, and who purchases such residence before Apr. 1, 2018, shall be considered to incur acquisition indebtedness prior to Dec. 15, 2017.

Refinancing. The $1 million/$500,000 limitations continue to apply to taxpayers who refinance existing qualified residence indebtedness that was incurred before Dec. 15, 2017, so long as the indebtedness resulting from the refinancing doesn't exceed the amount of the refinanced indebtedness. (**Code Sec. 163(h)(3)(F)** , as amended by Act Sec. 11043(a))

Medical expense deduction threshold temporarily reduced.

A deduction is allowed for the expenses paid during the tax year for the medical care of the taxpayer, the taxpayer's spouse, and the taxpayer's dependents to the extent the expenses exceed a threshold amount. To be deductible, the expenses may not be reimbursed by insurance or otherwise. If the medical expenses are reimbursed, then they must be reduced by the reimbursement before the threshold is applied. Under pre-Act law, the threshold was generally 10% of AGI.

And, under pre-Act law, for alternative minimum tax (AMT) purposes, the medical expenses deduction rules were modified such that medical expenses were only deductible to the extent they exceeded 10% of AGI.

New law. For tax years beginning after Dec. 31, 2016 and ending before Jan. 1, 2019, the threshold on medical expense deductions is reduced to 7.5% for all taxpayers. (**Code Sec. 213(f)** , as amended by Act Sec. 11027(a))

In addition, the rule limiting the medical expense deduction for AMT purposes to 10% of AGI doesn't apply to tax years beginning after Dec. 31, 2016 and ending before Jan. 1, 2019. (**Code Sec. 56(b)(1)(B)** , as amended by Act Sec. 11027(b))

Charitable contribution deduction limitation increased.

The deduction for an individual's charitable contribution is limited to prescribed percentages of the taxpayer's "contribution base." Under pre-Act law, the applicable percentages were 50%, 30%, or 20%, and depended on the type of organization to which the contribution was made, whether the contribution was made "to" or merely "for the use of" the donee organization, and whether the contribution consisted of capital gain property. The 50% limitation applied to public charities and certain private foundations.

No charitable deduction is allowed for contributions of $250 or more unless the donor substantiates the contribution by a contemporaneous written acknowledgment (CWA) from the donee organization. Under **Code Sec. 170(f)(8)(D)** , IRS is authorized to issue regs that exempt donors from this substantiation requirement if the donee organization files a return that contains the same required information; however, IRS has decided not to issue such donee reporting regs.

New law. For contributions made in tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the 50% limitation under **Code Sec. 170(b)** for cash contributions to public charities and certain private foundations is increased to 60%. (**Code Sec. 170(b)(1)(G)** , as added by Act Sec. 11023) Contributions exceeding the 60% limitation are generally allowed to be carried forward and deducted for up to five years, subject to the later year's ceiling.

And, for contributions made in tax years beginning after Dec. 31, 2016, the **Code Sec. 170(f)(8)(D)** provision-i.e., the donee-reporting exemption from the CWA requirement-is repealed. (Former Code Sec. 170(f)(8)(D), as stricken by Act Sec. 13705)

No deduction for amounts paid for college athletic seating rights.

Under pre-Act law, special rules applied to certain payments to institutions of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event. The payor could treat 80% of a payment as a charitable contribution where: (1) the amount was paid to or for the benefit of an institution of higher education (i.e., generally, a school with a regular faculty and curriculum and meeting certain other requirements); and (2) such amount would be allowable as a charitable deduction but for the fact that the taxpayer receives (directly or indirectly) as a result of the payment the right to purchase tickets for seating at an athletic event in an athletic stadium of such institution.

New law. For contributions made in tax years beginning after Dec. 31, 2017, no charitable deduction is allowed for any payment to an institution of higher education in exchange for which the payor receives the right to purchase tickets or seating at an athletic event. (**Code Sec. 170(l)** , as amended by Act Sec. 13704)

Alimony deduction by payor/inclusion by payee suspended.

Under pre-Act law, alimony and separate maintenance payments were deductible by the payor spouse under **Code Sec. 215(a)** and includible in income by the recipient spouse under **Code Sec. 71(a)** and **Code Sec. 61(a)(8)** .

New law. For any divorce or separation agreement executed after Dec. 31, 2018, or executed before that date but modified after it (if the modification expressly provides that the new amendments apply), alimony and separate maintenance payments are not deductible by the payor spouse and are not included in the income of the payee spouse. Rather, income used for alimony is taxed at the rates applicable to the payor spouse. (Former Code Secs. 215, 61(a)(8), and 71, as stricken by Act Sec. 11051)

Miscellaneous itemized deductions suspended.

Under pre-Act law, taxpayers were allowed to deduct certain miscellaneous itemized deductions to the extent they exceeded, in the aggregate, 2% of the taxpayer's adjusted gross income.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the deduction for miscellaneous itemized deductions that are subject to the 2% floor is suspended. (**Code Sec. 67(g)** , as added by Act Sec. 11045)

Overall limitation ("Pease" limitation) on itemized deductions suspended.

Under pre-Act law, higher-income taxpayers who itemized their deductions were subject to a limitation on these deductions (commonly known as the "Pease limitation"). For taxpayers who exceed the threshold, the otherwise allowable amount of itemized deductions was reduced by 3% of the amount of the taxpayers' adjusted gross income exceeding the threshold. The total reduction couldn't be greater than 80% of all itemized deductions, and certain itemized deductions were exempt from the Pease limitation.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the "Pease limitation" on itemized deductions is suspended. (**Code Sec. 68(f)** , as amended by Act Sec. 11046)

Qualified bicycle commuting exclusion suspended.

Under pre-Act law, an employee was allowed to exclude up to $20 per month in qualified bicycle commuting reimbursements-i.e., any amount received from an employer during a 15-month period beginning with the first day of the calendar year as payment for reasonable expenses during a calendar year.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the exclusion from gross income and wages for qualified bicycle commuting reimbursements is suspended.

(**Code Sec. 132(f)(8)** , as added by Act Sec. 11047)

Exclusion for moving expense reimbursements suspended.

Under pre-Act law, an employee could, under **Code Sec. 3401(a)(15)** , **Code Sec. 3121(a)(11)** , and **Code Sec. 3306(b)(9)** , exclude qualified moving expense reimbursements from his or her gross income and from his or her wages for employment tax purposes. These were any amount received (directly or indirectly) from an employer as payment for (or reimbursement of) expenses which would be deductible as moving expenses under **Code Sec. 217** if directly paid or incurred by the employee.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the exclusion for qualified moving expense reimbursements is suspended, except for members of the Armed Forces on active duty (and their spouses and dependents) who move pursuant to a military order and incident to a permanent change of station. (**Code Sec. 132(g)** , as amended by Act Sec. 11048)

Moving expenses deduction suspended.

Under pre-Act law, taxpayers could claim a deduction under **Code Sec. 217** for moving expenses

incurred in connection with starting a new job if the new workplace was at least 50 miles farther from a taxpayer's former residence than the former place of work.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the deduction for moving expenses is suspended, except for members of the Armed Forces on active duty who move pursuant to a military order and incident to a permanent change of station. (**Code Sec. 217(k)** , as amended by Act Sec. 11049(a))

Student loan discharged on death or disability.

Gross income generally includes the discharge of indebtedness of the taxpayer. Under an exception to this general rule, gross income does not include any amount from the forgiveness (in whole or in part) of certain student loans, if the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers.

New law. For discharges of indebtedness after Dec. 31, 2017 and before Jan. 1, 2026, certain student loans that are discharged on account of death or total and permanent disability of the student are also excluded from gross income. (**Code Sec. 108(f)** , as amended by Act Sec. 11031)

Deduction for living expenses of members of congress eliminated.

Individual taxpayers generally can, subject to certain limitations, deduct ordinary and necessary business expenses paid or incurred during the tax year in carrying on a trade or business, including expenses for travel away from home. Under pre-Act law, members of Congress were allowed to deduct up to $3,000 of living expenses when they were away from home (such as expenses connected with maintaining a residence in Washington, D.C.) in any tax year.

New law. For tax years beginning after Dec. 22, 2017, members of Congress cannot deduct living expenses when they are away from home. (**Code Sec. 162(a)** , as amended by Act Sec. 13311)

Combat zone treatment extended to Egypt's Sinai Peninsula.

Members of the Armed Forces serving in a combat zone are afforded a number of tax benefits e.g., exclusion of certain pay and special estate tax rules.

New law. For purposes of various Code provisions that provide tax benefits to members of the Armed Forces serving in a combat zone, the Act provides that a "qualified hazardous duty area" (which the Act defines as the Sinai Peninsula of Egypt) is treated in the same manner as a combat zone. Thus, under the Act, for services provided on or after June 9, 2015, combat zone tax benefits are, except as provided below, granted for the Sinai Peninsula of Egypt, if, as of Dec. 22, 2017, any member of the U.S. Armed Forces is entitled to special pay under section 310 of title 37, United States Code (relating to special pay; duty subject to hostile fire or imminent danger), for services performed in such location. This benefit lasts

only during the period such entitlement is in effect.

However, the combat zone benefit under **Code Sec. 3401(a)(1)** relating to the withholding exemption for combat pay applies to remuneration paid after Dec. 22, 2017. (Act Sec. 11026(d))

Child tax credit increased.

Under pre-Act law, a taxpayer could claim a child tax credit of up to $1,000 per qualifying child under the age of 17. The aggregate amount of the credit that could be claimed phased out by $50 for each $1,000 of AGI over $75,000 for single filers, $110,000 for married filers, and $55,000 for married individuals filing separately. To the extent that the credit exceeded a taxpayer's liability, a taxpayer was eligible for a refundable credit (i.e., the additional child tax credit) equal to 15% of earned income in excess of $3,000 (the "earned income threshold"). A taxpayer claiming the credit had to include a valid Taxpayer Identification Number (TIN) for each qualifying child on their return. In most cases, the TIN is the child's Social Security Number (SSN), although Individual Taxpayer Identification Numbers (ITINs) were also accepted.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the child tax credit is increased to $2,000, and other changes are made to phase-outs and refundability during this same period, as outlined below. (**Code Sec. 24(h)(2)** , as added by Act Sec. 11022(a))

Phase-out. The income levels at which the credit phases out are increased to $400,000 for married taxpayers filing jointly ($200,000 for all other taxpayers) (not indexed for inflation). (**Code Sec. 24(h)(3)** , as added by Act Sec. 11022(a))

Non-child dependents. In addition, a $500 nonrefundable credit is provided for certain non-child dependents. (**Code Sec. 24(h)(4)** , as added by Act Sec. 11022(a))

Refundability. The amount of the credit that is refundable is increased to $1,400 per qualifying child, and this amount is indexed for inflation, up to the base $2,000 base credit amount. The earned income threshold for the refundable portion of the credit is decreased from $3,000 to $2,500. ((Code Sec. 24(h)(6), as added by Act Sec. 11022(a)))

SSN required. No credit will be allowed to a taxpayer with respect to any qualifying child unless the taxpayer provides the child's SSN. (**Code Sec. 24(h)(7)** , as added by Act Sec. 11022(a))

New limitations on "excess business loss."

In general, the passive loss rules under **Code Sec. 469** limit deductions and credits from passive trade or business activities. The passive loss rules apply to individuals, estates and trusts, and closely held corporations. A passive activity for this purpose is a trade or business activity in which the taxpayer owns an interest but does not materially participate. "Material participation" means that the taxpayer is involved in the operation of the activity on a basis that is regular, continuous, and substantial. (**Reg. §**

1.469-5) Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income and are carried forward and treated as deductions and credits from passive activities in the next year.

Under pre-Act law, **Code Sec. 469** provided a limitation on excess farm losses that applies to taxpayers other than C corporations. If a taxpayer other than a C corporation received an applicable subsidy for the tax year, the amount of the "excess farm loss" was not allowed for the tax year, and was carried forward and treated as a deduction attributable to farming businesses in the next tax year. An excess farm loss for a tax year meant the excess of aggregate deductions that were attributable to farming businesses over the sum of aggregate gross income or gain attributable to farming businesses plus the threshold amount. The threshold amount was the greater of (1) $300,000 ($150,000 for married individuals filing separately), or (2) for the 5-consecutive-year period preceding the tax year, the excess of the aggregate gross income or gain attributable to the taxpayer's farming businesses over the aggregate deductions attributable to the taxpayer's farming businesses.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the Act provides that the excess farm loss limitation doesn't apply, and instead a noncorporate taxpayer's "excess business loss" is disallowed. Under the new rule, excess business losses are not allowed for the tax year but are instead carried forward and treated as part of the taxpayer's net operating loss (NOL) carryforward in subsequent tax years. This limitation applies *after* the application of the passive loss rules described above. (**Code Sec. 461(l)** , as added by Act Sec. 11012)

An excess business loss for the tax year is the excess of aggregate deductions of the taxpayer attributable to the taxpayer's trades and businesses, over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount for a tax year is $500,000 for married individuals filing jointly, and $250,000 for other individuals, with both amounts indexed for inflation. (**Code Sec. 461(l)(3)** , as added by Act Sec. 11012)

In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner's or S corporation shareholder's share of items of income, gain, deduction, or loss of the partnership or S corporation is taken into account in applying the above limitation for the tax year of the partner or S corporation shareholder; and regulatory authority is provided to apply the new provision to any other passthrough entity to the extent necessary, as well as to require any additional reporting as IRS determines is appropriate to carry out the purposes of the provision. (**Code Sec. 461(l)(4)** , as added by Act Sec. 11012(a))

Deduction for personal casualty & theft losses suspended.

Under pre-Act law, individual taxpayers were generally allowed to claim an itemized deduction for uncompensated personal casualty losses, including those arising from fire, storm, shipwreck, or other casualty, or from theft.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the personal casualty

and theft loss deduction is suspended, except for personal casualty losses incurred in a Federally-declared disaster. (**Code Sec. 165(h)(5)** , as amended by Act Sec. 11044) However, where a taxpayer has personal casualty gains, the loss suspension doesn't apply to the extent that such loss doesn't exceed the gain.

Gambling loss limitation modified.

In general, taxpayers can claim a deduction for wagering losses to the extent of wagering winnings. (**Code Sec. 165(d)**) However, under pre-Act law, other deductions connected to wagering (e.g., transportation, admission fees) could be claimed regardless of wagering winnings.

New law. For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the limitation on wagering losses under **Code Sec. 165(d)** is modified to provide that *all* deductions for expenses incurred in carrying out wagering transactions, and not just gambling losses, are limited to the extent of gambling winnings. (**Code Sec. 165(d)** , as amended by Act Sec. 11050)

New deferral election for qualified equity grants.

Code Sec. 83 governs the amount and timing of income inclusion for property, including employer stock, transferred to an employee in connection with the performance of services. Under **Code Sec. 83(a)** , an employee must generally recognize income for the tax year in which the employee's right to the stock is transferable or isn't subject to a substantial risk of forfeiture. The amount includible in income is the excess of the stock's fair market value at the time of substantial vesting over the amount, if any, paid by the employee for the stock.

New Law. Generally effective with respect to stock attributable to options exercised or restricted stock units (RSUs) settled after Dec. 31, 2017 (subject to a transition rule; see below), a qualified employee can elect to defer, for income tax purposes, recognition of the amount of income attributable to qualified stock transferred to the employee by the employer. (**Code Sec. 83(i)** , as amended by Act Sec. 13603(a)) The election applies only for income tax purposes; the application of FICA and FUTA is not affected.

The election must be made no later than 30 days after the first time the employee's right to the stock is substantially vested or is transferable, whichever occurs earlier. (**Code Sec. 83(i)(4)(A)** , as added by Act Sec. 13603(a)) If the election is made, the income has to be included in the employee's income for the tax year that includes the earliest of:

(1) The first date the qualified stock becomes transferable, including, solely for this purpose, transferable to the employer.
(2) The date the employee first becomes an "excluded employee" (i.e., an individual: (a) who is one-percent owner of the corporation at any time during the 10 preceding calendar years; (b) who is, or has been at any prior time, the chief executive officer or chief financial officer of

the corporation or an individual acting in either capacity; (c) who is a family member of an individual described in (a) or (b); or (d) who has been one of the four highest compensated officers of the corporation for any of the 10 preceding tax years.

