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The international tax provisions of the Tax Cuts and Jobs Act – latest developments

The Tax Cuts and Jobs Act continues to evolve. On Thursday, November 9, the Ways and Means Committee approved the Tax Cuts and Jobs Act, H.R. 1 (the "W&M bill"), which was originally released on November 2 and subsequently amended. On the same day, Senator Orrin Hatch (R-UT), Chairman of the Senate Finance Committee, had the staff of the Joint Committee on Taxation (JCT) release its "Description of the Chairman's Mark" of the Tax Cuts and Jobs Act (JCX-51-17), a proposal to be marked up by the Senate Finance Committee the week of November 13.

This alert provides a summary of the JCT's description (the "JCT description") of select international provisions of Chairman Hatch's mark (the "Senate proposal" as of November 9), and the November 9 amendments to the W&M bill prior to its approval by the House Ways and Means Committee. Finally, this alert provides a comparison chart of the international tax provisions in the W&M bill and the Senate proposal, with proposed effective dates.

Highlights from the JCT's description of the Senate proposal

The Senate proposal, like the W&M bill, would enact a participation exemption regime for future foreign earnings backstopped by various so-called "base erosion protections," along with a transition tax on previously-deferred foreign earnings. The major provisions along these lines would:

- Provide a 100% deduction for foreign-source dividends received from 10%-or-greater-owned foreign subsidiaries in tax years of subsidiaries beginning after 2017.

- Tax (at 5% or 10%) foreign earnings that were still deferred as of November 9, 2017, “or other measurement date as appropriate,” or were repatriated during the year to which the provision applies. The transition tax rates in this proposal are lower than the 7% and 14% rates set forth in the W&M bill, as amended.

- Tax a US shareholder of controlled foreign corporations (CFCs) on its "global intangible low-taxed income” (GILTI), an amount similar to the W&M bill’s “foreign high return amount” (FHRA). If the shareholder is a corporation, the inclusion would generally be offset by a 37.5% deduction, resulting in a corporate tax rate of 12.5%. The Senate proposal would also allow a 37.5% deduction for the corporation’s own “foreign-derived intangible income” and generally would allow CFCs to distribute intangible property (IP) to their corporate US shareholders tax-free for a three-year period.

- Require a corporation that is an “applicable taxpayer” to pay a tax equal to the “base erosion minimum tax amount,” which would be the excess of 10% of taxable income (determined without regard to certain deductible payments made to certain foreign related parties, which are referred to as “base erosion payments”) over its regular tax liability reduced by credits other than the research credit. This provision does not appear in the W&M bill and seems to be an alternative to its excise tax on “specified amounts.”

- Reduce the deduction for interest, in years beginning after 2017, by the *greater* of two reductions, which are based on:
    - The amount by which deductions exceed 30% of adjusted taxable income, or
    - The net interest expense the U.S. group would have if its debt/equity ratio were 110% of the overall ratio of its worldwide group.

Overall Observation: The Senate proposal is similar to the W&M bill in many important respects. However, it has some key differences, including the 12.5% rate on a domestic corporation’s foreign-derived intangible income (compare this to other countries’ “IP box” regimes), a proposal to encourage the domestication of intangible property (IP), and several revenue raisers not found in the W&M bill. Of note, the Senate proposal includes several items that are similar to those proposed as part of the OECD’s Base Erosion and Profit Shifting (BEPS) project. Notwithstanding the Senate proposal’s added revenue raisers, its international provisions raise far less revenue than those in the W&M bill.

Key changes in the Senate proposal

The participation exemption and the one-time taxation of presently deferred earnings

Transition tax on US shareholders

Similar to the W&M bill, the Senate proposal provides that a US shareholder of a "specified foreign corporation" (SFC) must include in income for the SFC's last tax year beginning before January 1, 2018, the shareholder's pro rata share of the foreign corporation's undistributed, non-previously taxed post-1986 foreign earnings. For purposes of the proposal, an SFC is any foreign corporation that has at least one US shareholder. Unlike the W&M bill, the Senate proposal modifies the definition of a US shareholder to include not only US persons who own 10% or more of the total combined voting power in the foreign corporation (as currently provided in section 951(b)), but also any US person who owns 10% or more of the total *value* of the foreign corporation.

