# ¶ 1. Thomson Reuters Checkpoint Complete Analysis of the Tax Cuts and Jobs Act

The following sections contain Thomson Reuters Checkpoint Complete Analysis of the Tax Cuts and Jobs Act.

H.R. 1, "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018" (referred to in the Analysis as the "Tax Cuts and Jobs Act"), was passed by Congress on Dec. 20, 2017, and is expected to be signed into law by the President.

Commonly known as the Tax Cuts and Jobs Act in the months leading up to passage of the bill, the title of the Act was changed after the Senate parliamentarian ruled that three provisions, including the bill's title (i.e., Tax Cuts and Jobs Act), violated Senate rules that every provision in a bill being considered under budget reconciliation procedures have a fiscal impact.

**Highlights of the Tax Cuts and Jobs Act.**

**New income tax rates & brackets.**

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 Tax Cuts and Jobs Act also provides four tax rates for estates and trusts: 10%, 24%, 35%, and 37%. For analysis, see ¶ 628, ¶ 629, and ¶ 631.

**Standard deduction increased.**

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. For analysis, see ¶ 675.

**Personal exemptions suspended.**

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. 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 exception below for 2018), and (Code Sec. 6334(d)) (property exempt from levy). For analysis, see ¶ 676.

**New measure of inflation provided.**

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), dollar amounts that were previously indexed using CPI-U will instead be indexed using chained CPI-U (C-CPI-U). This change, unlike many provisions in the Act, is permanent. For analysis, see ¶ 627, ¶ 632.

**Kiddie tax modified.**

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. This rule applies to the child's ordinary income and his or her income taxed at preferential rates. For analysis, see ¶ 630.

**Capital gains provisions conformed.**

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. 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. For analysis, see ¶ 631.

**Carried interest—new holding period requirement**

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. 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. For analysis, see ¶ 331.

### New limitations on "excess business loss"

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, see ¶ 326.

### Deduction for personal casualty & theft losses suspended

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. 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. For analysis, see ¶ 605.

### Gambling loss limitation modified

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. For analysis, see ¶ 657.

### Child tax credit increased

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. 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). In addition, a $500 nonrefundable credit is provided for certain non-child dependents. 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. No credit will be allowed to a taxpayer with respect to any qualifying child unless the taxpayer provides the child's SSN. For analysis, see ¶ 333, ¶ 334, ¶ 335.

### State and local tax deduction limited

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.

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. In order 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. For analysis, see ¶ 679.

**Mortgage & home equity indebtedness interest deduction limited**

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). 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.

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

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.

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. For analysis, see ¶ 678.

**Medical expense deduction threshold temporarily reduced**

For tax years beginning after Dec. 31, 2016 and ending before Jan. 1, 2019, the threshhold on medical expense deductions is reduced to 7.5% for all taxpayers. 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. For analysis, see ¶ 611.

**Charitable contribution deduction limitation increased**

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%. 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. For analysis, see ¶ 601.

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 contemporaneous written acknowledgment requirement—is repealed. For analysis, see ¶ 604.

**No deduction for amounts paid for college athletic seating rights**

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. For analysis, see ¶ 602.

**Alimony deduction by payor/inclusion by payee suspended**

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. For analysis, see ¶ 685.

**Miscellaneous itemized deductions suspended**

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. For analysis, see ¶ 607.

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

For tax years beginning after Dec. 31, 2017 and before Jan. 1, 2026, the "Pease limitation" on itemized deductions is suspended. For analysis, see ¶ 677.

**Qualified bicycle commuting exclusion suspended**

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. For analysis, see ¶ 507.

**Exclusion for moving expense reimbursements suspended**

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. For analysis, see ¶ 507.

**Moving expenses deduction suspended**

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. For analysis, see ¶ 664.

**Deduction for living expenses of members of Congress eliminated**

For tax years beginning after the enactment date, members of Congress cannot deduct living expenses when they are away from home. For analysis, see ¶ 612.

**Combat zone treatment extended to Egypt's Sinai Peninsula**

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 the enactment date, 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 the date of enactment. For analysis, see ¶ 305.

**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.

For months beginning after Dec. 31, 2018, under the Tax Cuts and Jobs Act, the amount of the individual shared responsibility payment is reduced to zero. This repeal is permanent. For analysis, see ¶ 400.