(3) the first date on which any stock of the employer becomes readily tradable on an established securities market;

(4) the date five years after the first date the employee's right to the stock becomes substantially vested; or

(5) the date on which the employee revokes his or her election. (**Code Sec. 83(i)(1)(B)** , as amended by Act Sec. 13603(a))

Sec. 13603(a)) attributable to a statutory option. In such a case, the option is not treated as a statutory option, and the rules relating to statutory options and related stock do not apply. In addition, an arrangement under which an employee may receive qualified stock is not treated as a nonqualified deferred compensation plan solely because of an employee's inclusion deferral election or ability to make the election.

Deferred income inclusion also applies for purposes of the employer's deduction of the amount of income attributable to the qualified stock. That is, if an employee makes the election, the employer's deduction is deferred until the employer's tax year in which or with which ends the tax year of the employee for which the amount is included in the employee's income as described in (1) - (5) above.

The new election applies for qualified stock of an eligible corporation. A corporation is treated as such for a tax year if: (1) no stock of the employer corporation (or any predecessor) is readily tradable on an established securities market during any preceding calendar year, and (2) the corporation has a written plan under which, in the calendar year, not less than 80% of all employees who provide services to the corporation in the US (or any US possession) are granted stock options, or restricted stock units (RSUs), with the same rights and privileges to receive qualified stock. (**Code Sec. 83(i)(2)(C)** , as amended by Act Sec. 13603(a))

Detailed employer notice, withholding, and reporting requirements also apply with regard to the election. (**Code Sec. 83(i)(6)** , as amended by Act Sec. 13603(a))

As noted above, the income deferral election generally applies with respect to stock attributable to options exercised or RSUs settled after Dec. 31, 2017. However, under a transition rule, until IRS issues regs or other guidance implementing the 80% and employer notice requirements under the provision, a corporation will be treated as complying with those requirements if it complies with a reasonable good faith interpretation of them. The penalty for a failure to provide the notice required under the provision applies to failures after Dec. 31, 2017. (Code Sec. 6652)(p), as amended by Act Sec. 13603(e))

ABLE account changes.

ABLE Accounts under **Code Sec. 529A** provide individuals with disabilities and their families the ability to fund a tax preferred savings account to pay for "qualified" disability related expenses. Contributions

may be made by the person with a disability (the "designated beneficiary"), parents, family members or others. Under pre-Act law, the annual limitation on contributions is the amount of the annual gift-tax exemption ($15,000 in 2018).

New law. Effective for tax years beginning after Dec. 22, 2017, and before Jan. 1, 2026, the contribution limitation to ABLE accounts with respect to contributions made by the designated beneficiary is increased, and other changes are in effect as described below. After the overall limitation on contributions is reached (i.e., the annual gift tax exemption amount; for 2018, $15,000), an ABLE account's designated beneficiary can contribute an additional amount, up to the lesser of (a) the Federal poverty line for a one-person household; or (b) the individual's compensation for the tax year. (**Code Sec. 529A(b)** , as amended by Act Sec. 11024(a))

Saver's credit eligible. Additionally, the designated beneficiary of an ABLE account can claim the saver's credit under **Code Sec. 25B** for contributions made to his or her ABLE account. (**Code Sec. 25B(d)(1)** , as amended by Act Sec. 11024(b))

Recordkeeping requirements. The Act also requires that a designated beneficiary (or person acting on the beneficiary's behalf) maintain adequate records for ensuring compliance with the above limitations. (**Code Sec. 529A(b)(2)** , as amended by Act Sec. 11024(a))

For distributions after Dec. 22, 2017, amounts from qualified tuition programs (QTPs, also known as 529 accounts; see below) are allowed to be rolled over to an ABLE account without penalty, provided that the ABLE account is owned by the designated beneficiary of that 529 account, or a member of such designated beneficiary's family. (**Code Sec. 529(c)(3)** , as amended by Act Sec. 11025) Such rolled-over amounts are counted towards the overall limitation on amounts that can be contributed to an ABLE account within a tax year, and any amount rolled over in excess of this limitation is includible in the gross income of the distributee.

Expanded use of 529 account funds.

Under pre-Act law, funds in a **Code Sec. 529** college savings account could only be used for qualified higher education expenses. If funds were withdrawn from the account for other purposes, each withdrawal was treated as containing a pro-rata portion of earnings and principal. The earnings portion of a nonqualified withdrawal was taxable as ordinary income and subject to a 10% additional tax unless an exception applied.

"Qualified higher education expenses" included tuition, fees, books, supplies, and required equipment, as well as reasonable room and board if the student was enrolled at least half-time. Eligible schools included colleges, universities, vocational schools, or other postsecondary schools eligible to participate in a student aid program of the Department of Education. This included nearly all accredited public, nonprofit, and proprietary (for-profit) postsecondary institutions.

New law. For distributions after Dec. 31, 2017, "qualified higher education expenses" include tuition at

an elementary or secondary public, private, or religious school, up to a $10,000 limit per tax year. (**Code Sec. 529(c)(7)** , as added by Act Sec. 11032(a))

New holding period required for "carried interest".

In general, the receipt of a capital interest for services provided to a partnership results in taxable compensation for the recipient. However, under a safe harbor rule, the receipt of a profits interest in exchange for services provided is *not* a taxable event to the recipient if the profits interest entitles the holder to share only in gains and profits generated after the date of issuance (and certain other requirements are met).

Typically, hedge fund managers guide the investment strategy and act as general partners to an investment partnership, while outside investors act as limited partners. Fund managers are compensated in two ways. First, to the extent that they invest their own capital in the funds, they share in the appreciation of fund assets. Second, they charge the outside investors two kinds of annual "performance" fees: a percentage of total fund assets, typically 2%, and a percentage of the fund's earnings, typically 20%, respectively. The 20% profits interest is often carried over from year to year until a cash payment is made, usually following the closing out of an investment. This is called a "carried interest."

Under pre-Act law, carried interests were taxed in the hands of the taxpayer (i.e., the fund manager) at favorable capital gain rates instead of as ordinary income.

New law. Effective for tax years beginning after Dec. 31, 2017, the Act effectively imposes a 3-year holding period requirement in order for certain partnership interests received in connection with the performance of services to be taxed as long-term capital gain. (**Code Sec. 1061** , "Partnership Interests Held in Connection with Performance of Services," added by Act Sec. 13309(a)) If the 3-year holding period is not met with respect to an applicable partnership interest held by the taxpayer, the taxpayer's gain will be treated as short-term gain taxed at ordinary income rates. (**Code Sec. 1061(a)**)

Certain self-created property not treated as capital asset.

Under pre-Act law, property held by a taxpayer (whether or not connected with the taxpayer's trade or business) is generally considered a capital asset under **Code Sec. 1221(a)** . However, certain assets are specifically excluded from the definition of a capital asset, including inventory property, depreciable property, and certain self-created intangibles (e.g., copyrights, musical compositions).

New law. Effective for dispositions after Dec. 31, 2017, the Act amends **Code Sec. 1221(a)(3)** , resulting in the exclusion of patents, inventions, models or designs (whether or not patented), and secret formulas or processes, which are held either by the taxpayer who created the property or by a taxpayer with a substituted or transferred basis from the taxpayer who created the property (or for whom the property was created), from the definition of a "capital asset." (**Code Sec. 1221(a)(3)** , amended by Act

Sec. 13314)

Estate and gift tax retained, with increased exemption amount.

A gift tax is imposed on certain lifetime transfers (**Code Sec. 2511**), and an estate tax is imposed on certain transfers at death. (**Code Sec. 2001**)

Under pre-Act law, the first $5 million (as adjusted for inflation in years after 2011) of transferred property was exempt from estate and gift tax. For estates of decedents dying and gifts made in 2018, this "basic exclusion amount" was $5.6 million ($11.2 million for a married couple).

New law. For estates of decedents dying and gifts made after Dec. 31, 2017 and before Jan. 1, 2026, the Act doubles the base estate and gift tax exemption amount from $5 million to $10 million. (**Code Sec. 2010(c)(3)** , as amended by Act Sec. 11061(a)) The $10 million amount is indexed for inflation occurring after 2011 and is expected to be approximately $11.2 million in 2018 ($22.4 million per married couple).

2016 "Net disaster loss" relief available to non-itemizers & taxpayers subject to AMT.

In general, no personal casualty loss (under **Code Sec. 165(h)**) can be claimed by a taxpayer who claims the standard deduction. Such losses can only be claimed as itemized deductions.

The standard deduction isn't allowed for purposes of the alternative minimum tax (AMT). Thus, a taxpayer who has taken the standard deduction for regular tax purposes must add back the amount of the deduction in computing alternative minimum taxable income (AMTI) and may not claim itemized deductions for AMT purposes.

New law. Effective for tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026, if an individual has a net disaster loss (defined below) for any tax year beginning after Dec. 31, 2017, and before Jan. 1, 2026, the standard deduction is increased by the net disaster loss. (Act Sec. 11028(c)(1)(C))

The Act also provides that, if any individual has a net disaster loss for any tax year beginning after Dec. 31, 2017 and before Jan. 1, 2026, the AMT adjustment for the standard deduction doesn't apply to the increase in the standard deduction that is attributable to the net disaster loss. (Act Sec. 11028(c)(1)(D))

Net disaster loss. A net disaster loss is the excess of (i) qualified disaster-related personal casualty losses, over (ii) personal casualty gains. "Qualified disaster-related personal casualty losses" are those described in **Code Sec. 165(c)(3)** that arise in a 2016 disaster area (below). Personal casualty gains are those described in **Code Sec. 165(h)(3)(A)** .

2016 disaster area. The Act provides tax relief relating to any "2016 disaster area," which means any area with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act during calendar year 2016. (Act Sec.

11028(a))

Raised casualty floor & modified threshold for 2016 disaster losses.

In general, the deduction for casualty and theft losses of personal-use property under **Code Sec. 165(h)** is subject to two limitations: the $100 per-casualty floor and the 10%-of-adjusted-gross-income (10%-of-AGI) threshold.

New law. For tax years beginning after Dec. 31, 2017, and before Jan. 1, 2026, the Act provides that if an individual has a net disaster loss (for this purpose, the definition above applies except that the timeframe is changed to any tax year beginning after Dec. 31, 2015 and before Jan., 1, *2018*), (i) the $100-per-casualty floor is increased to $500 (Act Sec. 11028(c)(1)(A)); and (ii) the 10%-of-AGI threshold doesn't apply. (Act Sec. 11028(c)(2)(B)

Relief from early withdrawal tax for "Qualified 2016 Disaster Distributions."

A distribution from a qualified retirement plan, a tax-sheltered annuity plan, an eligible deferred compensation plan of a State or local government employer, or an individual retirement arrangement (IRA) generally is included in income for the year distributed. In addition, unless an exception applies, distribution from a qualified retirement plan, a section 403(b) plan, or an IRA received before age 59½ is subject to a 10% additional tax under **Code Sec. 72(t)** (the "early withdrawal tax") on the amount includible in income.

In general, a distribution from an eligible retirement plan may be rolled over to another eligible retirement plan within 60 days, in which case the amount rolled over generally is not includible in income. The 60-day requirement can be waived by IRS in certain situations.

New law. The Act provides an exception to the retirement plan 10% early withdrawal tax for up to $100,000 of "qualified 2016 disaster distributions." (Act Sec. 11028(b)) These distributions are defined as distributions from an eligible retirement plan made (a) on or after Jan. 1, 2016, and before Jan. 1, 2018, to an individual whose principal place of abode at any time during calendar year 2016 was located in a 2016 disaster area and who has sustained an economic loss by reason of the events that gave rise to the Presidential disaster declaration. An "eligible retirement plan" means a qualified retirement plan, a section 403(b) plan or an IRA.

Income attributable to a qualified 2016 disaster distribution can, under the Act, be included in income ratably over three years (Act Sec. 11028(b)(1)(E)), and the amount of a qualified 2016 disaster distribution can be recontributed to an eligible retirement plan within three years.

The Act also provides that a plan amendment made pursuant to the above disaster relief provisions may be retroactively effective if certain requirements are met, including that it be made on or before the last day of the first plan year beginning after Dec. 31, 2018 (Dec. 31, 2020 for a governmental plan), or a

later date prescribed by IRS. (Act Sec. 11028(b)(1)(F)(2)(B))

Time to contest IRS levy extended.

IRS is authorized to return property that has been wrongfully levied upon. Under pre-Act law, monetary proceeds from the sale of levied property could generally be returned within nine months of the date of the levy

New law. For levies made after Dec. 22, 2017; and for levies made on or before Dec. 22, 2017 if the 9-month period has not expired as of Dec. 22, 2017, the 9-month period during which IRS may return the monetary proceeds from the sale of property that has been wrongfully levied upon is extended to two years. The period for bringing a civil action for wrongful levy is similarly extended from nine months to two years. (**Code Sec. 6343(b)** , as amended by Act Sec. 11071)

Due diligence requirements for claiming head of household.

Any person who is a tax return preparer for any return or claim for refund, who fails to comply with certain regulatory due diligence requirements imposed by regs with regard to determining the eligibility for, or the amount of, an earned income credit, a child tax credit, a additional child tax credit, or an American opportunity tax credit, must pay a penalty. (**Code Sec. 6695(g)**)

The base amount of the penalty is $500; for 2018, as adjusted for inflation under **Code Sec. 6695(h)** , the penalty is $520.

New law. Effective for tax years beginning after Dec. 31, 2017, the Act expands the due diligence requirements for paid preparers to cover determining eligibility for a taxpayer to file as head of household. A penalty of $500 (adjusted for inflation) is imposed for each failure to meet these requirements. (**Code Sec. 6695(g)** , as amended by Act Sec. 11001(b))

Repeal of the rule allowing recharacterization of IRA contributions.

Under pre-Act law, if an individual makes a contribution to an IRA (traditional or Roth) for a tax year, the individual is allowed to recharacterize the contribution as a contribution to the other type of IRA (traditional or Roth) by making a trustee-to-trustee transfer to the other type of IRA before the due date for the individual's income tax return for that year. In the case of a recharacterization, the contribution will be treated as having been made to the transferee IRA (and not the original, transferor IRA) as of the date of the original contribution. Both regular contributions and conversion contributions to a Roth IRA can be recharacterized as having been made to a traditional IRA.

New law. For tax years beginning after Dec. 31, 2017, the rule that allows a contribution to one type of IRA to be recharacterized as a contribution to the other type of IRA does not apply to a conversion contribution to a Roth IRA. Thus, recharacterization cannot be used to unwind a Roth conversion. (

Code Sec. 408A(d) , as amended by Act Sec. 13611)

Length of service award programs for public safety volunteers.

Under pre-Act law, any plan that solely provides length of service awards to bona fide volunteers or their beneficiaries, on account of qualified services performed by the volunteers, is not treated as a plan of deferred compensation for purposes of the **Code Sec. 457** rules. Qualified services are fire fighting and prevention services, emergency medical services, and ambulance services, including services performed by dispatchers, mechanics, ambulance drivers, and certified instructors. The exception applies only if the aggregate amount of length of service awards accruing for a bona fide volunteer with respect to any year of service does not exceed $3,000.

New law. For tax years beginning after Dec. 31, 2017, the Act increases the aggregate amount of length of service awards that may accrue for a bona fide volunteer with respect to any year of service, from $3,000 to $6,000, and adjusts that amount to reflect changes in cost-of-living for years after the first year the proposal is effective. Also, if the plan is a defined benefit plan, the limit applies to the actuarial present value of the aggregate amount of length of service awards accruing with respect to any year of service. Actuarial present value is calculated using reasonable actuarial assumptions and methods, assuming payment will be made under the most valuable form of payment under the plan, with payment commencing at the later of the earliest age at which unreduced benefits are payable under the plan or the participant's age at the time of the calculation. (**Code Sec. 457(e)** , as amended by Act Sec. 13612)

Extended rollover period for rollover of plan loan offset amounts.

If an employee stops making payments on a retirement plan loan before the loan is repaid, a deemed distribution of the outstanding loan balance generally occurs. Such a distribution is generally taxed as though an actual distribution occurred, including being subject to a 10% early distribution tax, if applicable. A deemed distribution isn't eligible for rollover to another eligible retirement plan.

