SUMMARY OF THE TAX CUTS AND JOBS ACT OF 2017

On December 22, 2017, the President signed into law, the Tax Cuts and Jobs Act of 2017. This Act represents some of the most extensive tax reform legislation passed in modern U.S. history, and has led to significant questions about the effects it will have on individuals and businesses.

Following is a summary of the changes that will affect individual and corporate taxpayers. Unless noted otherwise, the listed change took effect on January 1, 2018.

Individual Taxation

INCOME TAXATION
Under the bill, the seven income tax rates were modified to the following rates and thresholds:

	Married	Single	T&E
10%	$0	$0	$0
12%	$19,050	$9,525	N/A
22%	$77,400	$38,700	N/A
24%	$165,000	$82,500	$2,550
32%	$315,000	$157,500	N/A
35%	$400,000	$200,000	$9,150
37%	$600,000	$500,000	$12,500

The legislation provides for indexing of certain tax law amounts for inflation, including the above income bracket thresholds. Applicable amounts will be indexed for "chained CPI" instead of CPI-U (consumer price index, as published by the Department of Labor), a slightly different measure of inflation, beginning in tax years after 2018. These rates and thresholds were effective beginning January 1, 2018, and expire at the close of 2025, at which time the 2017 law will be reinstated, adjusted for inflation from 2017. Most of the individual income tax and transfer tax provisions expire, or sunset, at the close of 2025. As a general rule, provisions that sunset in 2025 will be replaced by the law that was in effect as of the close of 2017. Although most individual tax provisions expire after 2025, the chained-CPI indexing provisions are permanent.

Capital gains and dividends will continue to be taxed at the existing the rates, viz., 0%, 15%, and 20%, but the thresholds for each rate will be indexed for inflation at the chained-CPI. As a result, the threshold for joint returns in 2018 for the 15% rate is $77,200 (up from $75,900) and for 20% is $479,000 (up from $470,700).

The standard deduction is increased to $24,000 for married filing jointly, $12,000 for single filers, and $18,000 for heads of household. The standard deduction will be adjusted for inflation based on chained CPI in tax years after 2017. The deduction for personal exemptions for dependents is repealed. The increase in the standard deduction and the repeal of the personal exemption sunset after 2025.

The child tax credit is doubled to $2,000 per qualifying child under age 17, with a maximum refundable amount per child (if the credit reduces the tax below zero) of $1,400. It also includes the additional credit of $500 for each dependent that is not a qualifying child (e.g., elderly parent, special needs adult child, etc.) The phase-out threshold for these credits is increased to $400,000 for joint filers (up from $110,000) and $200,000 for single filers (up from $75,000). These credits both sunset after 2025.

ITEMIZED DEDUCTIONS
The vast majority of itemized deductions available to individuals were repealed or modified under the new law. Specifically, the following deductions are repealed:

- Personal casualty and theft losses
- Moving expenses (except for active-duty members of US military changing duty stations)
- Tax preparation expenses
- Alimony payments (and no longer includible income to payee). [Applies to agreements executed after 12/31/18, or modified after 12/31/18 with the modification expressly providing that this provision applies.]

Minimal change was made in the law governing charitable deductions, except that the AGI limitation against which such a deduction for charitable cash contributions may be applied is increased to 60% (from the previous 50%).

Two areas that received a great deal of attention both in the press and in the conference committee discussions were the deductibility of payments for state and local taxes ("SALT" deduction), including real estate taxes, and of interest payments on a mortgage loan for residential real estate.

State and Local Taxes: As a general rule, state, local, and foreign property taxes and state and local sales taxes are allowed as a deduction only when paid or accrued in carrying on a trade or business. As an exception to this general rule, a taxpayer may claim an itemized deduction of up to $10,000 ($5,000 for 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 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 taxable year. (Foreign real property taxes may not be deducted under this exception.) These provisions sunset after 2025.

Mortgage Interest: A taxpayer may deduct interest on indebtedness up to $750,000 (for married filing jointly) to acquire qualifying real estate for loans taken out after December 15, 2017. For loans existing before that date, the current $1,000,000 indebtedness limitation still applies. Interest on home equity borrowing is no longer deductible. However, interest on acquisition indebtedness continues to be deductible, within the new limits, for both the taxpayer's principal residence and a qualifying second home. These provisions, both the mortgage interest limitation and the deductibility of home equity indebtedness, sunset after 2025, regardless of when the indebtedness is incurred.