**AMT retained, with higher exemption amounts**

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.

Under the Act, the above exemption amounts are reduced (not below zero) to an amount equal to 25% of the amount by which the alternative taxable income 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 (see above). For analysis, see ¶ 625.

**ABLE account changes**

Effective for tax years beginning after the enactment date 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. *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.

*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. For analysis of the above changes, see ¶ 717, ¶ 718.

For distributions after the date of enactment, 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. 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. For analysis, see ¶ 700.

**Student loan discharged on death or disability**

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. For analysis, see ¶ 681.

**Certain self-created property not treated as capital asset**

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." For analysis, see ¶ 279.

**Estate and gift tax retained, with increased exemption amount**

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. The $10 million amount is indexed for inflation occurring after 2011 and is expected to be approximately $11.2 million in 2018 ($22.4 per married couple). For analysis, see ¶ 475.

**Time to contest IRS levy extended**

For levies made after the date of enactment; and for levies made on or before the date of enactment if the 9-month period has not expired as of the date of enactment, 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. For analysis, see ¶ 153.

**Due diligence requirements for claiming head of household**

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. For analysis, see ¶ 105.

**Business Tax Changes**

**Corporate tax rates reduced**

For tax years beginning after Dec. 31, 2017, the corporate tax rate is a flat 21% rate. For analysis, see ¶ 201, ¶ 202.

**Dividends-received deduction percentages reduced**

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%. For analysis, see ¶ 203.

**Alternative minimum tax repealed**

For tax years beginning after Dec. 31, 2017, the corporate AMT is repealed. For analysis, see ¶ 634. 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. For analysis, see ¶ 626.

**Increased Code Section 179 expensing**

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. For analysis, see ¶ 357, ¶ 358, ¶ 359.

**Temporary 100% cost recovery of qualifying business assets**

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.)

> **RIA caution:** The Act refers to the new 100% depreciation deduction in the placed-in-service year as "100% expensing," but the tax break should not be confused with expensing under (Code Sec. 179), which is subject to entirely separate rules (see above).

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). For analysis, see ¶ 350, ¶ 351, ¶ 352, ¶ 353, ¶ 354 , ¶ 356.

**Luxury automobile depreciation limits increased**

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.

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.

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. For analysis, see ¶ 370, ¶ 371 .

**New farming equipment and machinery is 5-year property**

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.

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. For analysis, see ¶ 365, ¶ 373.

**Recovery period for real property shortened**

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-month convention.

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. For analysis, see ¶ 367, ¶ 368, ¶ 369.

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). For analysis, see ¶ 372.

**Costs of replanting citrus plants lost due to casualty**

For replanting costs paid or incurred after the enactment date, but no later than a date which is ten years after the date of enactment, 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. For analysis, see ¶ 251.

**Limits on deduction of business interest**

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).

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 taxable 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). For analysis, see ¶ 716.

**Modification of net operating loss deduction**

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.

For analysis, see ¶ 712, ¶ 713.

**Domestic production activities deduction repealed**

For tax years beginning after Dec. 31, 2017, the DPAD is repealed for non-corporate taxpayers. For tax years beginning after Dec. 31, 2018, the DPAD is repealed for C corporations. For analysis, see ¶ 659.

**Like-kind exchange treatment limited**

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. For analysis, see ¶ 278.

**Five-year writeoff of specified reach or experimentation expenses**

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.

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). For analysis, see ¶ 283.

**Employer's deduction for fringe benefit expenses limited**

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. For analysis, see ¶ 721, ¶ 722, ¶ 723.

**Nondeductible penalties and fines**

For amounts generally paid or incurred on or after the date of enactment (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.

The provisions don't apply to amounts paid or incurred under any binding order or agreement entered into before the date of enactment. But this exception would not apply to an order or agreement requiring court approval unless the approval was obtained before the enactment date. For analysis, see ¶ 303, ¶ 682.

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

Under the Act, effective for amounts paid or incurred after the enactment date, 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. For analysis, see ¶ 683.

**Employee achievement awards**

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. For analysis, see ¶ 719.

**Limitation on excessive employee compensation**

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.