Under pre-Act law, a plan may also provide that, in certain circumstances (for example, if an employee terminates employment), an employee's obligation to repay a loan is accelerated and, if the loan is not repaid, the loan is cancelled and the amount in employee's account balance is offset by the amount of the unpaid loan balance, referred to as a loan offset. A loan offset is treated as an actual distribution from the plan equal to the unpaid loan balance (rather than a deemed distribution), and (unlike a deemed distribution) the amount of the distribution is eligible for tax free rollover to another eligible retirement plan within 60 days. However, the plan is not required to offer a direct rollover with respect to a plan loan offset amount that is an eligible rollover distribution, and the plan loan offset amount is generally not subject to 20% income tax withholding.

New law. For plan loan offset amounts which are treated as distributed in tax years beginning after Dec. 31, 2017, the Act provides that the period during which a qualified plan loan offset amount may be contributed to an eligible retirement plan as a rollover contribution would be extended from 60 days after

the date of the offset to the due date (including extensions) for filing the Federal income tax return for the tax year in which the plan loan offset occurs-that is, the tax year in which the amount is treated as distributed from the plan. A qualified plan loan offset amount is a plan loan offset amount that is treated as distributed from a qualified retirement plan, a **Code Sec. 403(b)** plan, or a governmental **Code Sec. 457(b)** plan solely by reason of the termination of the plan or the failure to meet the repayment terms of the loan because of the employee's separation from service, whether due to layoff, cessation of business, termination of employment, or otherwise. A loan offset amount under the Act (as before) is the amount by which an employee's account balance under the plan is reduced to repay a loan from the plan. (**Code Sec. 402(c)** , as amended by Act Sec. 13613)

Corporate tax rates reduced.

Under pre-Act law, corporations are subject to graduated tax rates of 15% (for taxable income of $0-$50,000), 25% (for taxable income of $50,001-$75,000), 34% (for taxable income of $75,001-$10,000,000), and 35% (for taxable income over $10,000,000). Personal service corporations pay tax on their entire taxable income at the rate of 35%.

New law. For tax years beginning after Dec. 31, 2017, the corporate tax rate is a flat 21% rate. (**Code Sec. 11(b)** , as amended by Act Sec. 13001)

Dividends-received deduction percentages reduced.

Under pre-Act law, corporations that receive dividends from other corporations are entitled to a deduction for dividends received. If the corporation owns at least 20% of the stock of another corporation, an 80% dividends received deduction is allowed. Otherwise, a 70% deduction is allowed.

New law. For tax years beginning after Dec. 31, 2017, the 80% dividends received deduction is reduced to 65%, and the 70% dividends received deduction is reduced to 50%. (**Code Sec. 243** , as amended by Act Sec. 13002)

Alternative minimum tax repealed.

Under pre-Act law, the corporate alternative minimum tax (AMT) is 20%, with an exemption amount of up to $40,000. Corporations with average gross receipts of less than $7.5 million for the preceding three tax years are exempt from the AMT. The exemption amount phases out starting at $150,000 of alternative minimum taxable income.

New law. For tax years beginning after Dec. 31, 2017, the corporate AMT is repealed. (**Code Sec. 55** , as amended by Act Sec. 12001)

For tax years beginning after 2017 and before 2022, the AMT credit is refundable and can offset regular tax liability in an amount equal to 50% (100% for tax years beginning in 2021) of the excess of the

minimum tax credit for the tax year over the amount of the credit allowable for the year against regular tax liability. Accordingly, the full amount of the minimum tax credit will be allowed in tax years beginning before 2022. (**Code Sec. 53** , as amended by Act Sec. 12002)

Increased Code 179 expensing.

A taxpayer may, subject to limitations, elect under **Code Sec. 179** to deduct (or "expense") the cost of qualifying property, rather than to recover such costs through depreciation deductions. Under pre-Act law, the maximum amount a taxpayer could expense was $500,000 of the cost of qualifying property placed in service for the tax year. The $500,000 amount was reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the tax year exceeds $2 million. These amounts were indexed for inflation.

In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business, and includes off-the-shelf computer software and qualified real property (i.e., qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property).

Passenger automobiles subject to the **Code Sec. 280F** limitation are eligible for **Code Sec. 179** expensing only to the extent of the **Code Sec. 280F** dollar limitations. For sport utility vehicles above the 6,000 pound weight rating and not more than the 14,000 pound weight rating, which are not subject to the **Code Sec. 280F** limitation, the maximum cost that may be expensed for any tax year under **Code Sec. 179** is $25,000.

New law. For property placed in service in tax years beginning after Dec. 31, 2017, the maximum amount a taxpayer may expense under **Code Sec. 179** is increased to $1 million, and the phase-out threshold amount is increased to $2.5 million. For tax years beginning after 2018, these amounts (as well as the $25,000 sport utility vehicle limitation) are indexed for inflation. Property is not treated as acquired after the date on which a written binding contract is entered into for such acquisition.

"Qualified real property." The definition of **Code Sec. 179** property is expanded to include certain depreciable tangible personal property used predominantly to furnish lodging or in connection with furnishing lodging. The definition of qualified real property eligible for **Code Sec. 179** expensing is also expanded to include the following improvements to nonresidential real property after the date such property was first placed in service: roofs; heating, ventilation, and air-conditioning property; fire protection and alarm systems; and security systems. (**Code Sec. 179** , as amended by Act Sec. 13101)

Temporary 100% cost recovery of qualifying business assets.

Under pre-Act law, an additional first-year bonus depreciation deduction was allowed equal to 50% of the adjusted basis of qualified property, the original use of which began with the taxpayer, placed in service before Jan. 1, 2020 (Jan. 1, 2021, for certain property with a longer production period). The 50%

allowance was phased down for property placed in service after Dec. 31, 2017 (after Dec. 31, 2018 for certain property with a longer production period). A first-year depreciation deduction is also electively available for certain plants bearing fruit or nuts planted or grafted after 2015 and before 2020. Film productions aren't eligible for bonus depreciation.

New law. A 100% first-year deduction for the adjusted basis is allowed for qualified property acquired and placed in service after Sept. 27, 2017, and before Jan. 1, 2023 (after Sept. 27, 2017, and before Jan. 1, 2024, for certain property with longer production periods). Thus, the phase-down of the 50% allowance for property placed in service after Dec. 31, 2017, and for specified plants planted or grafted after that date, is repealed. The additional first-year depreciation deduction is allowed for new and used property. (The pre-Act law phase-down of bonus depreciation applies to property acquired before Sept. 28, 2017, and placed in service after Sept. 27, 2017.)

In later years, the first-year bonus depreciation deduction phases down, as follows:

- 80% for property placed in service after Dec. 31, 2022 and before Jan. 1, 2024.
- 60% for property placed in service after Dec. 31, 2023 and before Jan. 1, 2025.
- 40% for property placed in service after Dec. 31, 2024 and before Jan. 1, 2026.
- 20% for property placed in service after Dec. 31, 2025 and before Jan. 1, 2027.

For certain property with longer production periods, the beginning and end dates in the list above are increased by one year. For example, bonus first-year depreciation is 80% for long-production-period property placed in service after Dec. 31, 2023 and before Jan. 1, 2025.

First-year bonus depreciation sunsets after 2026.

For productions placed in service after Sept. 27, 2017, qualified property eligible for a 100% first-year depreciation allowance includes qualified film, television and live theatrical productions. A production is considered placed in service at the time of initial release, broadcast, or live staged performance (i.e., at the time of the first commercial exhibition, broadcast, or live staged performance of a production to an audience).

For certain plants bearing fruit or nuts planted or grafted after Sept. 27, 2017, and before Jan. 21, 2023, the 100% first-year deduction is also available.

For the first tax year ending after Sept. 27, 2017, a taxpayer can elect to claim 50% bonus first-year depreciation (instead of claiming a 100% first-year depreciation allowance). (**Code Sec. 168(k)** , as amended by Act Sec. 13201)

The election to accelerate AMT credits in lieu of bonus depreciation is repealed. (**Code Sec. 168(k)(4)** , as amended by Act Sec. 12001)

Luxury automobile depreciation limits increased.

Code Sec. 280F limits the **Code Sec. 179** expensing and cost recovery deduction with respect to certain passenger autos (the luxury auto depreciation limit). Under pre-Act law, for passenger autos placed in service in 2017, for which the additional first-year depreciation deduction under **Code Sec. 168(k)** is not claimed, the maximum amount of allowable depreciation deduction is $3,160 for the year in which the vehicle is placed in service, $5,100 for the second year, $3,050 for the third year, and $1,875 for the fourth and later years in the recovery period. This limitation is indexed for inflation.

For passenger automobiles eligible for the additional first-year depreciation allowance in 2017, the first-year limitation is increased by an additional $8,000. This amount is phased down from $8,000 by $1,600 per calendar year beginning in 2018 Thus, the **Code Sec. 280F** increase amount for property placed in service during 2018 is $6,400, and during 2019 is $4,800.

Special rules also apply to listed property, such as any passenger auto; any other property used as a means of transportation; any property of a type generally used for purposes of entertainment, recreation, or amusement; and, under pre-Act law, any computer or peripheral equipment.

New law. For passenger automobiles placed in service after Dec. 31, 2017, in tax years ending after that date, for which the additional first-year depreciation deduction under **Code Sec. 168(k)** is not claimed, the maximum amount of allowable depreciation is increased to: $10,000 for the year in which the vehicle is placed in service, $16,000 for the second year, $9,600 for the third year, and $5,760 for the fourth and later years in the recovery period. For passenger automobiles placed in service after 2018, these dollar limits are indexed for inflation. For passengers autos eligible for bonus first-year depreciation, the maximum first-year depreciation allowance remains at $8,000. (**Code Sec. 280F** , as amended by Act Sec. 13202)

In addition, computer or peripheral equipment is removed from the definition of listed property, and so isn't subject to the heightened substantiation requirements that apply to listed property. (**Code Sec. 280F** , as amended by Act Sec. 13202)

For passenger automobiles acquired before Sept. 28, 2017, and placed in service after Sept. 27, 2017, the pre-Act phase-down of the **Code Sec. 280F** increase amount in the limitation on the depreciation deductions applies.

New farming equipment and machinery is 5-year property.

Under pre-Act law, depreciable assets used in agriculture activities that are assigned a recovery period of seven years include machinery and equipment, grain bins, and fences (but no other land improvements), that are used in the production of crops or plants, vines, and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushrooms cellars, cranberry bogs, apiaries, and fur farms; and the performance of agriculture, animal husbandry, and horticultural services.

Cotton ginning assets are also assigned a recovery period of seven years, while land improvements such as drainage facilities, paved lots, and water wells are assigned a recovery period of 15 years.

For new farm machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) used in a farming business, the original use of which began with the taxpayer after Dec. 31, 2008, and was placed in service before Jan. 1, 2010, a 5-year recovery period had applied.

Under pre-Act law, any property (other than nonresidential real property, residential rental property, and trees or vines bearing fruits or nuts) used in a farming business was subject to the 150% declining balance method. Under a special accounting rule, certain taxpayers engaged in the business of farming who elect to deduct pre-productive period expenditures are required to depreciate all farming assets using the alternative depreciation system (ADS; i.e., using longer recovery periods and the straight-line method).

New law. For property placed in service after Dec. 31, 2017, in tax years ending after that date, the cost recovery period is shortened from seven to five years for any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) used in a farming business, the original use of which commences with the taxpayer. (**Code Sec. 168(e)** , as amended by Act Sec. 13203)

In addition, the required use of the 150% declining balance depreciation method for property used in a farming business (i.e., for 3-, 5-, 7-, and 10-year property) is repealed. The 150% declining balance method continues to apply to any 15-year or 20-year property used in the farming business to which the straight-line method does not apply, and to property for which the taxpayer elects the use of the 150% declining balance method. (**Code Sec. 168(b)** , as amended by Act Sec. 13203)

Recovery period for real property shortened.

The cost recovery periods for most real property are 39 years for nonresidential real property and 27.5 years for residential rental property. The straight line depreciation method and mid-month convention are required for such real property.

Under pre-Act law, qualified leasehold improvement property was an interior building improvement to nonresidential real property, by a landlord, tenant or subtenant, that was placed in service more than three years after the building is and that meets other requirements. Qualified restaurant property was either (a) a building improvement in a building in which more than 50% of the building's square footage was devoted to the preparation of, and seating for, on-premises consumption of prepared meals (the more-than-50% test), or (b) a building that passed the more-than-50% test. Qualified retail improvement property was an interior improvement to retail space that was placed in service more than three years after the date the building was first placed in service and that meets other requirements.

Qualified improvement property is any improvement to an interior portion of a building that is nonresidential real property if such improvement is placed in service after the date such building was first

placed in service. Qualified improvement property does not include any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, or the internal structural framework of the building.

If a taxpayer elected the ADS, residential rental property had a recovery period of 40 years. ADS is principally a straight-line depreciation system under which one depreciation period (generally longer than any other) is prescribed for each class of recovery property.

New law. For property placed in service after Dec. 31, 2017, the separate definitions of qualified leasehold improvement, qualified restaurant, and qualified retail improvement property are eliminated, a general 15-year recovery period and straight-line depreciation are provided for qualified improvement property, and a 20-year ADS recovery period is provided for such property.

Thus, qualified improvement property placed in service after Dec. 31, 2017, is generally depreciable over 15 years using the straight-line method and half-year convention, without regard to whether the improvements are property subject to a lease, placed in service more than three years after the date the building was first placed in service, or made to a restaurant building. Restaurant building property placed in service after Dec. 31, 2017, that does not meet the definition of qualified improvement property, is depreciable as nonresidential real property, using the straight-line method and the mid-monthconvention.

For property placed in service after Dec. 31, 2017, the ADS recovery period for residential rental property is shortened from 40 years to 30 years. (**Code Sec. 168** , as amended by Act Sec. 13204)

For tax years beginning after Dec. 31, 2017, an electing farming business-i.e., a farming business electing out of the limitation on the deduction for interest-must use ADS to depreciate any property with a recovery period of 10 years or more (e.g., a single purpose agricultural or horticultural structures, trees or vines bearing fruit or nuts, farm buildings, and certain land improvements). (**Code Sec. 168** , as amended by Act Sec. 13205)

Costs of replanting citrus plants lost due to casualty.

Under a special rule, the uniform capitalization rules of **Code Sec. 263A** don't apply and agricultural producers and certain co-owners can deduct costs incurred in replanting edible crops for human consumption following loss or damage due to freezing temperatures, disease, drought, pests, or casualty. The rule generally requires the agricultural producer to own the plants at the time that the damage occurred and to replace them with the same type of crop on property located in the U.S. The rule also requires that co-owners materially participate in the business to deduct their portion of the replacement costs.

This exception also applies to costs incurred by persons other than the taxpayer who incurred the loss or damage, if (1) the taxpayer who incurred the loss or damage retained an equity interest of more than 50% in the property on which the loss or damage occurred at all times during the tax year in which the replanting costs were paid or incurred, and (2) the person holding a minority equity interest and claiming

the deduction materially participated in the planting, maintenance, cultivation, or development of the property during the tax year in which the replanting costs are paid or incurred.

New law. For replanting costs paid or incurred after Dec. 22, 2017, but no later Dec. 22, 2027, for citrus plants lost or damaged due to casualty, the costs may also be deducted by a person other than the taxpayer if (1) the taxpayer has an equity interest of not less than 50% in the replanted citrus plants at all times during the tax year in which the replanting costs are paid or incurred and such other person holds any part of the remaining equity interest, or (2) such other person acquires all of the taxpayer's equity interest in the land on which the lost or damaged citrus plants were located at the time of such loss or damage, and the replanting is on such land. (**Code Sec. 263A(d)** , as amended by Act Sec. 13207)

Limits on deduction of business interest.

Under pre-Act law, interest paid or accrued by a business generally is deductible in the computation of taxable income subject to a number of limitations. For a taxpayer other than a corporation, the deduction for interest on indebtedness that is allocable to property held for investment (investment interest) is limited to the taxpayer's net investment income for the tax year.

Code Sec. 163(j) may disallow a deduction for disqualified interest paid or accrued by a corporation in a tax year if: (1) the payor's debt-to-equity ratio exceeds 1.5 to 1.0 (the safe harbor ratio); and (2) the payor's net interest expense exceeds 50% of its adjusted taxable income (generally, taxable income computed without regard to deductions for net interest expense, net operating losses, domestic production activities under Code Sec. 199, depreciation, amortization, and depletion).