PEASE AMENDMENT LIMIT
For the remaining itemized deductions, the current phase-out/cap on itemized deductions for high-income taxpayers (the so-called "Pease Amendment limit") is repealed. (In 2017, itemized deductions face reduction/phase-out when AGI exceeds $320,000 for married filing jointly.)

GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE
These gains remain excludible from income for federal tax purposes, but a qualifying residence must have been used as the taxpayer's principal residence for five of the preceding eight years (previously two of the preceding five years).

QUALIFIED PLANS
Many advisors expressed relief that most of the provisions relating to qualified retirement plans considered under the House and Senate versions of the bill did not make it into the new law, which leaves the plans largely unchanged. Of note, the ability to recharacterize a Roth conversion contribution is repealed, but recharacterization is still permitted with respect to other contributions.

ESTATE, GIFT, AND GENERATION-SKIPPING TAXES
The applicable exclusion amount under IRC §2010(c)(3) is doubled to $10,000,000 per taxpayer, and is indexed for inflation after 2011 using the new chained CPI method. Thus, by reference, the generation-skipping transfer

tax exemption under IRC §2631(c) and the lifetime gift tax exemption under IRC §2505(a) are also increased to the same amount. These provisions sunset after 2025, after which the applicable exclusion amount will revert to $5,000,000 indexed for inflation after 2011 using the chained-CPI method. The estate tax rates and brackets remain the same (i.e., top rate of 40%), and the step-up in tax basis of property received from a decedent under IRC §1014 is unchanged.

PASS-THROUGH INCOME TAX PROVISIONS

As an individual income issue, these provisions belong in Title I of the new law, even though they might be related conceptually to the business taxation provisions of Title III below. A taxpayer generally may deduct 20% of "qualified business income" from a partnership, S corporation, or sole proprietorship, as well as 20% of aggregate qualified REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income. (Special rules apply to specified agricultural or horticultural cooperatives.) A limitation based on W-2 wages paid is phased in above taxable income of $157,500 (single) or $315,000 (jointly). A disallowance of the deduction with respect to specified service trades or businesses is also phased in above the same thresholds, with the deduction being fully phased out at $207,500 (single) and $415,000 (jointly). Specified service trades or businesses are defined generally as any trade or business involving the performance of services in the fields of health, law, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners, or which involves the performance of services that consist of investing and investment management trading, or dealing in securities, partnership interests, or commodities (specifically excluding engineering and architectural services included in earlier versions of the bill). These provisions will sunset after 2025.

TRANSFER FOR VALUE ISSUES

Of particular interest to our readers are new provisions which limit the applicability of the exceptions to the transfer-for-value rule under IRC §101(a)(2). New reporting requirements exist for any taxpayer acquiring a life insurance policy in a "reportable policy sale." The reporting requirements include personal identification information of the acquirer(s) and the transferor(s), payment amount(s), transferor's basis, death benefit received from a policy thus transferred, and other information. A "reportable policy sale" is defined generally as the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured (apart from the acquirer's interest in the life insurance contract). In determining the basis of a life insurance or annuity contract, no adjustment is to be made for mortality, expense, or other reasonable charges incurred under the contract (known as "cost of insurance"). This new provision reverses the position of the IRS in Revenue Ruling 2009-13 that on sale of a cash value life insurance contract, the insured's (seller's) basis is reduced by the cost of insurance. The law provides that the exceptions to the transfer for value rules under IRC §101(a)(2)(A) do not apply in the case of a transfer of a life insurance contract, or any interest in a life insurance contract, in a reportable policy sale. Thus, some portion of the death benefit ultimately payable under such a contract may be includable in income. The new basis rule is effective for contracts issued after August 25, 2009; otherwise these provisions are effective for reportable sales entered into, and reportable death benefit received, after December 31, 2017.

ALTERNATIVE MINIMUM TAX

For individual taxpayers, the alternative minimum tax is modified through 2025, after which it returns to its 2017 form and amounts. (That is, provisions modifying individual alternative minimum tax sunset after 2025.) The alternative minimum tax exemption amount and the exemption amount phaseout thresholds for individual taxpayers are temporarily increased. Under the relevant provisions, for taxable years 2018 through 2025, the alternative minimum tax exemption amount is increased to $109,400 for married taxpayers filing a joint return (up from $84,500 in 2017), and $70,300 for all other taxpayers (up from $54,300). The phaseout thresholds are increased to $1,000,000 for married taxpayers filing a joint return (up from $160,900), and $500,000 for all other taxpayers (up from $120,700). These amounts are indexed for inflation under the chained-CPI method.