Observation: The change to the definition of US shareholder is not limited to transition tax determinations, but instead applies generally to all subpart F provisions. Accordingly, a foreign corporation that is not treated as a CFC under current law (e.g., because a foreign investor holds high-vote stock in the corporation), may become a CFC, and low-vote US persons may become US shareholders, if this change is enacted.

The measurement date for deferred foreign earnings is November 9, 2017, or "other applicable measurement date as appropriate" under the Senate proposal (rather than November 2 or December 31, as under the W&M bill) unreduced by distributions during the taxable year to which the provision applies. Apparently in contrast to the W&M bill, the earnings taken into account in computing the mandatory inclusion are only those for periods when the foreign corporation was an SFC. Such earnings generally may be reduced by foreign E&P deficits of other foreign corporations that are properly allocable to the US shareholder by reason of other foreign corporations with such deficits.

The rate of tax on the mandatory inclusion (before taking foreign tax credits into account) is 10% to the extent of cash assets of the US shareholder's SFCs, and the remainder is taxed at a 5% rate. Foreign tax credits for taxes deemed paid as a result of the deemed repatriation are correspondingly reduced. The JCT description states that "[o]ther foreign tax credits used by a taxpayer against tax liability resulting from the deemed inclusion apply in full."

At the election of the US shareholder, the tax liability would be payable in increasing installments over a period of up to 8 years. As under the W&M bill, additional deferral may apply for shareholders of an S corporation that is a US shareholder.

Unlike the W&M bill, the Senate proposal would adversely affect certain domestic corporations that become "inverted" within the meaning of section 7874 during the 10-year period following enactment. It generally would claw back the reductions in tax rate under the proposal, and impose full 35% transition tax, if a US shareholder becomes an expatriated entity (within the meaning of section 7874(a)(2)) during this period.

The Senate proposal also would extend the period of assessment with respect to the transition tax (including related deductions and credits) to six years from the filing date for the first return reflecting the transition tax inclusion.

Dividends from 10% foreign subsidiaries received after 2017 by domestic corporations

The Senate proposal provides for a 100% dividends received deduction (DRD) for the foreign-source portion of dividends received from specified 10%-owned foreign corporations by domestic corporations that are US shareholders. An amount treated as a dividend under section 1248 is treated as a dividend for this purpose.

No foreign tax credit or deduction is allowed for taxes paid or accrued with respect to a dividend that qualifies for the DRD.

In contrast to the W&M bill, the Senate proposal (like the European Commission's Anti-Tax Avoidance Directives and consistent with a recommendation of the BEPS Project's Action 2), does not allow the DRD for a dividend with respect to which the payer receives a deduction (or other tax benefit) from taxes imposed by a foreign country (a "hybrid dividend"). Also, a hybrid dividend received by a US shareholder's CFC from another CFC of the same shareholder is treated as subpart F income of the CFC.

The Senate proposal conditions the DRD on satisfaction of a holding period requirement twice the length of that in the W&M bill.

Income inclusion for GILTI

The Senate proposal includes a provision requiring a US shareholder of CFCs to include in its gross income its GILTI. GILTI is the excess of the shareholder's "net CFC tested income" over the deemed tangible income return, which is defined as 10% of the aggregate of the shareholder's pro rata share of its CFCs' bases in tangible property used to produce "tested income."

Similar to the FHRA provision in the W&M bill, net CFC tested income is the aggregate of the US shareholder's pro rata shares of the "tested income" (if any) of each of its CFCs, reduced by such shares of the "tested loss" (if any) of each of its CFCs. Tested income is the gross income of a CFC, determined without regard to certain amounts, less deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5). The exceptions to the relevant gross income for this purpose are: (1) income effectively connected with the conduct of a US trade or business (ECI) under section 952(b); (2) gross income taken into account in determining subpart F income; (3) gross income excluded from foreign base company income or insurance income by reason of the high-tax exception (section 954(b)(4)); (4) dividends received from a related person; and (5) foreign oil and gas extraction income and foreign oil-related income.