New law. For tax years beginning after Dec. 31, 2017, every business, regardless of its form, is generally subject to a disallowance of a deduction for net interest expense in excess of 30% of the business's adjusted taxable income. The net interest expense disallowance is determined at the tax filer level. However, a special rule applies to pass-through entitles, which requires the determination to be made at the entity level, for example, at the partnership level instead of the partner level.

For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization, or depletion and without the former Code Sec. 199 deduction (which is repealed effective Dec. 31, 2017).

The amount of any business interest not allowed as a deduction for any taxable year is treated as business interest paid or accrued in the succeeding taxable year. Business interest may be carried forward indefinitely, subject to certain restrictions applicable to partnerships (see below). (**Code Sec. 163(j)** , as amended by Act Sec. 13301)

Exemptions. An exemption from these rules applies for taxpayers (other than tax shelters) with average annual gross receipts for the three-tax year period ending with the prior tax year that do not exceed $25 million. The business-interest-limit provision does not apply to certain regulated public utilities and electric cooperatives. Real property trades or businesses can elect out of the provision if they use ADS

to depreciate applicable real property used in a trade or business. Farming businesses can also elect out if they use ADS to depreciate any property used in the farming business with a recovery period of ten years or more. An exception from the limitation on the business interest deduction is also provided for floor plan financing (i.e., financing for the acquisition of motor vehicles, boats or farm machinery for sale or lease and secured by such inventory).

Partnerships. The limit on the amount allowed as a deduction for business interest is increased by a partner's distributive share of the partnership's excess taxable income. The excess taxable income for any partnership is the amount which bears the same ratio to the partnership's adjusted taxable income as the excess (if any) of 30% of the adjusted taxable income of the partnership over the amount (if any) by which the business interest of the partnership, reduced by floor plan financing interest, exceeds the business interest income of the partnership bears to 30% of the adjusted taxable income of the partnership. As a result, a partner of a partnership can deduct additional interest expense the partner may have paid or incurred to the extent the partnership could have deducted more business interest. Excess taxable income is allocated in the same manner as non-separately stated income and loss. Similar to these rules also apply to S corporations.

Special rule for carryforward of disallowed partnership interest. In the case of a partnership, any business interest that is not allowed as a deduction to the partnership for the tax year is allocated to each partner in the same manner as non-separately stated taxable income or loss of the partnership. The partner may deduct its share of the partnership's excess business interest in any future year, but only against excess taxable income attributed to the partner by the partnership the activities of which gave rise to the excess business interest carryforward. Any such deduction requires a corresponding reduction in excess taxable income. In addition, when excess business interest is allocated to a partner, the partner's basis in its partnership interest is reduced (but not below zero) by the amount of such allocation, even though the carryforward does not give rise to a partner deduction in the year of the basis reduction. However, the partner's deduction in a future year for interest carried forward does not reduce the partner's basis in the partnership interest.

In the event the partner disposes of a partnership interest the basis of which has been so reduced, the partner's basis in such interest shall be increased, immediately before such disposition, by the amount that any such basis reductions exceed any amount of excess interest expense that has been treated as paid by the partner (i.e., excess interest expense that has been deducted by the partner against excess taxable income of the same partnership). This rule does not apply to S corporations and their shareholders. (**Code Sec. 163(j)** , as amended by Act Sec. 13301)

Modification of net operating loss deduction.

Under pre-Act law, a net operating loss (NOL) may generally be carried back two years and carried over 20 years to offset taxable income in such years. However, different carryback periods apply with respect to NOLs arising in different circumstances. For example, extended carryback periods are allowed for NOLs attributable to specified liability losses and certain casualty and disaster losses.

New law. For NOLs arising in tax years ending after Dec. 31, 2017, the two-year carryback and the special carryback provisions are repealed, but a two-year carryback applies in the case of certain losses incurred in the trade or business of farming.

For losses arising in tax years beginning after Dec. 31, 2017, the NOL deduction is limited to 80% of taxable income (determined without regard to the deduction). Carryovers to other years are adjusted to take account of this limitation, and, except as provided below, NOLs can be carried forward indefinitely.

However, NOLs of property and casualty insurance companies can be carried back two years and carried over 20 years to offset 100% of taxable income in such years. (**Code Sec. 172** , as amended by Act Sec. 13302)

Domestic production activities deduction repealed.

Under pre-Act law, taxpayers could claim a domestic production activities deduction (DPAD) under Code Sec. 199 equal to 9% (6% in the case of certain oil and gas activities) of the lesser of the taxpayer's qualified production activities income or the taxpayer's taxable income for the tax year. The deduction was limited to 50% of the W-2 wages paid by the taxpayer during the calendar year. Qualified production activities income was equal to domestic production gross receipts less the cost of goods sold and expenses properly allocable to such receipts. Qualifying receipts were derived from property that was manufactured, produced, grown, or extracted within the U.S.; qualified film productions; production of electricity, natural gas, or potable water; construction activities performed in the U.S.; and certain engineering or architectural services.

New law. For tax years beginning after Dec. 31, 2017, the DPAD is repealed. (Code Sec. 199, as amended by Act Sec. 13305)

Like-kind exchange treatment limited.

Under pre-Act law, the like-kind exchange rule provided that no gain or loss was recognized to the extent that property-which included a wide range of property from real estate to tangible personal property-held for productive use in the taxpayer's trade or business, or property held for investment purposes, is exchanged for property of a like-kind that also is held for productive use in a trade or business or for investment.

New law. Generally effective for transfers after Dec. 31, 2017, the rule allowing the deferral of gain on like-kind exchanges is modified to allow for like-kind exchanges only with respect to real property that is not held primarily for sale. However, under a transition rule, the pre-Act like-kind exchange rules apply to exchanges of personal property if the taxpayer has either disposed of the relinquished property or acquired the replacement property on or before Dec. 31, 2017. (**Code Sec. 1031** , as amended by Act Sec. 13303)

Five-year writeoff of specified R&E expenses.

Under pre-Act law, taxpayers may elect to deduct currently the amount of certain reasonable research or experimentation (R&E) expenses paid or incurred in connection with a trade or business. Alternatively, taxpayers may forgo a current deduction, capitalize their research expenses, and recover them ratably over the useful life of the research, but in no case over a period of less than 60 months. Or, they may elect to recover them over a period of 10 years.

New law. For amounts paid or incurred in tax years beginning after Dec. 31, 2021, "specified R&E expenses" must be capitalized and amortized ratably over a 5-year period (15 years if conducted outside of the U.S.), beginning with the midpoint of the tax year in which the specified R&E expenses were paid or incurred.

Specified R&E expenses subject to capitalization include expenses for software development, but not expenses for land or for depreciable or depletable property used in connection with the research or experimentation (but do include the depreciation and depletion allowances of such property). Also excluded are exploration expenses incurred for ore or other minerals (including oil and gas). In the case of retired, abandoned, or disposed property with respect to which specified R&E expenses are paid or incurred, any remaining basis may not be recovered in the year of retirement, abandonment, or disposal, but instead must continue to be amortized over the remaining amortization period. (**Code Sec. 174** , as amended by Act Sec. 13206)

Use of this provision is treated as a change in the taxpayer's accounting method under **Code Sec. 481** , initiated by the taxpayer, and made with IRS's consent. For R&E expenditures paid or incurred in tax years beginning after Dec. 31, 2025, the provision is applied on a cutoff basis (so there is no adjustment under **Code Sec. 481(a)** for R&E paid or incurred in tax years beginning before Jan. 1, 2026).

Employer's deduction for fringe benefit expenses limited.

Under current law, a taxpayer may deduct up to 50% of expenses relating to meals and entertainment. Housing and meals provided for the convenience of the employer on the business premises of the employer are excluded from the employee's gross income. Various other fringe benefits provided by employers are not included in an employee's gross income, such as qualified transportation fringe benefits

New law. For amounts incurred or paid after Dec. 31, 2017, deductions for entertainment expenses are disallowed, eliminating the subjective determination of whether such expenses are sufficiently business related; the current 50% limit on the deductibility of business meals is expanded to meals provided through an in-house cafeteria or otherwise on the premises of the employer; and deductions for employee transportation fringe benefits (e.g., parking and mass transit) are denied, but the exclusion from income for such benefits received by an employee is retained. In addition, no deduction is allowed

for transportation expenses that are the equivalent of commuting for employees (e.g., between the employee's home and the workplace), except as provided for the safety of the employee.

For tax years beginning after Dec. 31, 2025, the Act will disallow an employer's deduction for expenses associated with meals provided for the convenience of the employer on the employer's business premises, or provided on or near the employer's business premises through an employer-operated facility that meets certain requirements. (**Code Sec. 274** , as amended by Act Sec. 13304)

Nondeductible penalties and fines.

Under pre-Act law, no deduction is allowed for fines or penalties paid to a government for the violation of any law.

New law. For amounts generally paid or incurred on or after Dec. 22, 2017 (see below), no deduction is allowed for any otherwise deductible amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or specified nongovernmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law. An exception applies to payments that the taxpayer establishes are either restitution (including remediation of property) or amounts required to come into compliance with any law that was violated or involved in the investigation or inquiry, that are identified in the court order or settlement agreement as restitution, remediation, or required to come into compliance. IRS remains free to challenge the characterization of an amount so identified; however, no deduction is allowed unless the identification is made.

An exception also applies to any amount paid or incurred as taxes due.

Restitution for failure to pay any tax, that is assessed as restitution under the Code is deductible only to the extent it would have been allowed as a deduction if it had been timely paid. (**Code Sec. 162(f)** , as amended by Act Sec. 13306)

Government agencies (or entities treated as such) must report to IRS and to the taxpayer the amount of each settlement agreement or order entered into where the aggregate amount required to be paid or incurred to or at the direction of the government is at least $600 (or such other amount as may be specified by IRS). The report must separately identify any amounts that are for restitution or remediation of property, or correction of noncompliance. The report must be made at the time the agreement is entered into, as determined by IRS. (**Code Sec. 6050X** , as added by Act Sec. 13306)

The provisions don't apply to amounts paid or incurred under any binding order or agreement entered into before Dec. 22, 2017. But this exception would not apply to an order or agreement requiring court approval unless the approval was obtained before Dec. 22, 2017.

No deduction for amounts paid for sexual harassment subject to nondisclosure agreement.

A taxpayer generally is allowed a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business. However, among other exceptions, there's no deduction for: any illegal bribe, illegal kickback, or other illegal payment; certain lobbying and political expenses; any fine or similar penalty paid to a government for the violation of any law; and two-thirds of treble damage payments under the antitrust laws.

New law. Under the Act, effective for amounts paid or incurred after Dec. 22, 2017, no deduction is allowed for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement. (**Code Sec. 162** , as amended by Act Sec. 13307)

Employee achievement awards.

Employee achievement awards are excludable to the extent the employer can deduct the cost of the award-generally limited to $400 for any one employee, or $1,600 for a "qualified plan award." An employee achievement award is an item of tangible personal property given to an employee in recognition of either length of service or safety achievement and presented as part of a meaningful presentation.

New law. For amounts paid or incurred after Dec. 31, 2017, a definition of "tangible personal property" is provided. Tangible personal property does not include cash, cash equivalents, gifts cards, gift coupons, gift certificates (other than where from the employer pre-selected or pre-approved a limited selection) vacations, meals, lodging, tickets for theatre or sporting events, stock, bonds or similar items. and other non-tangible personal property. No inference is intended that this is a change from present law and guidance. (**Code Sec. 274(j)** , as amended by Act Sec. 13310)

Limitation on excessive employee compensation.

A deduction for compensation paid or accrued with respect to a covered employee of a publicly traded corporation is limited to no more than $1 million per year. However, under pre-Act law, exceptions applied for: (1) commissions; (2) performance-based remuneration, including stock options; (3) payments to a tax-qualified retirement plan; and (4) amounts that are excludable from the executive's gross income.

New law. For tax years beginning after Dec. 31, 2017, the exceptions to the $1 million deduction limitation for commissions and performance-based compensation are repealed. The definition of "covered employee" is revised to include the principal executive officer, the principal financial officer, and the three other highest paid officers. If an individual is a covered employee with respect to a corporation

for a tax year beginning after Dec. 31, 2016, the individual remains a covered employee for all future years. (**Code Sec. 162(m)** , as amended by Act Sec. 13601)

Under a transition rule, the changes do not apply to any remuneration under a written binding contract which was in effect on Nov. 2, 2017 and which was not modified in any material respect after that date. Compensation paid pursuant to a plan qualifies for this exception if the right to participate in the plan is part of a written binding contract with the covered employee in effect on Nov. 2, 2017. The fact that a plan was in existence on Nov. 2, 2017 isn't by itself sufficient to qualify the plan for the exception. The exception ceases to apply to amounts paid after there has been a material modification to the terms of the contract. The exception does not apply to new contracts entered into or renewed after Nov. 2, 2017. A contract that is terminable or cancelable unconditionally at will by either party to the contract without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a contract is not treated as so terminable or cancellable if it can be terminated or cancelled only by terminating the employment relationship of the covered employee.

Deduction for local lobbying expenses eliminated

Under current law, businesses generally may deduct ordinary and necessary expenses paid or incurred in connection with carrying on any trade or business. Under pre-Act law, an exception to the general rule, however, disallows deductions for lobbying and political expenditures with respect to legislation and candidates for office, except for lobbying expenses with respect to legislation before local government bodies (including Indian tribal governments).

New law. For amounts paid or incurred on or after Dec. 22, 2017, the **Code Sec. 162(e)** deduction for lobbying expenses with respect to legislation before local government bodies (including Indian tribal governments) is eliminated. (**Code Sec. 162(e)** , as amended by Act Sec. 13308)

Exclusions from contributions to capital.

Under pre-Act law, **Code Sec. 118(a)** provides that the gross income of a corporation generally does not include any contribution to its capital. For purposes of this rule, **Code Sec. 118(b)** excludes from a contribution to the capital of a corporation any contribution in aid of construction or any other contribution from a customer or potential customer.

If property is acquired by a corporation as a contribution to capital and is not contributed by a shareholder as such, the adjusted basis of the property is zero under **Code Sec. 362(c)(1)** . If the contribution consists of money, **Code Sec. 362(c)(2)** provides that the corporation must first reduce the basis of any property acquired with the contributed money within the following 12-month period, and then reduce the basis of other property held by the corporation.

New law. Effective for contributions made after Dec. 22, 2017 (except as otherwise provided below), the

Act provides that the term "contributions to capital" does not include:

(1) any contribution in aid of construction or any other contribution as a customer or potential customer, and

(2) any contribution by any governmental entity or civic group (other than a contribution made by a shareholder as such). (**Code Sec. 118** , as amended by Act Sec. 13312)

Exception-prior approvals. The new provision does not apply to any contribution made after Dec. 22, 2017 by a governmental entity pursuant to a master development plan that had been approved prior to such date by a governmental entity.

Repeal of rollover of publicly traded securities gain into specialized SBICs.

Under pre-Act law, under Code Sec. 1044(a), a corporation or individual may elect to roll over tax-free any capital gain realized on the sale of publicly-traded securities to the extent of the taxpayer's cost of purchasing common stock or a partnership interest in a specialized small business investment company (SBIC) within 60 days of the sale. The amount of gain that an individual may elect to roll over under this provision for a taxable year is limited to (1) $50,000 or (2) $500,000 reduced by the gain previously excluded under this provision; for corporations, these limits are $250,000 and $1 million, respectively. (Code Sec. 1044(b))

New law. For sales after Dec. 31, 2017, this election is repealed. (Former Code Sec. 1044, as stricken by Act Sec. 13313(a))

Tax incentives for investment in qualified opportunity zones.

The Code occasionally has provided several incentives aimed at encouraging economic growth and investment in distressed communities by providing Federal tax benefits to businesses located within designated boundaries. An example of one of these incentives is a federal income tax credit that is allowed in the aggregate amount of 39% of a taxpayer's "qualified equity investment" in a qualified community development entity (CDE; an entity which is required to make investments in low-income communities).