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. For analysis, see ¶ 701, ¶ 702, ¶ 703

**Deduction for local lobbying expenses eliminated**

For amounts paid or incurred on or after the date of enactment, the (Code Sec. 162(e)) deduction for lobbying expenses with respect to legislation before local government bodies (including Indian tribal governments) is eliminated. For analysis, see ¶ 613.

**Orphan drug credit modified**

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). For analysis, see ¶ 375, ¶ 379.

**Rehabilitation credit limited**

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 the date of the enactment, and apply to such expenditures paid or incurred after the end of the tax year in which such 24- or 60-month period ends.

For analysis, see ¶ 250.

**New credit for employer-paid family and medical leave**

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%. 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). For analysis, see ¶ 254.

**Accounting method changes**

**Taxable year of inclusion**

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).

In the case of any taxpayer t 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.

For analysis, see ¶ 255, ¶ 256.

**Cash method of accounting**

For tax years beginning after Dec. 31, 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.

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

For analysis, see ¶ 329, ¶ 330, ¶ 252, ¶ 361, ¶ 362.

**Accounting for inventories**

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.

Use of this provisions results is a change in the taxpayer's accounting method for purposes of (Code Sec. 481). For analysis, see ¶ 329, ¶ 330, ¶ 252, ¶ 361, ¶ 362.

**Capitalization and inclusion of certain expenses in inventory costs**

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.

Use of this provision results is a change in the taxpayer's accounting method for purposes of (Code Sec. 481). For analysis, see ¶ 329, ¶ 330, ¶ 252, ¶ 361, ¶ 362.

**Accounting for long-term contracts**

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.

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). For analysis, see ¶ 329, ¶ 330 , ¶ 252, ¶ 361, ¶ 362.

**Exclusions from contributions to capital**

Effective for contributions made after the date of enactment (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).

(2) *Exception—prior approvals.* The new provision does not apply to any contribution made after the date of enactment by a governmental entity pursuant to a master development plan that had been approved prior to such date by a governmental entity. For analysis, see ¶ 937.

**Repeal of rollover of publicly traded securities gain into specialized small business investment companies**

For sales after Dec. 31, 2017, this election is repealed. For analysis, see ¶ 327.

**Tax incentives for investment in Qualified Opportunity Zones**

Effective on the enactment date, 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.

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.

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 opportunity zone funds. For analysis, see ¶ 284, ¶ 285.

**Pass-Throughs**

**New deduction for pass-through income**

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 limitation; 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.

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.

*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.

**RIA observation:** The second limitation, which was newly added to the bill during Conference, apparently allows pass-through businesses to be eligible for the deduction on the basis of owning property that qualifies under the provision (e.g., real estate).

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).

*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. For analysis, see ¶ 205, ¶ 206.

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. For analysis, see ¶ 326.

**Partnership provisions**

**Repeal of partnership technical termination**

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. For analysis, see ¶ 213.

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

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.

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. For analysis, see ¶ 209.

**Partnership “substantial built-in loss” modified**

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. For analysis, see ¶ 210.

**Charitable contributions and foreign taxes in partner's share of loss**

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. For analysis, see ¶ 211.

**S corporations**

**Treatment of S corporation converted to C corporation**

For distributions after the date of enactment, distributions from an “eligible terminated S corporation” are treated as paid from its accumulated adjustments account and from its earnings and profits on a pro rata basis. Resulting adjustments are taken into account ratably over a 6-year period. An eligible terminated S corporation is any C corporation which (i) was an S corporation on the date before the enactment date, (ii) revoked its S corporation election during the 2-year period beginning on the enactment date, and (iii) had the same owners on the enactment date and on the revocation date (in the same proportion). For analysis, see ¶ 204.

**Tax-exempt organizations**

**Excise tax on excess tax-exempt organization executive compensation**

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. For analysis, see ¶ 476.

**UBTI separately computed for each trade or business activity**

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. For analysis, see ¶ 478.

**Electing small business trust provisions**

**Qualifying beneficiaries of an ESBT**

Effective on Jan. 1, 2018, the Act allows a nonresident alien individual to be a potential current beneficiary of an ESBT. For analysis, see ¶ 207.

**Charitable contribution deduction for ESBTs**

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. For analysis, see ¶ 208.

**Retirement plan provisions**

**Repeal of the rule allowing recharacterization of IRA contributions**

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. For analysis, see ¶ 528.