A corporate US shareholder can claim a foreign tax credit for 80% of the aggregate taxes paid or accrued with respect to the tested income of each CFC from which the shareholder has an inclusion. Also, many of the rules that apply to subpart F income and section 951(a)(1)(A) inclusions would apply, in the same or modified form, to the GILTI (e.g., sections 959, 961, 904(h), and 1248(b))

Observation: The GILTI proposal differs from the FHRA proposal in certain respects. The category of CFC income “tested” for the GILTI inclusion is broader than that tested for the FHRA. A shareholder’s increase in income resulting from the inclusion would be greater under the GILTI proposal. While the FHRA inclusion under the W&M bill is only 50% of the FHRA, in the case of a corporate US shareholder, the Senate proposal generally would require an income inclusion of 62.5% of GILTI after the deduction described below. No such deduction is available for non-corporate US shareholders. The proposal generally assures that either CFC tested income is taxed abroad at an average effective rate of 15.625% or the US will impose tax on a US corporate shareholder’s GILTI such that it bears a minimum of 12.5% tax worldwide. The allowed tax-free return on CFCs’ tangible asset bases is slightly higher under the GILTI proposal. The 20% haircut of foreign taxes that are eligible to be credited by a corporate US shareholder would be the same under both proposals.

Partial corporate deduction for GILTI inclusion and foreign-derived intangible income

The Senate proposal provides that a domestic corporation is allowed a deduction for 37.5% of the lesser of (1) its GILTI inclusion *plus* its “foreign-derived intangible income,” or (2) its taxable income.

Foreign-derived intangible income is an amount equal to the corporation’s deemed intangible income multiplied by an amount equal to the corporation’s “*foreign-derived* deduction eligible income” over its “*total* deduction eligible income.”

“Deduction eligible income” is the excess of the gross income of the corporation, determined without regard to certain amounts, over the deductions (including taxes) properly allocable to such gross income. The exceptions to the relevant gross income for this purpose are: (1) the subpart F income of the corporation under section 951; (2) the GILTI of the corporation; (3) dividends received from CFCs with respect to which the corporation is a US shareholder; (4) domestic oil and gas income; and (5) foreign branch income.

"Deemed intangible income" is the excess of a corporation's deduction eligible income over 10% of the basis in its tangible depreciable property used to produce deduction eligible income.

"Foreign-derived deduction eligible income" means deduction eligible income that is derived in connection with (1) property that is sold by the taxpayer to any person who is not a US person and that the taxpayer establishes to the satisfaction of the Secretary is for a foreign use, or (2) services provided by the taxpayer that the taxpayer establishes to the satisfaction of the Secretary are provided to any person, or with respect to property, not located within the United States. The sale of property to a related foreign party is not treated as for a foreign use unless (1) the property is sold by the related foreign party to a non-US unrelated person, and (2) the taxpayer establishes to the satisfaction of the Secretary that the property is for a foreign use.

Observation: Royalty income appears to be "deduction eligible income," and therefore would be included in "deemed intangible income." However, it is unclear whether foreign-source royalty income falls within the definition "foreign-derived deduction eligible income." The JCT description states that "the terms 'sold,' 'sell,' and 'sale' include any lease, exchange, or other disposition."

Special rules for domesticating IP

The Senate proposal also contains a rule presumably intended to incentivize the domestication of IP by providing that if a CFC holds intangible property on the date of enactment, and distributes it to a corporate US shareholder by the end of the CFC's third tax year beginning after 2017, the fair market value of the property on the date of the distribution is treated as not exceeding its adjusted basis. In addition, if this distribution is not a dividend, the CFC's stock basis would be increased to prevent the shareholder from recognizing gain. As a result, the CFC's US shareholder would not recognize income as a result of the distribution of IP.

Observation: If enacted in its proposed form, taxpayers would need to carefully consider whether to domesticate IP.

Base erosion anti-abuse tax (BEAT)

In lieu of the W&M bill's proposed excise tax on "specified amounts" paid by domestic corporations to their foreign affiliates, the Senate proposal requires a corporation that is an applicable taxpayer to pay a tax equal to its “base erosion minimum tax amount” (BEMTA) for the taxable year.

BEMTA is the excess of 10% of the corporation’s “modified taxable income” (taxable income determined without regard to “base erosion tax benefits,” namely, deductions for “base erosion payments”) over its regular tax liability reduced by credits other than the research credit.

A “base erosion payment” is generally any amount paid or accrued by a taxpayer to a foreign person that is a related party (generally, with a 25% “relatedness” threshold) and with respect to which a deduction is allowable. It includes any amount paid or accrued by the taxpayer to the related party in connection with the acquisition of depreciable or amortizable property.