New law. Effective on Dec. 22, 2017, the Act provides temporary deferral of inclusion in gross income for capital gains reinvested in a qualified opportunity fund and the permanent exclusion of capital gains from the sale or exchange of an investment in the qualified opportunity fund. (**Code Sec. 1400Z-2** , as added by Act Sec. 13823)

The Act allows for the designation of certain low-income community population census tracts as qualified opportunity zones. The designation of a population census tract as a qualified opportunity zone remains in effect for the period beginning on the date of the designation and ending at the close of the tenth calendar year beginning on or after the date of designation. (**Code Sec. 1400Z-1** , as added by Act

Sec.)

Temporary deferral applies for capital gains that are reinvested in a qualified opportunity fund-an investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (other than another qualified opportunity fund) that holds at least 90% of its assets in qualified opportunity zone property. Qualified opportunity zone property includes: any qualified opportunity zone stock, any qualified opportunity zone partnership interest, and any qualified opportunity zone business property. The maximum amount of the deferred gain equals the amount invested in a qualified opportunity fund by the taxpayer during the 180-day period beginning on the date of sale of the asset to which the deferral pertains. For amounts of the capital gains that exceed the maximum deferral amount, the capital gains are recognized and included in gross income.

Post-acquisition capital gains apply for a sale or exchange of an investment in opportunity zone funds that are held for at least 10 years. At the election of the taxpayer, the basis of such investment in the hands of the taxpayer is the fair market value of the investment at the date of such sale or exchange. Taxpayers continue to be allowed to recognize losses associated with investments in qualified

Orphan drug credit modified.

Under pre-Act law, a drug manufacturer could claim a credit equal to 50% of qualified clinical testing expenses.

New law. For amounts paid or incurred after Dec. 31, 2017, the **Code Sec. 45C** orphan drug credit is limited to 25% (instead of current law's 50%) of so much of qualified clinical testing expenses for the tax year. Taxpayers can elect a reduced credit in lieu of reducing otherwise allowable deductions in a manner similar to the research credit under **Code Sec. 280C** . (**Code Sec. 45C** , as amended by Act Sec. 13401)

Rehabilitation credit limited.

Under pre-Act law, a 20% credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure, i.e., any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district. A 10% credit is provided for qualified rehabilitation expenditures with respect to a qualified rehabilitated building, which generally means a building that was first placed in service before 1936. A building is treated as having met the substantial rehabilitation requirement under the 10% credit only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the tax year exceed the greater of (1) the adjusted basis of the building (and its structural components), or (2) $5,000.

Straight-line depreciation or the ADS must be used in order for rehabilitation expenditures to be treated as qualified for the credit.

New law. For amounts paid or incurred after Dec. 31, 2017, the 10% credit for qualified rehabilitation expenditures with respect to a pre-'36 building is repealed and a 20% credit is provided for qualified rehabilitation expenditures with respect to a certified historic structure which can be claimed ratably over a 5-year period beginning in the tax year in which a qualified rehabilitated structure is placed in service.

A transition rule provides that for qualified rehabilitation expenditures (for either a certified historic structure or a pre-'36 building), for any building owned or leased (as provided under pre-Act law) by the taxpayer at all times on and after Jan. 1, 2018, the 24-month period selected by the taxpayer (under Code Sec. 47(c)(1)(C)(i)), or the 60-month period selected by the taxpayer under the rule for phased rehabilitation (Code Sec. 47(c)(1)(C)(ii)), is to begin no later than the end of the 180-day period beginning on Dec. 22, 2017, and apply to such expenditures paid or incurred after the end of the tax year in which such 24- or 60-month period ends. (**Code Sec. 47** , as amended by Act Sec. 13402)

New credit for employer-paid family and medical leave.

Under pre-Act law, no credit is provided to employers for compensation paid to employees while on leave.

New law. For wages paid in tax years beginning after Dec. 31, 2017, but not beginning after Dec. 31, 2019, the Act allows businesses to claim a general business credit equal to 12.5% of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave (FMLA) if the rate of payment is 50% of the wages normally paid to an employee. The credit is increased by 0.25 percentage points (but not above 25%) for each percentage point by which the rate of payment exceeds 50%. To qualify for the credit, all qualifying full-time employees have to be given at least two weeks of annual paid family and medical leave (all less-than-full-time qualifying employees have to be given a commensurate amount of leave on a pro rata basis). (**Code Sec. 45S** , as added by Act Sec. 13403)

Taxable year of inclusion.

In general, for a cash basis taxpayer, an amount is included in income when actually or constructively received. For an accrual basis taxpayer, an amount is included in income when all the events have occurred that fix the right to receive such income and the amount thereof can be determined with reasonable accuracy (i.e., when the "all events test" is met), unless an exception permits deferral or exclusion. A number of exceptions that exist to permit deferral of income relate to advance payments. An advance payment is when a taxpayer receives payment before the taxpayer provides goods or services to its customer. The exceptions often allow tax deferral to mirror financial accounting deferral (e.g., income is recognized as the goods are provided or the services are performed).

New law. Generally for tax years beginning after Dec. 31, 2017, a taxpayer is required to recognize income no later than the tax year in which such income is taken into account as income on an applicable

financial statement (AFS) or another financial statement under rules specified by IRS (subject to an exception for long-term contract income under **Code Sec. 460**).

The Act also codifies the current deferral method of accounting for advance payments for goods and services provided by **Rev Proc 2004-34** to allow taxpayers to defer the inclusion of income associated with certain advance payments to the end of the tax year following the tax year of receipt if such income also is deferred for financial statement purposes. In addition, it directs taxpayers to apply the revenue recognition rules under Code Sec. 452 before applying the original issue discount (OID) rules under **Code Sec. 1272** . (**Code Sec. 451** , as amended by Act Sec. 13221)

In the case of any taxpayer required by this provision to change its accounting method for its first tax year beginning after Dec. 31, 2017, such change will be treated as initiated by the taxpayer and made with IRS's consent.

Under a special effective date provision, the AFS conformity rule applies for OID for tax years beginning after Dec. 31, 2018, and the adjustment period is six years.

Cash method of accounting.

Under pre-Act law, a corporation, or a partnership with a corporate partner, may generally only use the cash method of accounting if, for all earlier tax years beginning after Dec. 31, '85, the corporation or partnership met a gross receipts test-i.e., the average annual gross receipts the entity for the three-tax-year period ending with the earlier tax year does not exceed $5 million. Under current law, farm corporations and farm partnerships with a corporate partner may only use the cash method of accounting if their gross receipts do not exceed $1 million in any year. An exception allows certain family farm corporations to qualify if the corporation's gross receipts do not exceed $25 million. Qualified personal service corporations are allowed to use the cash method without regard to whether they meet the gross receipts test.

New law. For tax years beginning after Dec. 31, 2017, the cash method may be used by taxpayers (other than tax shelters) that satisfy a $25 million gross receipts test, regardless of whether the purchase, production, or sale of merchandise is an income-producing factor. Under the gross receipts test, taxpayers with annual average gross receipts that do not exceed $25 million (indexed for inflation for tax years beginning after Dec. 31, 2018) for the three prior tax years are allowed to use the cash method.

The exceptions from the required use of the accrual method for qualified personal service corporations and taxpayers other than C corporations are retained. Accordingly, qualified personal service corporations, partnerships without C corporation partners, S corporations, and other pass-through entities are allowed to use the cash method without regard to whether they meet the $25 million gross receipts test, so long as the use of the method clearly reflects income. (**Code Sec. 448** , as amend by Act Sec. 13102)

Use of this provision results in a change in the taxpayer's accounting method for purposes of **Code Sec. 481** .

Accounting for inventories.

Under pre-Act law, businesses that are required to use an inventory method must generally use the accrual accounting method. However, the cash method can be used for certain small businesses that meet a gross receipt test with average gross receipts of not more than $1 million ($10 million businesses in certain industries). These business account for inventory as non-incidental materials and supplies.

New law. For tax years beginning after Dec. 31, 2017, taxpayers that meet the $25 million gross receipts test are not required to account for inventories under **Code Sec. 471** , but rather may use an accounting method for inventories that either (1) treats inventories as non-incidental materials and supplies, or (2) conforms to the taxpayer's financial accounting treatment of inventories.. (**Code Sec. 471** , as amended by Act Sec. 13102)

Use of this provisions results is a change in the taxpayer's accounting method for purposes of **Code Sec. 481** .

Capitalization and inclusion of certain expenses in inventory costs.

The uniform capitalization (UNICAP) rules generally require certain direct and indirect costs associated with real or tangible personal property manufactured by a business to be included in either inventory or capitalized into the basis of such property. However, under pre-Act law, a business with average annual gross receipts of $10 million or less in the preceding three years is not subject to the UNICAP rules for personal property acquired for resale. The exemption does not apply to real property (e.g., buildings) or personal property that is manufactured by the business.

New law. For tax years beginning after Dec. 31, 2017, any producer or re-seller that meets the $25 million gross receipts test is exempted from the application of **Code Sec. 263A** . The exemptions from the UNICAP rules that are not based on a taxpayer's gross receipts are retained. (**Code Sec. 263A(b)** , as amended by Act Sec. 13102)

Use of this provision results is a change in the taxpayer's accounting method for purposes of **Code Sec. 481** .

Accounting for long-term contracts.

Under pre-Act law, an exception from the requirement to use the percentage-of-completion method (PCM) for long-term contracts was provided for construction companies with average annual gross receipts of $10 million or less in the preceding three years (i.e., they are allowed to instead deduct costs associated with construction when they are paid and recognize income when the building is completed).

New law. For contracts entered into after Dec. 31, 2017 in tax years ending after that date, the exception for small construction contracts from the requirement to use the PCM is expanded to apply to contracts for the construction or improvement of real property if the contract: (1) is expected (at the time such contract is entered into) to be completed within two years of commencement of the contract and (2) is performed by a taxpayer that (for the tax year in which the contract was entered into) meets the $25 million gross receipts test. (**Code Sec. 460(e)** , as amended by Act Sec. 13102)

Use of this PCM exception for small construction contracts is applied on a cutoff basis for all similarly classified contracts (so there is no adjustment under **Code Sec. 481(a)** for contracts entered into before Jan. 1, 2018).

New deduction for pass-through income.

Under pre-Act law, the net income of these pass-through businesses- sole proprietorships, partnerships, limited liability companies (LLCs), and S corporations-was not subject to an entity-level tax and was instead reported by the owners or shareholders on their individual income tax returns. Thus, the income was effectively subject to individual income tax rates.

New law. Generally for tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the Act adds a new section, **Code Sec. 199A** , "Qualified Business Income," under which a non-corporate taxpayer, including a trust or estate, who has qualified business income (QBI) from a partnership, S corporation, or sole proprietorship is allowed to deduct:

> *(1)* the *lesser* of: (a) the "combined qualified business income amount" of the taxpayer, or (b) 20% of the excess, if any, of the taxable income of the taxpayer for the tax year over the sum of net capital gain and the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year; *plus*
>
> (2) the *lesser* of: (i) 20% of the aggregate amount of the qualified cooperative dividends of the taxpayer for the tax year, or (ii) taxable income (reduced by the net capital gain) of the taxpayer for the tax year. (**Code Sec. 199A(a)** , as added by Act Sec. 11011)

The "combined qualified business income amount" means, for any tax year, an amount equal to: (i) the deductible amount for each qualified trade or business of the taxpayer (defined as 20% of the taxpayer's QBI subject to the W-2 wage limit; see below); *plus* (ii) 20% of the aggregate amount of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership income of the taxpayer for the tax year. (**Code Sec. 199A(b)**)

QBI is generally defined as the net amount of "qualified items of income, gain, deduction, and loss" relating to any qualified trade or business of the taxpayer. (**Code Sec. 199A(c)(1)** , as added by Act Sec. 11011) For this purpose, qualified items of income, gain, deduction, and loss are items of income, gain, deduction, and loss to the extent these items are effectively connected with the conduct of a trade or business within the U.S. under **Code Sec. 864(c)** and included or allowed in determining taxable income for the year. If the net amount of qualified income, gain, deduction, and loss relating to qualified

trade or businesses of the taxpayer for any tax year is less than zero, the amount is treated as a loss from a qualified trade or business in the succeeding tax year. (**Code Sec. 199A(c)(2)** , as added by Act Sec. 11011) QBI does *not* include: certain investment items; reasonable compensation paid to the taxpayer by any qualified trade or business for services rendered with respect to the trade or business; any guaranteed payment to a partner for services to the business under **Code Sec. 707(c)** ; or a payment under **Code Sec. 707(a)** to a partner for services rendered with respect to the trade or business.

The 20% deduction is not allowed in computing adjusted gross income (AGI), but rather is allowed as a deduction reducing *taxable* income. (**Code Sec. 62(a)** , as added by Act Sec. 11011(b))

Limitations. For pass-through entities, other than sole proprietorships, the deduction cannot exceed the greater of:

(1) 50% of the W-2 wages with respect to the qualified trade or business ("W-2 wage limit"), or
(2) the sum of 25% of the W-2 wages paid with respect to the qualified trade or business *plus* 2.5% of the unadjusted basis, immediately after acquisition, of all "qualified property." Qualified property is defined in **Code Sec. 199A(b)(6)** as meaning tangible, depreciable property which is held by and available for use in the qualified trade or business at the close of the tax year, which is used at any point during the tax year in the production of qualified business income, and the depreciable period for which has not ended before the close of the tax year.

For a partnership or S corporation, each partner or shareholder is treated as having W-2 wages for the tax year in an amount equal to his or her allocable share of the W-2 wages of the entity for the tax year. A partner's or shareholder's allocable share of W-2 wages is determined in the same way as the partner's or shareholder's allocable share of wage expenses. For an S corporation, an allocable share is the shareholder's pro rata share of an item. However, the W-2 wage limit begins phasing out in the case of a taxpayer with taxable income exceeding $315,000 for married individuals filing jointly ($157,500 for other individuals). The application of the W-2 wage limit is phased in for individuals with taxable income exceeding these thresholds, over the next $100,000 of taxable income for married individuals filing jointly ($50,000 for other individuals). (**Code Sec. 199A(b)(3)** , as added by Act Sec. 1101)

Thresholds and exclusions. The deduction does not apply to specified service businesses (i.e., trades or businesses described in **Code Sec. 1202(e)(3)(A)** , but excluding engineering and architecture; and trades or businesses that involve the performance of services that consist of investment-type activities). However the service business limitation begins phasing out in the case of a taxpayer whose taxable income exceeds $315,000 for married individuals filing jointly ($157,500 for other individuals), both indexed for inflation after 2018. The benefit of the deduction for service businesses is phased out over the next $100,000 of taxable income for joint filers ($50,000 for other individuals). (**Code Sec. 199A(d)**) The deduction also does not apply to the trade or business of being an employee.

The new deduction for pass-through income is also available to specified agricultural or horticultural cooperatives, in an amount equal to the lesser of (i) 20% of the co-op's taxable income for the tax year,

or (ii) the greater of (a) 50% of the W-2 wages of the co-op with respect to its trade or business, or (b) or the sum of 25% of the W-2 wages of the cooperative with respect to its trade or business plus 2.5% of the unadjusted basis immediately after acquisition of qualified property of the cooperative. (**Code Sec. 199A(g)** , as added by Act Sec. 11012)

Repeal of partnership technical termination.

Under a "technical termination" under Code Sec. 708(b)(1)(B), a partnership is considered as terminated if, within any 12-month period, there is a sale or exchange of 50% or more of the total interest in partnership capital and profits. A technical termination gives rise to a deemed contribution of all the partnership's assets and liabilities to a new partnership in exchange for an interest in the new partnership, followed by a deemed distribution of interests in the new partnership to the purchasing partners and the other remaining partners. As a result of a technical termination, some of the tax attributes of the old partnership terminate; the partnership's tax year closes; partnership-level elections generally cease to apply; and the partnership depreciation recovery periods restart.

New Law. For partnership tax years beginning after Dec. 31, 2017, the Code Sec. 708(b)(1)(B) rule providing for the technical termination of a partnership is repealed. The repeal doesn't change the pre-Act law rule of Code Sec. 708(b)(1)(A) that a partnership is considered as terminated if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership. (**Code Sec. 708(b)** , as amended by Act Sec. 13504)

Look-through rule applied to gain on sale of partnership interest.