The alternative minimum tax is permanently repealed for corporations, and provisions allow a corporation's alternative minimum tax credit (i.e., AMT paid in a prior year) to offset the regular tax liability for any taxable year. In addition, the AMT credit is refundable for any taxable year beginning after 2017 and before 2022 in an amount equal to 50 percent (1 00 percent in the case of taxable years beginning after 2021) of the excess of the minimum tax credit for the taxable year over the amount of the credit allowable for the year against regular tax liability.

Thus, the full amount of the minimum tax credit will be allowed in taxable years beginning before 2022. This provision functions to make the repeal of corporate alternative minimum tax partially retroactive.

Corporate Taxation

INCOME TAXATION

The new law replaces the existing four corporate tax rates with a flat 21% rate applicable to all corporations.

Before the new law, corporations could take a deduction for dividends received from other taxable domestic corporations. The new law modifies these deductions by reducing the general dividends received deduction to 50% (down from 70%) and the deduction for dividends received from a 20% owned corporation to 65% (down from 80%). The 100% deduction for dividends received from corporations in the same affiliated group is unchanged. The bill vastly accelerates the rate at which a corporation may deduct the expense of new qualified business property acquired and put in service after September 27, 2017, and expands the current definition of property that can generate such a deduction. The relevant provisions generally allow for a 100% deduction of the acquisition cost of such qualified property effective in 2018 through 2022, and thereafter phased down gradually through 2027, with some exceptions for longer-production property and certain aircraft. As it did for individual income taxation, the bill eliminates many business deductions and modifies many of those that would remain. For example, the bill repeals the deduction for lobbying expenses and for entertainment, amusement or recreation activities, facilities, or membership dues relating to such social purposes. The bill repeals all deductions for transportation fringe benefits and other fringe benefits except to the extent that the deducted value is included in employees' taxable income. Likewise, the bill modifies the rules governing business interest under IRC §163, limiting the allowable deduction to 30% of adjusted taxable income, but allowing an indefinite carryforward of any business interest denied under the new limitation.

Following both the House and Senate versions of the bill, the new law repeals the deduction for the first $3 million in income of "small life insurance companies," defined as those companies with taxable income of less than $15 million. This provision would potentially affect the tax attractiveness of so-called "captive" insurance companies.

Likewise, the bill modifies IRC §1031 ("Exchange of property held for productive use or investment") which governs gain recognition rules applicable to qualifying exchanges of "like-kind" property that is held for productive use in a trade or business or for investment. Specifically, the bill limits nonrecognition of gain to only exchanges of like-kind real property rather than to all types of property. This modification does not appear to affect in any way the ability of the owner of a life insurance policy, endowment contract, annuity, or long-term-care contract to exchange the property for qualifying like-kind property under IRC §1035 without recognizing gain in the original contract.

Numerous business tax credits are also repealed or modified by the bill, such as the credit for clinical testing expenses for certain drugs for rare diseases or conditions, etc.

The new law contains no vestige of the modifications to nonqualified deferred compensation law introduced in the original House version of the bill. Generally, nonqualified deferred compensation will face the same opportunities and constraints as it did in 2017. Slight modifications are made to the so-called compensation deduction limitation ("reasonable compensation") of $1,000,000 under IRC §162(m): while the limitation amount remains the same, covered employees are expanded to include the CEO and CFO, but grandfathering provisions are included to exclude payments made subject to certain existing compensation arrangements.

TAXATION OF INCOME FROM FOREIGN SUBSIDIARIES

The new law makes numerous complicated modifications to the laws providing for the taxation of foreign income and foreign companies. Notable among the changes is the so-called "repatriation" tax, aimed at providing an incentive for domestic companies to bring foreign profits back to the US. In 2017, US corporations with income from foreign subsidiaries could defer recognition of that income until it was received in the US. The new law imposes a "deemed repatriation" tax on such deferred foreign profits at the rate of 15.5% for liquid assets and 8% for illiquid assets.