A base erosion payment also includes any amount that constitutes a reduction in gross receipts of the taxpayer that is accrued by the taxpayer or paid with respect to: (1) a surrogate foreign corporation that is a related party, and (2) a foreign person that is a member of the same expanded affiliated group as the surrogate foreign corporation. A surrogate foreign corporation has the meaning given in section 7874(a)(2).

Base erosion tax benefits do not take into account base erosion payments to the extent that the gross-basis tax of section 871 or 881 is imposed, and is deducted and withheld under section 1441 or 1442.

“Applicable taxpayers” are corporations (other than RICs, REITs, and S corporations) with (1) average annual gross receipts of at least $500 million for the three years, and (2) a “base erosion percentage” of at least 4%. (For this purpose, corporations treated as a single employer generally are treated as a single person, and special rules apply for foreign corporations.) The “base erosion percentage” is generally the taxpayer’s base erosion tax benefits divided by its deductions under Chapter 1 of the Internal Revenue Code (other than the 100% DRD proposed above, NOL deductions, and, apparently, the 37.5% deduction for GILTI and foreign-derived intangible income).

Observation: While the Senate proposal is described as an “inbound provision,” it appears (like the W&M bill’s excise tax) to apply to US-parented multinationals as well. It should be noted that, unlike the excise tax proposal in the W&M bill, interest deductions appear to be within the scope of the BEAT.

Limitations on interest deductibility

Like the W&M bill, the Senate proposal provides two limitations on taxpayers’ interest deductions: a new limitation to address members of multinational corporate groups that are disproportionately leveraged in the United States, and a revised section 163(j) limitation based on 30% of a taxpayer's adjusted taxable income. As with the W&M bill, the more stringent limitation would apply.

Revised section 163(j) limitation

In a provision similar to the W&M bill, the Senate proposal would entirely revise section 163(j), making it a rule that would generally apply (subject to the exceptions mentioned below) to every business, regardless of its form, and disallow the deduction for net interest expense in excess of 30% of the business's adjusted taxable income. However, the Senate proposal appears to define adjusted taxable income more narrowly, as NOLs and depreciation deductions would not be "added back" to determine adjusted taxable income, which could be significant in light of the 100% "bonus" depreciation for certain property provided in the proposal. The Senate proposal would permit disallowed deductions to be carried forward indefinitely. Exceptions are included for taxpayers with average annual gross receipts of less than $15 million, regulated public utilities, and real property businesses that elect to be excepted from the rule.

Observation: As the Senate proposal permits disallowed interest deductions to be carried forward indefinitely, it is more consistent with current section 163(j) in this regard than the W&M bill. However, like the W&M bill, the Senate proposal is unclear on how carryforwards of interest deductions under current-law section 163(j) are to be treated.

Additional limitation on deductions for groups with "excess domestic indebtedness"

In addition, the Senate proposal would limit interest deductions to the extent attributable to excess borrowing in the United States. Although conceptually similar, the mechanics of the Senate proposal and the W&M bill are different – the Senate proposal is based on debt/equity ratios, while the W&M bill uses EBITDA ratios. Under the Senate proposal, interest paid by a domestic corporation that is a member of a worldwide affiliated group is reduced by the product of the domestic corporation's net interest expense multiplied by the "debt-to-equity differential percentage" of the "worldwide" affiliated group (which would include foreign corporations, and for which the ownership threshold would only be 50%).

The debt-to-equity differential percentage means, with respect to any worldwide affiliated group, the excess domestic indebtedness of the group divided by the total indebtedness of the domestic corporations that are members of the group. All US members of the worldwide affiliated group are treated as one member for these purposes.

Excess domestic indebtedness is the amount by which the total indebtedness of the US members exceeds 110% of the total indebtedness those members would hold if their total indebtedness to total equity ratio were proportionate to the ratio of total indebtedness to total equity in the worldwide group.

Observation: In years in which a multinational group's US debt/equity ratio is higher than that of its worldwide group (by more than a 10% "cushion"), the interest deductions of US group members could be significantly limited, regardless of whether the group is US-parented or foreign-parented.

Treatment of hybrid transactions

The Senate proposal includes a provision not in the W&M bill (but similar to one proposed by the previous administration) that would deny a deduction for any disqualified related-party amount paid 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. Authority is granted to expand the scope of the rule by regulations.