Gain or loss from the sale or exchange of a partnership interest generally is treated as gain or loss from the sale or exchange of a capital asset. However, the amount of money and the fair market value of property received in the exchange that represent the partner's share of certain ordinary income-producing assets of the partnership give rise to ordinary income rather than capital gain.

A foreign person that is engaged in a trade or business in the U.S. is taxed on income that is "effectively connected" with the conduct of that trade or business (i.e., effectively connected gain or loss). Partners in a partnership are treated as engaged in the conduct of a trade or business within the U.S. if the partnership is so engaged.

In a Revenue Ruling, in determining the source of gain or loss from the sale or exchange of an interest in a foreign partnership, IRS applied an asset-use test and business activities test at the partnership level to determine the extent to which income derived from the sale or exchange is effectively connected with that U.S. business. However, a Tax Court case has instead held that, generally, gain or loss on sale or exchange by a foreign person of an interest in a partnership that is engaged in a U.S. trade or business is foreign-source.

New law. For sales and exchanges on or after Nov. 27, 2017, gain or loss from the sale or exchange of

a partnership interest is effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. Any gain or loss from the hypothetical asset sale by the partnership must be allocated to interests in the partnership in the same manner as non-separately stated income and loss. (**Code Sec. 864(c)** , as amended by Act Sec. 13501)

For sales, exchanges, and dispositions after Dec. 31, 2017, the transferee of a partnership interest must withhold 10% of the amount realized on the sale or exchange of a partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation. (**Code Sec. 1446(f)** , as amended by Act Sec. 13501)

Partnership "substantial built-in loss" modified.

In general, a partnership does not adjust the basis of partnership property following the transfer of a partnership interest unless either the partnership has made a one-time election under **Code Sec. 754** to make basis adjustments, or the partnership has a substantial built-in loss immediately after the transfer. If an election is in effect, or if the partnership has a substantial built-in loss immediately after the transfer, adjustments are made with respect to the transferee partner. These adjustments are to account for the difference between the transferee partner's proportionate share of the adjusted basis of the partnership property and the transferee's basis in his or her partnership interest.

Under pre-Act law, a substantial built-in loss exists if the partnership's adjusted basis in its property exceeds by more than $250,000 the fair market value of the partnership property. Certain securitization partnerships and electing investment partnerships are not treated as having a substantial built-in loss in certain instances and thus are not required to make basis adjustments to partnership property. For electing investment partnerships, in lieu of the partnership basis adjustments, a partner-level loss limitation rule applies.

New law. For transfers of partnership interests after Dec. 31, 2017, the definition of a substantial built-in loss is modified for purposes of **Code Sec. 743(d)** , affecting transfers of partnership interests. In addition to the present-law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of $250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest. (**Code Sec. 743(d)** , as amended by Act Sec. 13502)

Charitable contributions & foreign taxes in partner's share of loss.

Under pre-Act law, a partner was allowed to deduct his or her distributive share of partnership loss only to the extent of the adjusted basis of the partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of the loss over basis was allowed as a deduction at the end of the partnership year in which the excess was repaid to the partnership. IRS has taken the

position in a private letter ruling that the **Code Sec. 704(d)** loss limitation on partner losses does not apply to limit the partner's deduction for its share of the partnership's charitable contributions. While the regs relating to the **Code Sec. 704(d)** loss limitation do not mention the foreign tax credit, a taxpayer may choose the foreign tax credit in lieu of deducting foreign taxes.

New law. For partnership tax years beginning after Dec. 31, 2017, in determining the amount of a partner's loss, the partner's distributive shares under **Code Sec. 702(a)** of partnership charitable contributions and taxes paid or accrued to foreign countries or U.S. possessions are taken into account. However, in the case of a charitable contribution of property with a fair market value that exceeds its adjusted basis, the partner's distributive share of the excess is not taken into account. (**Code Sec. 704(d)** , as amended by Act Sec. 13503)

Treatment of S corporation converted to C corporation.

Under present law, in the case of an S corporation that converts to a C corporation, distributions of cash by the C corporation to its shareholders during the post-termination transition period (PTTP), to the extent of the amount in the accumulated adjustment account),are tax-free to the shareholders and reduce the adjusted basis of the stock.

The PTTP is:

(1) the period beginning on the day after the last day of the corporation's last tax year as an S corporation and ending on the later of (a) the day that is one year after that day, or (b) the due date for filing the return for the corporation's last tax year as an S corporation (including extensions);
(2) the 120-day period beginning on the date of any determination (as defined in **Reg. § 1.1377-2(c)**) with respect to an audit of the taxpayer that follows the termination of the corporation's election and that adjusts a Subchapter S income, loss or deduction item that arises during the S corporation period (i.e., the most recent continuous period during which the corporation was an S corporation); and
(3) the 120-day period beginning on the date of a determination that the corporation's S election had terminated for an earlier year.

New law. Effective Dec. 22, 2017, any **Code Sec. 481(a)** adjustment of an eligible terminated S corporation attributable to the revocation of its S corporation election (i.e., a change from the cash method to an accrual method) is taken into account ratably during 6-tax year period beginning with the year of change. An eligible terminated S corporation is any C corporation which (1) is an S corporation the day before Dec. 22, 2017; (2) during the 2-year period beginning on Dec. 22, 2017 revokes its S corporation election; and (3) all of the owners of which on the date the S corporation election is revoked are the same owners (and in identical proportions) as the owners on Dec. 22, 2017.

In the case of a distribution of money by an eligible terminated S corporation, the accumulated adjustments account shall be allocated to such distribution, and the distribution shall be chargeable to accumulated earnings and profits, in the same ratio as the amount of the accumulated adjustments

account bears to the amount the accumulated earnings and profits. (**Code Sec. 1371(f)** and **Code Sec. 481(d)** , as amended by Act Sec. 13543)

Excise tax on excess tax-exempt organization executive compensation.

Under pre-Act law, there were reasonableness requirements and a prohibition against private inurement with respect to executive compensation for tax-exempt entities, but no excise tax tied to the amount of compensation paid.

New law. For tax years beginning after Dec. 31, 2017, a tax-exempt organization is subject to a tax at the corporate tax rate (21% under the Act) on the sum of: (1) the remuneration (other than an excess parachute payment) in excess of $1 million paid to a covered employee by an applicable tax-exempt organization for a tax year; and (2) any excess parachute payment (as newly defined) paid by the applicable tax-exempt organization to a covered employee. A covered employee is an employee (including any former employee) of an applicable tax-exempt organization if the employee is one of the five highest compensated employees of the organization for the tax year or was a covered employee of the organization (or a predecessor) for any preceding tax year beginning after Dec. 31, 2016. Remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration. (**Code Sec. 4960** , as amended by Act Sec. 13602)

Excise tax based on investment income of private colleges and universities.

Private colleges and universities generally are treated as public charities rather than private foundations and thus are not subject to the private foundation excise tax on net investment income.

New law. For tax years beginning after Dec. 31, 2017, an excise tax equal to 1.4% is imposed on net investment income of certain private colleges and universities. The tax applies only to private colleges and universities with at least 500 students, more than 50% of the students of which are located in the U.S., and with assets (other than those used directly in carrying out the institution's exempt purpose) of at least $500,000 per student. The number of students is based on the daily average number of full-time equivalent students (full-time students and part-time students on an equivalent basis). Net investment income is gross investment income minus expenses to produce the investment (but disallowing the use of accelerated depreciation methods or percentage depletion). (**Code Sec. 4968** , as amended by Act Sec. 13701)

UBTI separately computed for each trade or business activity.

A tax-exempt organization determines its unrelated business taxable income (UBTI) by subtracting, from its gross unrelated business income, deductions directly connected with the unrelated trade or business. Under regs, in determining UBTI, an organization that operates multiple unrelated trades or businesses

aggregates income from all such activities and subtracts from the aggregate gross income the aggregate of deductions. As a result, an organization may use a deduction from one unrelated trade or business to offset income from another, thereby reducing total unrelated business taxable income

New law. For tax years beginning after Dec. 31, 2017 (subject to an exception for net operating losses (NOLs) arising in a tax year beginning before Jan. 1, 2018, that are carried forward), losses from one unrelated trade or business may not be used to offset income derived from another unrelated trade or business. Gains and losses have to be calculated and applied separately. (**Code Sec. 512(a)** , as amended by Act Sec. 13702)

Repeal of advance refunding bonds.

The exclusion for income for interest on State and local bonds applies to refunding bonds, but there are limits on advance refunding bonds. A refunding bond is defined as any bond used to pay principal, interest, or redemption price on a prior bond issue (the refunded bond). A current refunding occurs when the refunded bond is redeemed within 90 days of issuance of the refunding bonds. Conversely, a bond is classified as an advance refunding if it is issued more than 90 days before the redemption of the refunded bond. Proceeds of advance refunding bonds are generally invested in an escrow account and held until a future date when the refunded bond may be redeemed.

New law. For advance refunding bonds issued after Dec. 31, 2017, the exclusion from gross income for interest on a bond issued to advance refund another bond is repealed. (**Code Sec. 149(d)** , as amended by Act Sec. 13532)

Credit bonds repealed.

Tax-credit bonds provide tax credits to investors to replace a prescribed portion of the interest cost. The borrowing subsidy generally is measured by reference to the credit rate set by the Treasury Department. Current tax-credit bonds include qualified tax credit bonds, which have certain common general requirements, and include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds.

New law. For bonds issued after Dec. 31, 2017, the authority to issue tax-credit bonds and direct-pay bonds is prospectively repealed. (Code Sec. 54A, Code Sec. 54B, Code Sec. 54C, Code Sec. 54D , Code Sec. 54E,Code Sec. 54F and Code Sec. 6431, as amended by Act Sec. 13404)

Qualifying beneficiaries of an ESBT.

An electing small business trust (ESBT) may be a shareholder of an S corporation. Generally, the eligible beneficiaries of an ESBT include individuals, estates, and certain charitable organizations eligible to hold S corporation stock directly. Under pre-Act law, a nonresident alien individual may not be a

shareholder of an S corporation and may not be a potential current beneficiary of an ESBT.

New law. Effective on Jan. 1, 2018, the Act allows a nonresident alien individual to be a potential current beneficiary of an ESBT. (**Code Sec. 1361(c)** , as amended by Act Sec. 13541)

Charitable contribution deduction for ESBTs.

Under pre-Act law, the deduction for charitable contributions applicable to trusts, rather than the deduction applicable to individuals, applied to an ESBT. Generally, a trust is allowed a charitable contribution deduction for amounts of gross income, without limitation, which pursuant to the terms of the governing instrument are paid for a charitable purpose. No carryover of excess contributions is allowed. An individual is allowed a charitable contribution deduction limited to certain percentages of adjusted gross income, generally with a 5-year carryforward of amounts in excess of this limitation.

New law. For tax years beginning after Dec. 31, 2017, the Act provides that the charitable contribution deduction of an ESBT is not determined by the rules generally applicable to trusts but rather by the rules applicable to individuals. Thus, the percentage limitations and carryforward provisions applicable to individuals apply to charitable contributions made by the portion of an ESBT holding S corporation stock. (**Code Sec. 641(c)** , as amended by Act Sec. 13542)

Deduction for foreign-source portion of dividends.

Under pre-Act law, U.S. citizens, resident individuals, and domestic corporations generally are taxed on all income, whether earned in the U.S. or abroad (referred to as a "worldwide" system of taxation). Foreign income earned by a foreign subsidiary of a U.S. corporation generally is not subject to U.S. tax until the income is distributed as a dividend to the U.S. corporation.

New law. For tax years of foreign corporations that begin after Dec. 31, 2017, and for tax years of U.S. shareholders in which or with which such tax years of foreign corporations end, the current-law system of taxing U.S. corporations on the foreign earnings of their foreign subsidiaries when these earnings are distributed is replaced. The Act provides for an exemption (referred to here as a deduction for dividends received, or DRD) for certain foreign income. This exemption is provided for by means of a 100% deduction for the "foreign-source portion" of dividends received from specified 10% owned foreign corporations (generally, any foreign corporation other than a passive foreign investment company that is not also a controlled foreign corporation (CFC), with respect to which any domestic corporation is a U.S. shareholder) by domestic corporations that are U.S. shareholders of those foreign corporations within the meaning of **Code Sec. 951(b)** . The foreign-source portion of a dividend from a specified 10%-owned foreign corporation is that amount which bears the ratio to the dividend as the undistributed foreign earnings of the specified 10%-owned foreign corporation bears to the total undistributed earnings of such foreign corporation. (**Code Sec. 245A(c)** , as added by Act Sec. 14101)

No foreign tax credit or deduction is allowed for any taxes paid or accrued with respect to a dividend that

qualifies for the DRD. There is also a provision in the Act that disallows the DRD if the domestic corporation held the stock in the foreign corporation for 180 days or less during the 361-day period beginning on the date that is 180 days before the date on which the share becomes ex-dividend with respect to the dividend.

The provision eliminates the "lock-out" effect under pre-Act law, which encourages U.S. companies to avoid bringing their foreign earnings back into the U.S. (**Code Sec. 245A** , as added by Act Sec. 14101)

The DRD is available only to C corporations that are not regulated investment companies (RICs) or real estate investment trusts (REITs).

Sales or transfers involving specified 10%-owned foreign corporations.

Under pre-Act law, when a U.S. corporation sells or exchanges stock in a foreign subsidiary, the gain may be considered a dividend to the extent the foreign corporation has earnings and profits (E&P) that have not already been subject to U.S. tax. If foreign business is conducted through a branch of a U.S. corporation rather than a foreign subsidiary, the corporation owes U.S. taxes on the foreign earnings and deducts losses as though they accrued directly to the U.S. corporation.

New law. In the case of the sale or exchange after Dec. 31, 2017, by a domestic corporation of stock in a foreign corporation held for one year or more, any amount received by the domestic corporation which is treated as a dividend for purposes of **Code Sec. 1248** , is treated as a dividend for purposes of applying **Code Sec. 245A** (i.e., the provision described at **¶ 1701**). (**Code Sec. 1248(j)** , as amended by Act Sec. 14102(a))

For dividends received in tax years that begin after Dec. 31 2017, a domestic corporate shareholder's adjusted basis in the stock of a "specified 10-percent owned foreign corporation" is reduced by an amount equal to the portion of any dividend received with respect to such stock from such foreign corporation that was not taxed by reason of a dividends received deduction allowable under **Code Sec. 245A** in any tax year of such domestic corporation, but only for the purpose of determining losses on sales and exchanges of the foreign corporation's stock. (**Code Sec. 961(d)** , as amended by Act Sec. 14102(b))

If, after Dec. 31 2017, a U.S. corporation transfers substantially all of the assets of a foreign branch to a foreign subsidiary corporation, the "transferred loss" amount (i.e., the losses incurred by the foreign branch over certain taxable income earned by the foreign branch) must generally be included in the U.S. corporation's gross income. (**Code Sec. 91** , as added by Act Sec. 14102(d)(1))

Treatment of deferred foreign income upon transition to new participation exemption system-deemed repatriation.

Under pre-Act law, U.S. citizens, resident individuals, and domestic corporations generally are taxed on all income, whether earned in the U.S. or abroad. Foreign income earned by a foreign subsidiary of a

U.S. corporation generally is not subject to U.S. tax until the income is distributed as a dividend to the U.S. corporation.

New law. Under the Act, U.S. shareholders owning at least 10% of a foreign subsidiary generally must include in income, for the subsidiary's last tax year beginning before 2018, the shareholder's pro rata share of the accumulated post-'86 historical E&P of the foreign subsidiary as of the "measurement date" to the extent such E&P has not been previously subject to U.S. tax. The "measurement date" is Nov. 2, 2017, or Dec. 31, 2017, whichever date produces a greater result.

The portion of the E&P comprising cash or cash equivalents is taxed at a reduced rate of 15.5%, while any remaining E&P is taxed at a reduced rate of 8%.

At the election of the U.S. shareholder, the tax liability is payable over a period of up to eight years The payments for each of the first five years equals 8% of the net tax liability. The amount of the sixth installment is 15% of the net tax liability, increasing to 20% for the seventh installment and the remaining balance of 25% in the eighth year.

The Act provides a special rule for S corporations. Their shareholders are allowed to elect to maintain deferral on such foreign income until the S corporation changes its status, sells substantially all its assets, ceases to conduct business, or the electing shareholder transfers its S corporation stock.