**Length of service award programs for public safety volunteers**

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. For analysis, see ¶ 429.

**Extended rollover period for rollover of plan loan offset amounts**

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. For analysis, see ¶ 428.

**Bond provisions**

**Repeal of advance refunding bonds**

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. For analysis, see ¶ 600.

**Credit bonds repealed**

For bonds issued after Dec. 31, 2017, the authority to issue tax-credit bonds and direct-pay bonds is prospectively repealed. For analysis, see ¶ 614.

**Foreign provisions**

**Deduction for foreign-source portion of dividends**

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.

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 did not hold the stock in the foreign corporation for a long enough period of time.

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.

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

For analysis, see ¶ 175, ¶ 176.

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

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 “Deduction for foreign-source portion of dividends,” above).

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.

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. For analysis, see ¶ 192, ¶ 193, ¶ 194, ¶ 195.

**Treatment of deferred foreign income upon transition to new participation exemption system—deemed repatriation**

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 net post-'86 historical E&P of the foreign subsidiary to the extent such E&P has not been previously subject to U.S. tax.

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. For analysis, see ¶ 181, ¶ 182 , ¶ 183, ¶ 184, ¶ 185, ¶ 186, ¶ 187, ¶ 188.

**Current inclusion of global intangible low-taxed income**

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. The shareholder's net deemed tangible income return is an amount equal to 10% of the aggregate of the shareholder's pro rata share of the qualified business asset investment of each CFC with respect to which it is a U.S. shareholder.

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. For analysis, see ¶ 234, ¶ 235, ¶ 236 .

**Deduction for foreign-derived intangible income and GILTI**

For tax years that begin after Dec. 31, 2017 and before Jan. 1, 2026, in the case of a domestic corporation, 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. For analysis, see ¶ 237.

**Repeal of foreign base company oil-related income rule**

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. For analysis, see ¶ 226.

**Repeal of rule taxing income when CFC decreases investment**

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. For analysis, see ¶ 225.

**Modification of CFC status attribution rules**

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. For analysis, see ¶ 229.

**Expansion of definition of “U.S. Shareholder”**

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. For analysis, see ¶ 232.

**Elimination of 30-day minimum holding period for CFC**

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. For analysis, see ¶ 231.

**Prevention of base erosion**

**Base erosion and anti-abuse tax**

With respect to base erosion payments (as defined below) paid or accrued in tax years that begin after Dec. 31, 2017, certain corporations with average annual gross receipts of at least $500 million 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. Except as provided at “Members of affiliated...,” below, the base erosion minimum tax amount means, with respect to an applicable taxpayer for any tax year beginning before Jan. 1, 2026, the excess of 10% of the modified taxable income of the taxpayer for the tax year over an amount equal to the regular tax liability reduced (but not below zero) by the excess (if any) of credits allowed under Chapter 1 over an amount that includes the credit allowed under (Code Sec. 38) (general business credit) for the tax year allocable to the research credit under (Code Sec. 41(a)).

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, 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. For analysis, see ¶ 805.

**Limitations on income shifting through intangible property transfers**

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. For analysis, see ¶ 922.

**Denial of deduction for certain related party payments**

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. For analysis, see ¶ 253.

**Surrogate foreign corporation dividends aren't qualified**

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 date of enactment, is not entitled to the lower rates on qualified dividends provided for in (Code Sec. 1(h)). For analysis, see ¶ 609.

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

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 “Deduction for foreign-source portion of dividends,” above, applies.

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. For analysis, see ¶ 178.

**Separate foreign tax credit limitation basket for foreign branch income**

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. For analysis, see ¶ 103.

**Change in rule for sourcing income from sales of inventory**

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. For analysis, see ¶ 150.

**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.

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%. For analysis, see ¶ 936.

**Other international reforms**

**Restriction on insurance business exception to PFIC rules**

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. For analysis, see ¶ 100.

**Repeal of fair market value of interest expense apportionment**

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. For analysis, see ¶ 401.

**Stock compensation of insiders in expatriated corporations**

For corporations first becoming expatriated corporations after the date of enactment of the Act, the excise tax on stock compensation in an inversion is increased from 15% to 20%. For analysis, see ¶ 151.