A hybrid transaction is any transaction, series of transactions, agreement, or instrument with respect to which payments are treated as interest or royalties for US federal income tax purposes but are not treated as such for purposes of the tax laws of the country in which the recipient is a tax resident or subject to tax.

A hybrid entity is any entity that is either: (1) treated as fiscally transparent for US federal income tax purposes but not so treated for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax, or (2) treated as fiscally transparent for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax but not so treated for US federal income tax purposes.

Observation: This proposal is analogous to, but more limited in scope than, the anti-hybrid rules introduced by the UK and the EU in response to the OECD's BEPS Action 2 report.

Dispositions of ECI partnership interests (Rev. Rul. 91-32)

The Senate proposal effectively would codify Rev. Rul. 91-32 with respect to a foreign person's gain from the disposition of an interest in a partnership that is engaged in a US trade or business. (The Tax Court recently declined to follow Rev. Rul. 91-32 in *Grecian Magnesite Mining, Indus. & Shipping Co. v. Commissioner*, 149 T.C. No. 3 (July 13, 2017).) The proposal provides that a foreign corporation's or nonresident alien's gain or loss from the sale or exchange of a partnership interest is ECI to the extent that the transferor would have been allocated ECI gain or loss if the partnership had sold all of its assets at fair market value as of the date of the sale or exchange. For this purpose, any gain or loss from the hypothetical asset sale by the partnership would have to be allocated in the same fashion as the partnership's nonseparately stated income or loss. Similar to the previous administration's legislative proposals, this provision would be enforced through a withholding tax. The transferee of a partnership interest that is sold or exchanged would be required to withhold 10% of the transferor's amount realized unless the transferor certifies that it is neither a nonresident alien individual nor a foreign corporation. If the transferee fails to perform this withholding, the partnership would be required to withhold on subsequent distributions to the transferee to satisfy the obligation.

Observation: This proposal would impose a withholding tax that would apply to *all* sales and exchanges of partnership interests unless the transferor certifies that it is not foreign, similar to FIRPTA withholding under current law.

Section 367(d) and 482 rules with respect to intangible property transfers

The Senate proposal would modify the section 367(d) and 482 rules with respect to transfers of intangible property in two respects. First, it would change the definition of intangible property in section 936(h)(3)(B) to include workforce in place, goodwill, and going concern value, and to provide that the source of value is not relevant to whether an item falls within its scope. Accordingly, all outbound transfers of such property in a section 351 or 361 exchange would be governed by section 367(d), which generally requires the US transferor to recognize income over the property's useful life. Second, the proposal codifies certain principles currently described in section 482 regulations, taking into account the 2015 amendments. That is, the proposal would provide explicit statutory authority enabling the IRS to value intangible property on an aggregate basis if doing so would achieve a more reliable result, and to determine an arm's length price by reference to a transaction different from the one actually completed (the "realistic alternative principle").

Observation: This proposal would expand the scope of section 367(d), and would provide the IRS with an explicit grant of authority to apply certain section 482 approaches that it has thus far been unsuccessful in asserting in litigation. It should be noted this proposal is prospective and the section 367(d) proposal is not described as a "clarification," as a prior administration suggested in a similar proposal.

Modification of the insurance exception to the passive foreign investment company (PFIC) rules

Like the W&M bill, the Senate proposal also would amend the PFIC exception for insurance companies by replacing a facts-and-circumstances criterion with a bright-line rule. Although this exception still would require that a foreign corporation be taxed as an insurance company if it were a domestic corporation, the Senate proposal would replace the requirement that the corporation be predominantly engaged in an insurance business with one that certain loss and loss adjustment expenses and reserves generally must constitute more than 25 percent of the foreign corporation's total assets.

Other provisions also included in the W&M bill

Other provisions in the Senate proposal follow the W&M bill. They both would:

- Eliminate foreign base company oil-related income as a category of subpart F income;
- Index the subpart F de minimis rule for inflation;
- Repeal subpart F inclusions based on the withdrawal of previously excluded subpart F income invested in foreign base company shipping operations;
- Eliminate the limitation on attribution of stock from a foreign person to a US shareholder (effective beginning with a foreign corporation's *last tax year beginning before 2018,* which is also the year of the transition tax);
- Eliminate the requirement that a foreign corporation must be a CFC for an uninterrupted period of 30 days for subpart F to apply;
- Make permanent the look-through rule of section 954(c)(6);
- Repeal section 956 as applied to domestic corporations;
- Repeal section 902 and apply section 960 on a current year basis; and
- Source income from the sale of inventory property produced by the taxpayer solely on the basis of the place of production.