The Act excludes the post-'86 historical E&P from the REIT gross income tests. In addition, REITs are permitted to elect to meet their distribution requirement to REIT shareholders with respect to the accumulated deferred foreign income over an 8-year period under the same installment percentages as apply to U.S. shareholders who elect to pay the net tax liability resulting from the mandatory inclusion of pre-effective-date undistributed CFC earnings in eight installments. (**Code Sec. 965** , as amended by Act Sec. 14103)

Current year inclusion of global intangible low-taxed income.

Under pre-Act law, a U.S. person generally was not subject to U.S. tax on foreign income earned by a foreign corporation in which it owns shares until that income was distributed to the U.S. person as a dividend. Several anti-deferral regimes modified this general rule, including the Subpart F rules.

New law. For tax years of foreign corporations that begin after Dec. 31, 2017, and for tax years of U.S. shareholders in which or with which such tax years of foreign corporations end, a U.S. shareholder of any CFC has to include in gross income for a tax year its global intangible low-taxed income (GILTI) in a manner generally similar to inclusions of subpart F income. GILTI means, with respect to any U.S. shareholder for the shareholder's tax year, the excess (if any) of the shareholder's "net CFC tested income" over the shareholder's net deemed tangible income return. Net CFC tested income means, with respect to any U.S. shareholder, the excess of the aggregate of its pro rata share of the tested income of each CFC with respect to which it is a U.S. shareholder over the aggregate of its pro rata share of the tested loss of each CFC with respect to which it is a U.S. shareholder. The shareholder's net deemed tangible income return is an amount equal to the excess of (i) 10% of the aggregate of the shareholder's

pro rata share of the qualified business asset investment (QBAI) of each CFC with respect to which it is a U.S. shareholder; over (ii) the amount of interest expense taken into account under **Code Sec. 951A(c)(2)(A)(ii)** in determining the shareholder's net CFC tested income for the tax year to the extent the interest income attributable to the expense is not taken into account in determining the shareholder's net CFC tested income.

GILTI does not include effectively connected income, subpart F income, foreign oil and gas income, or certain related party payments. GILTI is taxed at a rate of 10%.

Foreign tax credits are allowed for foreign income taxes paid with respect to GILTI but are limited to 80% of the foreign income taxes paid and are not allowed to be carried back or forward to other tax years. (**Code Sec. 951A** , as added by Act Sec. 14201)

Deduction for foreign-derived intangible income and GILTI.

Under pre-Act law, the U.S. employed a worldwide tax system, under which U.S. persons were generally taxed on all income, whether derived in the U.S. or abroad. Foreign income earned by U.S. corporate shareholders through foreign corporations was generally subject to U.S. tax only when the income was distributed as a dividend to the U.S. corporate shareholder.

New law. For tax years that begin after Dec. 31, 2017 and before Jan. 1, 2026, in the case of a C corporation that is not a RIC or a REIT, a deduction is allowed in an amount equal to the sum of: (i) 37.5% of the foreign-derived intangible income (FDII) of the domestic corporation for the tax year, plus (ii) 50% of the GILTI amount (if any) which is included in the gross income of the domestic corporation under **Code Sec. 951A** for the tax year. FDII of a domestic corporation is the amount which bears the same ratio to the corporation's deemed intangible income as its foreign-derived deduction eligible income bears to its deduction eligible income.

For tax years that begin after Dec. 31, 2025, the allowed deduction will decrease to (i) 21.875% of the FDII of the domestic corporation for the tax year, and (ii) 37.5% of the GILTI amount included in the gross income of the domestic corporation for the tax year. (**Code Sec. 250** , as added by Act Sec. 14202)

Repeal of foreign base company oil-related income rule.

Subpart F income includes foreign base company income (FBCI). Under pre-Act law, foreign base company oil related income was included in the Subpart F income of U.S. Shareholders as a category of FBCI.

New law. For tax years of foreign corporations that begin after Dec. 31, 2017 and for tax years of U.S. shareholders in which or with which such tax years of foreign subsidiaries end, the Act eliminates foreign base company oil related income as a category of FBCI. (**Code Sec. 954(a)** , as amended by Act Sec. 14211)

Repeal of rule taxing income when CFC decreases investments.

Prior to the '86 Tax Reform Act, foreign base company shipping income (FBCSI) that was reinvested in the shipping operations of a CFC (a qualified shipping investment) was not included in Subpart F income. The previously excluded income was then recaptured if and when it was subsequently withdrawn from the qualified shipping investment. Although the '86 Tax Reform Act repealed the exclusion for qualified shipping investments, the recapture provision was retained.

New law. For tax years of foreign corporations that begin after Dec. 31, 2017, and for tax years of U.S. shareholders within which or with which such tax years of foreign corporations end, the Act repeals Code Sec. 955. As a result, a U.S. shareholder in a CFC that invested its previously excluded subpart F income in qualified foreign base company shipping operations is no longer required to include in income a pro rata share of the previously excluded subpart F income when the CFC decreases such investments. (Code Sec. 955, as repealed by Act Sec. 14212)

Modification of CFC status attribution rules.

Under pre-Act law, a U.S. parent of a controlled foreign corporation (CFC) is subject to current U.S. tax on its pro rata share of the CFC's subpart F income. A foreign subsidiary is a CFC if it is more than 50% owned by one or more U.S. persons, each of which owns at least 10% of the foreign subsidiary. Constructive ownership rules apply in determining ownership for this purpose.

New law. For the last tax year of a foreign corporation that begins before Jan. 1, 2018, for all subsequent tax years of a foreign corporation, and for the tax years of a U.S. shareholder with or with which such tax years end, the Act amends the constructive ownership rules so that certain stock of a foreign corporation owned by a foreign person is attributed to a related U.S. person for purposes of determining whether the related U.S. person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a CFC. (**Code Sec. 958** , as amended by Act Sec. 14213)

Expansion of definition of "U.S. Shareholder."

Under pre-Act law, a U.S. shareholder for CFC purposes is a U.S. person who owns 10% or more of the total combined *voting power* of all classes of stock entitled to vote of the foreign corporation. (**Code Sec. 951(b)**)

New law. For the last tax year of foreign corporations beginning before Jan. 1, 2018, and for tax years of U.S. shareholders with or within which such tax years of foreign corporations end, the Act expands the definition of "U.S. shareholder" to also include any U.S. person who owns 10% or more of the *total value* of shares of all classes of stock of a foreign corporation. (**Code Sec. 951(b)** , as amended by Act Sec. 14214)

Elimination of 30-day minimum holding period for CFC.

Under pre-Act law, a U.S. parent of a CFC is subject to current U.S. tax on its pro rata share of the CFC's subpart F income, but only if the U.S. parent owns stock in the foreign subsidiary for an uninterrupted period of 30 days or more during the year.

New law. For tax years of foreign corporations that begin after Dec. 31, 2017, and for tax years of U.S. shareholders in which or with which such tax years of foreign subsidiaries end, a U.S. parent is subject to current U.S. tax on the CFC's subpart F income even if the U.S. parent does not own stock in the CFC for an uninterrupted period of 30 days or more during the year. (**Code Sec. 951(a)(1)** , as amended by Act Sec. 14215)

Base erosion and anti-abuse tax.

Under pre-Act law, a multinational corporation resident in the U.S. was subject to U.S. tax on its worldwide income, and active foreign earnings were subject to U.S. tax only when they were repatriated to a domestic parent. This system created incentives for multinational companies to shift income away from the U.S. to lower-tax jurisdictions and to defer the repatriation of active foreign source earnings. The term "base erosion" generally refers to tax reduction strategies employed by multinational corporations that exploit differences between the tax laws of different countries in order to minimize or eliminate the amount of corporate tax paid. One technique used by U.S. corporations to erode the U.S. tax base is to reduce it by, for example, putting in place an arrangement that results in cross-border payments of deductible royalties, interest, or other fees to a foreign parent, subsidiary, or affiliate. While a withholding tax applies to many such payments under **Code Sec. 1441** or **Code Sec. 1442** , treaties frequently reduce the withholding tax and, at times, eliminate it altogether. If a withholding tax does not apply, deductible payments of interest, royalties, and management fees reduce the U.S. tax base. Under pre-Act law, there was no minimum tax that had to be paid on certain deductible payments to a foreign affiliate.

New law. With respect to "base erosion payments" paid or accrued in tax years that begin after Dec. 31, 2017, "applicable taxpayers" are required to pay a tax, the "base erosion anti-abuse tax" (BEAT), equal to the "base erosion minimum tax amount" for the tax year. Applicable taxpayers are corporations (other than RICs, REITs, and S corporations) with average annual gross receipts of at least $500 million for the three-tax-year period ending with the preceding year and a "base erosion percentage" of at least 3% (2% for certain banks and securities dealers). The base erosion percentage for any tax year is equal to the aggregate amount of base erosion tax benefits of the taxpayer for the tax year divided by the aggregate amount of specified deductions allowable to the taxpayer for the tax year. A base erosion payment, in turn, generally means any amount paid or accrued by a taxpayer to a foreign person that is a related party of the taxpayer and with respect to which a deduction is allowable, including any amount paid or accrued by the taxpayer to the related party in connection with the acquisition by the taxpayer from the related party of property of a character subject to the allowance of depreciation (or amortization

in lieu of depreciation). Except as provided at "Members of affiliated...," below, the base erosion minimum tax amount means, with respect to an applicable taxpayer, the excess of 10% of the taxpayer's "modified taxable income" (5% in tax years beginning in calendar year 2018) over its regular tax liability (as defined in **Code Sec. 26(b)**) reduced (although not below zero) by any excess of the credits allowed against the taxpayer's regular tax liability over the sum of (1) the credit allowed under **Code Sec. 38** (general business credit) for the tax year properly allocable to the research credit determined under **Code Sec. 41(a)** plus (2) the portion of its applicable regular tax liability credits ("the applicable Section 38 credits") not in excess of 80% of the lesser of (a) the applicable Section 38 credits amount or (b) the base erosion minimum tax amount determined without this adjustment. The "applicable Section 38 credits" are the credit allowed under **Code Sec. 38** allocable to the low-income housing credit under **Code Sec. 42(a)** , the renewable electricity production credit under **Code Sec. 45(a)** , and the investment credit under **Code Sec. 46** but only to the extent properly allocable to the energy credit under **Code Sec. 48** .

Except as provided at "Members of affiliated...," below, the tax is 12.5% of the modified taxable income of the taxpayer for the tax year over an amount equal to the regular tax liability of the taxpayer for the tax year, for tax years beginning after Dec. 31, 2025. That is, the regular tax liability is reduced by an amount equal to all credits allowed under Chapter 1 (including the general business credit), for tax years that begin after Dec. 31, 2025.

Members of affiliated groups that include a bank or securities dealer will pay the BEAT tax at an 11% rate (6% for tax years beginning in 2018), increasing to 13.5% after 2025.

Modified taxable income means the taxable income of the taxpayer computed under Chapter 1 for the tax year, determined without regard to any base erosion tax benefit with respect to any base erosion payment, or the base erosion percentage of any net operating loss deduction allowed under **Code Sec. 172** for the tax year. A base erosion payment generally means any amount paid or accrued by a taxpayer to a foreign person that is a related party of the taxpayer and with respect to which a deduction is allowable, including any amount paid or accrued by the taxpayer to the related party in connection with the acquisition by the taxpayer from the related party of property of a character subject to the allowance of depreciation (or amortization in lieu of depreciation).

The Act excludes an amount paid or incurred for services if those services meet the requirements for the services cost method under **Code Sec. 482** (excluding the requirement that the services not contribute significantly to fundamental risks of business success or failure) and if such amount is the total services cost with no markup, for tax years that begin after Dec. 31, 2017.

There is also an exception for certain derivative payments made in the ordinary course of a trade or business. (**Code Sec. 59A** , as added by Act Sec. 14401)

Limitations on income shifting through intangible property transfers.

Under **Code Sec. 367(d)** , a U.S. person that transfers intangible property-as defined in **Code Sec.**

936(h)(3)(B) -to a foreign corporation in an otherwise nonrecognition transaction is generally treated as having sold the intangible property in exchange for payments contingent on the property's productivity, use, or disposition. In these cases, the U.S. transferor includes an amount in income each year, over the useful life of the property.

New law. For transfers in tax years that begin after Dec. 31, 2017, the Act addresses recurring definitional and methodological issues that have arisen in controversies in transfers of intangible property for purposes of **Code Sec. 367(d)** and **Code Sec. 482** , both of which use the statutory definition of "intangible property" in **Code Sec. 936(h)(3)(B)** .

The Act revises that definition and confirms IRS's authority to require certain valuation methods. It does not modify the basic approach of the existing transfer pricing rules with regard to income from intangible property. Under the Act, workforce in place, goodwill (both foreign and domestic), and going concern value are intangible property within the meaning of **Code Sec. 936(h)(3)(B)** , as is the residual category of "any similar item" the value of which is not attributable to tangible property or the services of an individual. (**Code Sec. 367(d)** , **Code Sec. 482** and **Code Sec. 936(h)(3)(B)** , as amended by Act Sec. 14221)

Denial of deduction for certain related party payments.

No deduction is allowed for losses from sales or exchanges of property (except in corporate liquidations), directly or indirectly, between certain related persons. Under pre-Act law, there was no explicit disallowance of a deduction for any disqualified related party amount paid or accrued under a hybrid transaction or by, or to, a hybrid entity.

New law. For tax years that begin after Dec. 31, 2017, the Act denies a deduction for any disqualified related party amount paid or accrued pursuant to a hybrid transaction or by, or to, a hybrid entity. A disqualified related party amount is any interest or royalty paid or accrued to a related party to the extent that: (1) there is no corresponding inclusion to the related party under the tax law of the country of which such related party is a resident for tax purposes, or (2) such related party is allowed a deduction with respect to such amount under the tax law of such country. In general, a hybrid transaction is one that involves payment of interest or royalties that are not treated as such by the country of residence of the foreign recipient. And, in general, a hybrid entity is an entity that is treated as fiscally transparent for federal income purposes but not so treated for purposes of the tax law of the foreign country, or vice versa. (**Code Sec. 267A** , as added by Act Sec. 14222)

Surrogate foreign corporation dividends aren't qualified.

Qualified dividend income is taxed at capital gain, rather than ordinary income, rates. Generally, qualified dividend income includes dividends received during the tax year from domestic corporations and qualified foreign corporations.

New law. For dividends paid in tax years that begin after Dec. 31, 2017, any dividend received by an individual shareholder from a corporation which is a surrogate foreign corporation as defined in **Code Sec. 7874(a)(2)(B)** (other than a foreign corporation which is treated as a domestic corporation under **Code Sec. 7874(b)**), and which first became a foreign surrogate corporation after Dec. 22, 2017, is not entitled to the lower rates on qualified dividends provided for in **Code Sec. 1(h)** . (**Code Sec. 1(h)** , as amended by Act Sec. 14223)

Repeal of indirect foreign tax credits; change to CFC shareholder deemed-paid credit.

Under pre-Act law, a U.S. corporation that owned at least 10% of the voting stock of a foreign corporation is allowed a deemed-paid credit for foreign income taxes paid by the foreign corporation that the U.S. corporation was treated as having paid when the income on which the foreign tax was paid was distributed to the shareholder as a dividend.

And, a 10% shareholder in a controlled foreign corporation (CFC) (a U.S. Shareholder) is allowed to take a deemed-paid credit for foreign taxes paid by the CFC on the portion of the CFC's earnings that the U.S. Shareholder is required to include in income under Subpart F.

New law. For tax years of foreign corporations that begin after Dec. 31, 2017 and for tax years of U.S. shareholders in which or with which such tax years of foreign subsidiaries end, no foreign tax credit or deduction is allowed for any taxes (including withholding taxes) paid or accrued with respect to any dividend to which the deduction for foreign-source portion of dividends described at **¶ 1701** applies. (Code Sec. 902, as repealed by Act Sec. 14301)

A foreign tax credit is allowed for any subpart F income that is included in the income of the U.S. shareholder on a current year basis. (**Code Sec. 960** , as amended by Act Sec. 14301)

Separate foreign tax credit limitation basket for foreign branch income.