**Analysis of the Tax Cuts and Jobs Act.**

This section includes the Analysis of the tax provisions of the Tax Cuts and Jobs Act arranged in topical order. Each analysis paragraph starts with a boldface title. That is followed by a list of the Code sections amended, added, affected, repealed by or related to the change, the Act section that caused the change, and the generally effective date for the change. Each Analysis paragraph discusses the background for the change, the new law change, and the effective date for that change. Analysis paragraphs may include (1) illustrations and observations providing practical insight into the effects of the change, (2) recommendations explaining how to take advantage of opportunities presented by the law change, (3) cautions explaining how to avoid pitfalls created by the law change, and (4) client letters highlighting important law changes. The Analysis is reproduced at ¶ 10 et seq.

**Client Letters.**

The Analysis includes client letters highlighting the tax changes made by the Tax Cuts and Jobs Act. The Client Letters that highlight the Tax Cuts and Jobs Act changes begin at ¶ XXXX et seq.

**Code as Amended.**

All Code sections that were amended, added, repealed, or redesignated by the tax provisions of the Tax Cuts and Jobs Act appear in Code section order as amended, added, repealed, or redesignated. New matter is shown in italics. Deleted material and effective dates are shown in footnotes. The Code as Amended is reproduced at (¶ XXX0) et seq.

**Act Sections Not Amending Code.**

This section reproduces in Act section order, all tax provisions of the Tax Cuts and Jobs Act, or portions thereof that are tax related but do not amend specific Code sections. The Act Sections Not Amending Code are reproduced at (¶ 4000) et seq.

**Committee Reports.**

This section reproduces all relevant parts of Committee Reports and/or Joint Committee on Taxation Explanations that have been issued for the Tax Cuts and Jobs Act.

**Act Section Cross Reference Table.**

Arranged in Act section order, this table shows substantive Code section(s) amended, added, affected, repealed by or related to the Tax Cuts and Jobs Act section, the topic involved, the generally effective date of the amendment, the relevant paragraph number for the Analysis and the paragraph where the relevant Committee Reports are reproduced. The table is reproduced at ¶ 6000.

**Code Section Cross Reference Table.**

Arranged in Code section order, this table shows the Tax Cuts and Jobs Act section(s) that amend, add, affect, repeal or relate to the Code Section, the topic involved, the generally effective date of the amendment, the relevant paragraph number for the Analysis and the paragraph where the relevant Committee Reports are reproduced. The table is reproduced at ¶ 6001.

**Code Sections Amended by Acts.**

Arranged in Code section order, this table shows all changes to the Internal Revenue Code made by the Tax Cuts and Jobs Act, including conforming amendments. The table is reproduced at

¶ 6004

**Act Sections Amending Code.**

Arranged in Act section order, this table shows all changes to the Internal Revenue Code made by the Tax Cuts and Jobs Act including conforming amendments. The table is reproduced at ¶ 6005.

**Federal Tax Coordinator 2d ¶¶ Affected by Act.**

Arranged in FTC 2d ¶ order, this table shows the FTC 2d paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6008 .

**United States Tax Reporter ¶¶ Affected by Act.**

Arranged in USTR ¶ order, this table shows the USTR paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6009.

**Catalyst ¶¶ Affected by Act.**

Arranged in Catalyst ¶ order, this table shows the Catalyst paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6010.

**Pension Analysis ¶¶ Affected by Act.**

Arranged in Pension and Benefits Analysis ¶ order, this table shows the Pension and Benefits Analysis paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6011.

**Pension & Benefits Explanations ¶¶ Affected by Act.**

Arranged in Pension and Benefits Explanations ¶ order, this table shows the Pension and Benefits Explanations paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6012.

**Benefits Explanations ¶¶ Affected by Act.**

Arranged in Benefits Explanations ¶ order, this table shows the Benefits Explanations paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6013.

**Estate Planning Analysis ¶¶ Affected by Act.**

Arranged in Estate Planning Analysis ¶ order, this table shows the Estate Planning Analysis paragraphs that have been affected by the Tax Cuts and Jobs Act. The table is reproduced at ¶ 6014.

**Index.**

A detailed index, which directs the reader to the appropriate Analysis paragraph, is reproduced immediately after the aforementioned Tables for the Complete Analysis.

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