Additional provisions not included in W&M bill

The Senate proposal would also make changes to international tax rules for which there are no equivalent provisions in the W&M bill. The Senate proposal would:

- Repeal the special rules for DISCs and IC-DISCs;
- Make dividends paid by a surrogate foreign corporation subject to section 7874(a) ineligible for the capital gains rate of tax under section 1(h)(11);
- Impose a separate FTC limitation for branch income;
- Accelerate the ability to elect to allocate interest on a worldwide basis (see section 864(f)) to taxable years beginning after 2017;
- Eliminate the fair market value method for allocating interest expense under section 864(e); and
- Create a category of income defined as “passenger cruise gross income,” provide specific rules for determining the extent to which such income is ECI, and remove such income from eligibility for the reciprocal exemptions of sections 873 and 883. As a result, effectively connected passenger cruise income would be subject to net basis taxation.

Further amendments reflected in the W&M bill (as approved November 9)

The W&M bill incorporates amendments adopted on November 9 (the day that the Committee approved the bill), which made several noteworthy changes to the international tax provisions of the W&M bill as previously amended through November 6, 2017. (For prior coverage of the W&M bill, see **United States Tax Alert dated November 6, 2017** and **United States Tax Alert dated November 8, 2017**.)

With respect to the transition tax, the amendments would:

- Increase the residual rate of the transition tax from 5% to 7%, and increase the rate applicable to the extent of cash assets from 12% to 14%; and
- Correspondingly decrease the percentage of foreign tax credits that are disallowed as an offset against the transition tax, from 85.7% and 65.7% to 80% and 60%.

With respect to "specified amounts" that a foreign recipient elects to treat as ECI (and which, if the ECI election were not made, would be subject to a 20% excise tax), the amendments:

- Eliminate the mark-up on "deemed expenses" allowed as a deduction against the specified amount; and
- Revise the foreign taxes paid or accrued with respect to such specified amounts that may be claimed as a credit against the foreign recipient's US federal income tax. As approved by the Ways and Means Committee, the bill provides that the credit allowed with respect to such specified amounts is to be determined under section 906(a) (as opposed to a formula based on financial accounting information) and limited to 80% of the amount of taxes paid or accrued.

House vs. Senate comparison chart

Provision	Effective date	10-year revenue increase ($ billions)
Participation exemption	**House**: Distributions made after 12/31/2017	**House**: -205.1
	Senate: Taxable years (TYs) of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: -215.6
	House: TYs beginning after 12/31/2017	**House**: -2.0

Repeal section 956 for domestic corporations	**Senate**: TYs of controlled foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: -2.0
Special rules with respect to specified 10% owned foreign corporations (i.e. extension of participation exemption to section 1248 and 964(e)(1) dividends, limitation on losses on sale of 10%-owned foreign corporations, and branch loss recapture on transfer of certain foreign branches)	**House**: Distributions made after 12/31/2017	**House**: 11.1
	Senate: The proposal relating to reduction of basis in certain foreign stock for the purposes of determining a loss is effective for dividends received in TYs beginning after 12/31/2017 The proposal relating to transfer of loss amounts from foreign branches to certain foreign corporations is effective for transfers after 12/31/2017	**Senate**: 11.3
Transition tax	**House**: Subpart F of foreign corporation increased for last TY beginning before 1/1/2018	**House**: 293.4
	Senate: Last TY of foreign corporations beginning before 1/1/2018, and all subsequent TYs of a foreign corporation and for the TYs of a US shareholder with or within which such TYs end	**Senate**: 190
Repeal section 902/modify section 960	**House**: TYs beginning after 12/31/2017	**House**: est. included in transition tax
	Senate: TYs beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: est. included in participation exemption
Separate section 904 limitation basket for foreign branch income	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: est. included in GILTI
Modification of section 863(b)	**House**: TYs beginning after 12/31/2017	**House**: 0.5