The foreign tax credit limitation is calculated separately for certain categories (or "baskets") of income. Under pre-Act law, there were two such baskets: income was either passive category income or general category income.

New law. For tax years that begin after Dec. 31, 2017, foreign branch income must be allocated to a specific foreign tax credit basket. Foreign branch income is the business profits of a U.S. person which are attributable to one or more qualified business units in one or more foreign countries. (**Code Sec. 904(d)** , as amended by Act Sec. 14302)

Change in rule for sourcing income from sales of inventory

Under pre-Act law, in determining the source of income for foreign tax credit purposes, up to 50% of the

income from the sale of inventory property that is produced within the U.S. and sold outside the U.S. (or vice versa) may be treated as foreign-source income.

New law. For tax years that begin after Dec. 31, 2017, gains, profits, and income from the sale or exchange of inventory property produced partly in, and partly outside, the U.S. must be allocated and apportioned on the basis of the location of production with respect to the property. For example, income derived from the sale of inventory property to a foreign jurisdiction is sourced wholly within the U.S. if the property was produced entirely in the U.S., even if title passage occurred elsewhere. Likewise, income derived from inventory property sold in the U.S., but produced entirely in another country, is sourced in that country even if title passage occurs in the U.S. If the inventory property is produced partly in, and partly outside, the U.S., the income derived from its sale is sourced partly in the U.S. (**Code Sec. 863(b)** as amended by Act Sec. 14303)

Election with respect to foreign tax credit limitation.

Under pre-Act law, for purposes of the limitation on the foreign tax credit, if a taxpayer sustains an overall domestic loss for any tax year, then, for each succeeding year, an amount of U.S. source taxable income equal to the lesser of:

...the full amount of the loss to the extent not carried back to prior tax years; or

...50% of the taxpayer's U.S. source taxable income for that succeeding tax year,

is recharacterized as foreign source income.

New law. For any tax year of the taxpayer that begins after Dec. 31, 2017 and before Jan. 1, 2028, the taxpayer may, with respect to pre-2018 unused overall domestic losses, elect to substitute, for the above 50% amount, a percentage greater than 50% but not greater than 100%. (**Code Sec. 904(g)(5)** , as amended by Act Sec. 14304)

Restriction on insurance business exception to PFIC rules.

Under pre-Act law, U.S. shareholders of a passive foreign investment company (PFIC) are taxed currently on the PFIC's earnings. An exception to this rule applies to certain income derived in the active conduct of an insurance business.

New law. For tax years that begin after Dec. 31, 2017, the Act replaces the test based on whether a corporation is predominantly engaged in an insurance business with a test based on the corporation's insurance liabilities. Under the provision, passive income for purposes of the PFIC rules does not include income derived in the active conduct of an insurance business by a corporation (1) that would be subject to tax under subchapter L if it were a domestic corporation; and (2) the applicable insurance liabilities of which constitute more than 25% of its total assets as reported on the company's applicable financial statement for the last year ending with or within the taxable year. (**Code Sec. 1297** , as amended by

Act Sec. 14501)

Repeal of fair market value of interest expense apportionment.

Taxpayers must determine U.S. source and foreign source income for various purposes. **Code Sec. 864(e)** provides rules for allocating interest, etc. for those purposes.

New law. For tax years that begin after Dec. 31, 2017, for purposes of such determinations, members of a U.S. affiliated group are not able to allocate interest expense on the basis of the fair market value of assets for purposes of **Code Sec. 864(e)** . Instead, the members have to allocate interest expense based on the adjusted tax basis of assets. (**Code Sec. 864(e)** , as amended by Act Sec. 14502)

Stock compensation of insiders in expatriated corporations.

An excise tax is imposed on the value of the specified stock compensation held by disqualified individuals if a corporation expatriates and gain on any stock in the expatriated corporation is recognized by any shareholder in the expatriation transaction. Under pre-Act law, the excise tax was 15% of the value of the specified stock compensation (i.e., payments with a value that is based on (or determined by reference to) the value (or change in value) of stock in the corporation) held (directly or indirectly) by or for the benefit of the individual or a member of the individual's family during the twelve-month period beginning six months before the expatriation date.

New law. For corporations first becoming expatriated corporations after Dec. 22, 2017, the excise tax on stock compensation in an inversion is increased from 15% to 20%. (**Code Sec. 4985(a)(1)** , as amended by Act Sec. 13604)

Corporate income tax rate drops to 21%, and individual rate brackets are modified under new tax law.

Changes to the individual and corporate income tax rates that take effect beginning in 2018 under the major piece of tax legislation called the Tax Cuts and Jobs Act (the Act).

Rate changes for individuals. Individuals are subject to income tax on "ordinary income," such as compensation, and most retirement and interest income, at increasing rates that apply to different ranges of income depending on their filing status (single; married filing jointly, including surviving spouse; married filing separately; and head of household). Currently those rates are 10%, 15%, 25%, 28%, 33%, 35%, and 39.6%.

New rates. Beginning with the 2018 tax year and continuing through 2025, there will still be seven tax brackets for individuals, but their percentage rates will change to: 10%, 12%, 22%, 24%, 32%, 35%, and 37%.

Bottom line. While these changes will lower rates at many income levels, determining the overall impact on any particular individual or family will depend on a variety of other changes made by the Tax Cuts and Jobs Act, including increases in the standard deduction, loss of personal and dependency exemptions, a dollar limit on itemized deductions for state and local taxes, and changes to the child tax credit and the taxation of a child's unearned income, known as the Kiddie Tax.

Capital gain rates. Three tax brackets currently apply to net capital gains, including certain kinds of dividends, of individuals and other noncorporate taxpayers: 0% for net capital gain that would be taxed at the 10% or 15% rate if it were ordinary income; 15% for gain that would be taxed above 15% and below 39.6% if it were ordinary income, or 20% for gain that would be taxed at the 39.6% ordinary income rate.

The Act, generally, keeps the existing rates and breakpoints on net capital gains and qualified dividends. For 2018, the 15% breakpoint is: $77,200 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $51,700 for heads of household, and $38,600 for other unmarried individuals. The 20% breakpoint is $479,000 for joint returns and surviving spouses (half this amount for married taxpayers filing separately), $452,400 for heads of household, and $425,800 for any other individual (other than an estate or trust).

Important: These new individual income tax rates will not affect your tax on the return you will soon file for 2017, however they will almost immediately affect the amount of your wage withholding and the amount, if any, of estimated tax that you may need to pay.

A related change is that the future annual indexing of the rate brackets (and many other tax amounts) for inflation, which helps to prevent "bracket creep" and the erosion of the value of a variety of deductions and credits due solely to inflation, will be done in a way that generally will recognize less inflation than the current method does. While it won't be very recognizable immediately, over the years this will push some additional income into higher brackets and reduce the value of many tax breaks.

Corporate income tax rate drop. C corporations currently are subject to graduated tax rates of 15% for taxable income up to $50,000, 25% (over $50,000 to $75,000), 34% (over $75,000 to $10,000,000), and 35% (over $10,000,000). Personal service corporations pay tax on their entire taxable income at the rate of 35%. (The benefit of lower rate brackets was phased out at higher income levels.)

Beginning with the 2018 tax year, the Act makes the corporate tax rate a flat 21%. It also eliminates the corporate alternative minimum tax.

New 20% deduction for qualified business (pass-through) income under new tax law.

Significant new tax deduction taking effect in 2018 under the new tax law, the Tax Cuts and Jobs Act (the Act). It should provide a substantial tax benefit to individuals with "qualified business income" from a partnership, S corporation, LLC, or sole proprietorship. This income is sometimes referred to as

"pass-through" income.

The deduction is 20% of your "qualified business income (QBI)" from a partnership, S corporation, or sole proprietorship, defined as the net amount of items of income, gain, deduction, and loss with respect to your trade or business. The business must be conducted within the U.S. to qualify, and specified investment-related items are not included, e.g., capital gains or losses, dividends, and interest income (unless the interest is properly allocable to the business). The trade or business of being an employee does not qualify. Also, QBI does not include reasonable compensation received from an S corporation, or a guaranteed payment received from a partnership for services provided to a partnership's business.

The deduction is taken "below the line," i.e., it reduces your taxable income but not your adjusted gross income. But it is available regardless of whether you itemize deductions or take the standard deduction. In general, the deduction cannot exceed 20% of the excess of your taxable income over net capital gain. If QBI is less than zero it is treated as a loss from a qualified business in the following year.

Rules are in place (discussed below) to deter high-income taxpayers from attempting to convert wages or other compensation for personal services into income eligible for the deduction.

For taxpayers with taxable income above $157,500 ($315,000 for joint filers), an exclusion from QBI of income from "specified service" trades or businesses is phased in. These are trades or businesses involving the performance of services in the fields of health, law, consulting, athletics, financial or brokerage services, or where the principal asset is the reputation or skill of one or more employees or owners. Here's how the phase-in works: If your taxable income is at least $50,000 above the threshold, i.e., $207,500 ($157,500 + $50,000), all of the net income from the specified service trade or business is excluded from QBI. (Joint filers would use an amount $100,000 above the $315,000 threshold, viz., $415,000.) If your taxable income is between $157,500 and $207,500, you would exclude only that percentage of income derived from a fraction the numerator of which is the excess of taxable income over $157,500 and the denominator of which is $50,000. So, for example, if taxable income is $167,500 ($10,000 above $157,500), only 20% of the specified service income would be excluded from QBI ($10,000/$50,000). (For joint filers, the same operation would apply using the $315,000 threshold, and a $100,000 phase-out range.)

Additionally, for taxpayers with taxable income more than the above thresholds, a limitation on the amount of the deduction is phased in based either on wages paid or wages paid plus a capital element. Here's how it works: If your taxable income is at least $50,000 above the threshold, i.e., $207,500 ($157,500 + $50,000), your deduction for QBI cannot exceed the greater of (1) 50% of your allocable share of the W-2 wages paid with respect to the qualified trade or business, or (2) the sum of 25% of such wages plus 2.5% of the unadjusted basis immediately after acquisition of tangible depreciable property used in the business (including real estate). So if your QBI were $100,000, leading to a deduction of $20,000 (20% of $100,000), but the greater of (1) or (2) above were only $16,000, your deduction would be limited to $16,000, i.e., it would be reduced by $4,000. And if your taxable income were between $157,500 and $207,500, you would only incur a percentage of the $4,000 reduction, with the percentage worked out via the fraction discussed in the preceding paragraph. (For joint filers, the same operations would apply using the $315,000 threshold, and a $100,000 phase-out range.)

Other limitations may apply in certain circumstances, e.g., for taxpayers with qualified cooperative dividends, qualified real estate investment trust (REIT) dividends, or income from publicly traded partnerships.

Obviously, the complexities surrounding this substantial new deduction can be formidable, especially if your taxable income exceeds the thresholds discussed above.

$10,000 limit on state and local tax deduction under new tax law.

New limit placed on individuals' itemized deductions of various kinds of nonbusiness taxes, which was made by the massive Tax Cuts and Jobs Act (the Act), effective beginning with the 2018 tax year.

Before the changes were effective, individuals were permitted to claim the following types of taxes as itemized deductions, even if they were not business related:

(1) state, local, and foreign real property taxes;
(2) state and local personal property taxes; and
(3) state, local, and foreign income, war profits, and excess profits taxes.

Taxpayers could elect to deduct state and local general sales taxes in lieu of the itemized deduction for state and local income taxes.

Tax deduction cuts. For tax years 2018 through 2025, the Act limits deductions for taxes paid by individual taxpayers in the following ways:

> . . . It limits the aggregate deduction for state and local real property taxes; state and local personal property taxes; state and local, and foreign, income, war profits, and excess profits taxes; and general sales taxes (if elected) for any tax year to $10,000 ($5,000 for marrieds filing separately). *Important exception:* The limit doesn't apply to: (i) foreign income, war profits, excess profits taxes; (ii) state and local, and foreign, real property taxes; and (iii) state and local personal property taxes if those taxes are paid or accrued in carrying on a trade or business or in an activity engaged in for the production of income.
>
> . . . It completely eliminates the deduction for foreign real property taxes unless they are paid or accrued in carrying on a trade or business or in an activity engaged in for profit.

To prevent avoidance of the $10,000 deduction limit by prepayment in 2017 of future taxes, the Act treats any amount paid in 2017 for a state or local income tax imposed for a tax year beginning in 2018 as paid on the last day of the 2018 tax year. So an individual may not claim an itemized deduction in 2017 on a pre-payment of income tax for a future tax year in order to avoid the $10,000 aggregate limitation.

Whether home mortgage interest and home equity loan interest are deductible under the new law.

Changes in the rules for deducting qualified residential interest, i.e., interest on your home mortgage, under the Tax Cuts and Jobs Act (the Act).

Under the pre-Act rules, you could deduct interest on up to a total of $1 million of mortgage debt used to acquire your principal residence and a second home, i.e., acquisition debt. For a married taxpayer filing separately, the limit was $500,000. You could also deduct interest on home equity debt, i.e., other debt secured by the qualifying homes. Qualifying home equity debt was limited to the lesser of $100,000 ($50,000 for a married taxpayer filing separately), or the taxpayer's equity in the home or homes (the excess of the value of the home over the acquisition debt). The funds obtained via a home equity loan did not have to be used to acquire or improve the homes. So you could use home equity debt to pay for education, travel, health care, etc.

Under the Act, starting in 2018, the limit on qualifying acquisition debt is reduced to $750,000 ($375,000 for a married taxpayer filing separately). However, for acquisition debt incurred before Dec. 15, 2017, the higher pre-Act limit applies. The higher pre-Act limit also applies to debt arising from refinancing pre-Dec. 15, 2017 acquisition debt, to the extent the debt resulting from the refinancing does not exceed the original debt amount. This means you can refinance up to $1 million of pre-Dec. 15, 2017 acquisition debt in the future and not be subject to the reduced limitation.

And, importantly, starting in 2018, there is no longer a deduction for interest on home equity debt. This applies regardless of when the home equity debt was incurred. Accordingly, if you are considering incurring home equity debt in the future, you should take this factor into consideration. And if you currently have outstanding home equity debt, be prepared to lose the interest deduction for it, starting in 2018. (You will still be able to deduct it on your 2017 tax return, filed in 2018.)

Lastly, both of these changes last for eight years, through 2025. In 2026, the pre-Act rules are scheduled to come back into effect. So beginning in 2026, interest on home equity loans will be deductible again, and the limit on qualifying acquisition debt will be raised back to $1 million ($500,000 for married separate filers).

New treatment of alimony under the new tax law.

The Tax Cuts and Jobs Act (the Act) has made changes to the tax treatment of alimony that you will be interested in. These changes take effect for divorce agreements and legal separation agreements executed *after 2018.*

Current rules. Under the current rules, an individual who pays alimony or separate maintenance may deduct an amount equal to the alimony or separate maintenance payments paid during the year as an

"above-the-line" deduction. (An "above-the-line" deduction, i.e., a deduction that a taxpayer need not itemize deductions to claim, is more valuable for the taxpayer than an itemized deduction.)

And, under current rules, alimony and separate maintenance payments are taxable to the recipient spouse (includible in that spouse's gross income).

New rules. Under the Act rules, there is no deduction for alimony for the payer. Furthermore, alimony is not gross income to the recipient. So for divorces and legal separations that are executed (i.e., that come into legal existence due to a court order) after 2018, the alimony-paying spouse won't be able to deduct the payments, and the alimony-receiving spouse doesn't include them in gross income or pay federal income tax on them.

New rules don't apply to existing divorces and separations. It's important to emphasize that the current rules continue to apply to already-existing divorces and separations, as well as divorces and separations that are executed *before 2019.*

Some taxpayers may want the Act rules to apply to their existing divorce or separation. Under a special rule, if taxpayers have an existing (pre-2019) divorce or separation decree, and they have that agreement legally modified, then the new rules don't apply to that modified decree, unless the modification *expressly provides* that the Act rules are to apply. There may be situations where applying the Act rules voluntarily is beneficial for the taxpayers, such as a change in the income levels of the alimony payer or the alimony recipient.

About Keiter

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For over 38 years, Keiter has been providing businesses in Virginia and throughout the country with award-winning advice and counsel. Based in Central Virginia, we have received regional, statewide, and national recognition for the work that we have done for clients and our commitment to the communities that we serve.