sourcing rules for inventory	**Senate**: TYs beginning after 12/31/2017	**Senate**: 0.5
Acceleration of section 864(f)(6) election to allocate interest on a worldwide basis	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: -2.0
Eliminate the fair market value method for allocating interest expense	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: 0.2
New US shareholder inclusion under section 951A for FHRA or GILTI	**House**: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**House**: 67.5
	Senate: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: 115.5
Deduction for domestic corporations' "foreign-derived intangible income"	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: -86.4
Special rules for domesticating IP	**House**: N/A	**House**: N/A
	Senate: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: -34.1
Repeal of section 955	**House**: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end.	**House**: de minimis^
	Senate: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end.	**Senate**: de minimis^
Elimination of inclusion of foreign	**House**: TYs of foreign corporations beginning	**House**: -3.2

base company oil related income	after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end.	
	Senate: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end.	**Senate**: -4.0
Inflation adjustment of de minimis exception for foreign base company income	**House**: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**House**: -0.4
	Senate: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: -0.4
Look-thru rule for related CFCs made permanent	**House**: TYs of foreign corporations beginning after 12/31/2019 and TYs of US shareholders in which or with which such TYs of foreign corporations end.	**House**: -11.8
	Senate: TYs of foreign corporations beginning after 12/31/2019 and TYs of US shareholders in which or with which such TYs of foreign corporations end.	**Senate**: -11.8
Modification of stock attribution rules for determining status as a CFC	**House**: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**House**: est. included in participation exemption
	Senate: Last TY of foreign corporations beginning before 1/1/2018, and all subsequent TYs of a foreign corporation and for the TYs of a US shareholder with or within which such TYs end	**Senate**: est. included in participation exemption
	House: N/A	**House**: N/A

Modification of definition of US shareholder	**Senate**: Last TY of foreign corporations beginning before 1/1/2018, and all subsequent TYs of a foreign corporation and for the TYs of a US shareholder with or within which such TYs end	**Senate**: 1.4
Elimination of 30-day control requirement for subpart F	**House**: TYs of controlled foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**House**: 0.4
	Senate: TYs of foreign corporations beginning after 12/31/2017 and TYs of US shareholders in which or with which such TYs of foreign corporations end	**Senate**: 0.4
Excise tax on specified amounts/election out via ECI taxation	**House**: Amounts paid or accrued after 12/31/2018	**House**: 94.6
	Senate: TYs beginning after 12/31/2017	**Senate**: 123.5
110% and 30% interest limitations	**House**: TYs beginning after 12/31/2017	**House**: 34.2 171.7
	Senate: TYs beginning after 12/31/2017	**Senate**: 8.8 308.3
Amendments to sections 367(d) and 482 with respect to intangible property transfers	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: 1.3
Denial of deduction for certain related-party interest or royalty expense paid or accrued in hybrid transactions or to hybrid entities	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: est. included in participation exemption
Termination of special rules for DISCs and IC-DISCs	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2018	**Senate**: 5.3
Surrogate foreign corporations not eligible for reduced rate on dividends	**House**: N/A	**House**: N/A
	Senate: Dividends paid in TYs beginning after 12/31/2017	**Senate**: 0.7
	House: N/A	**House**: N/A

Codification of Rev. Rul. 91-32	**Senate**: TYs beginning after 12/31/2017	**Senate**: 3.8
Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico	**House**: Retroactively to TYs beginning after 1/1/2016 and before 1/1/2018	**House**: -0.1
	Senate: N/A	**Senate**: N/A
Extension of temporary increase in limit on cover over rum excise taxes to Puerto Rico and the Virgin Islands	**House**: Retroactively to include imports after 12/31/2016, and extended to rum imported in the United States before 1/1/2023	**House**: -0.8
	Senate: N/A	**Senate**: N/A
Extension of American Samoa economic development credit	**House**: First 11 tax years of a corporation that begin after 2005 and before 2017	**House**: -0.1
	Senate: N/A	**Senate**: N/A
Restriction on insurance business exception to PFIC rules	**House**: TYs beginning after 12/31/2017	**House**: 1.1
	Senate: TYs beginning after 12/31/2017	**Senate**: 1.1
Taxation of passenger cruise gross income of foreign corporations and nonresident alien individuals	**House**: N/A	**House**: N/A
	Senate: TYs beginning after 12/31/2017	**Senate**: 0.7
	Total revenue for listed provisions*	**House**: 451.0 **Senate**: 416.5

^ Estimated revenue loss of less than $50 million
*Additional tax and transfer pricing provisions are included in the W&M bill and Senate proposal, but are beyond the scope of this comparison chart.

Contacts

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