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U.S. TAX CUTS & JOBS ACT - A COMPARISON OF HOUSE & SENATE BILLS

The US House of Representatives & the Senate have now both released their versions of the Tax Cuts & Jobs Act. On November 16, 2017 the House passed their bill, and later that same day the Senate Finance Committee approved their proposed tax reform legislation. On December 2, 2017 the full Senate voted on its bill and after making more changes they approved the bill with a vote of 51-49. Now both houses of Congress will meet to try to reach an agreement on a unified tax bill. After the House & Senate approve a bill it can be signed into law by the President. If passed, this will be the most significant overhaul of the US Internal Revenue Code in over 30 years.

In the table below, I have outlined some of the similarities and differences in the House and Senate versions of the Tax Cuts & Jobs Act. Note that in the Senate version of the bill, the proposed changes affecting individuals would be temporary, and would expire after December 31, 2025. As a result, beginning with year 2026, the Code provisions would revert back to current form. In comparison, the House reform is mostly permanent.

	HOUSE BILL	SENATE BILL
FOR BUSINESSES		
Corporate income tax rate	Flat 20% effective January 1, 2018	Flat 20% effective for tax years beginning after 2018
Alternative Minimum Tax (AMT)	Repeal Those with AMT carry forwards would claim a refund for 50% of remaining credits (to the extent they exceed regular tax) beginning 2019	Retain
Section 179 (Election to expense certain depreciable business assets)	Increase Limit to $5,000,000, from $500,000, phase out at $20,000,000 instead of current law at $2,000,000	Increase Limit to $1,000,000, phased out at $2,500,000
Depreciation on real property	No change	Shorten recovery periods on non-residential rental properties (including properties located outside the US) to 25 years and to 30 years for residential rental properties
NOL (net operating loss)	Eliminates carrybacks and limits carryforwards to 90% of taxable income	Eliminates carrybacks and limits carryforwards to 90% of taxable income, reduced to 80% after December 31, 2022

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	HOUSE BILL	SENATE BILL
FOR BUSINESSES		
Interest Expense	Caps the deductibility at 30% of earnings before interest, taxes, depreciation and amortization (EBITA)	Caps the deductibility at 30% of earnings before interest and taxes (EBIT) Interest not allowed as a deduction can be carried forward. Certain businesses would be exempt from this limit like real property developers, construction, and rental. Full interest expense allowed for “small businesses” less than $15,000,000 gross receipts
Deductions	Eliminates deduction for Entertainment expenses	Eliminates deduction for entertainment expenses
Repatriation	100% dividend received deduction for certain qualified foreign source dividends received by US companies from foreign subsidiaries	100% dividend received deduction for certain qualified foreign source dividends received by US companies from foreign subsidiaries
	Shareholders must include in income pro rata share of undistributed non previously taxed post 1986 foreign earnings. A portion of this is deductible depending on if deferred earnings are held in cash or other assets 14% tax on E&P relating to cash or cash equivalents & 7% tax on E&P related to other assets Amount subject to tax is greater of E&P as at November 2, 2017 or December 31, 2017	Shareholders must include in income pro rata share of undistributed non previously taxed post 1986 foreign earnings. A portion of this is deductible depending on if deferred earnings are held in cash or other assets 14.49% tax on E&P relating to cash or cash equivalents & 7.49% tax on E&P related to other assets Amount subject to tax is as of November 9, 2017
	HOUSE BILL	SENATE BILL
FOR INDIVIDUALS		
Individual tax brackets	Reduced to 4	Kept at 7 but income levels modified. Top bracket reduced to 38.5% for income over $500,000 ($1,000,000 Married) “Marriage penalty” to be eliminated
Alternative Minimum Tax (AMT)	Repeal of AMT	Retain with modified threshold

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	HOUSE BILL	SENATE BILL
FOR INDIVIDUALS		
Taxation of flow through business income	Flat 25% tax	23% deduction on qualified business income from a partnership, S-Corp (effectively taxing income at 29.6% at top bracket)
Depreciation – bonus depreciation	Increases rate to 100% starting Sept 27, 2017 until Dec 31, 2022 applicable on new and used property	Increases rate to 100% starting Sept 27, 2017 applicable only on new qualified property Difference between House & Senate is definition of qualified property. After 2022 100% write off will begin to phase out
1031 exchange	Limit to real property, no longer allowed on tangible personal property	Limit to real property, no longer allowed on tangible personal property
Taxation of capital gains & Dividends	Retain current 15% and 20% rates	Retain current 15% and 20% rates
Standard deduction	Almost doubled current amount for Standard Deduction $24,400 for Married Filing Joint & $12,200 for Single	Almost doubled current amount for Standard Deduction $24,000 for Married Filing Joint & $12,000 for Single
Personal exemptions	Repealed	Repealed
Deduction for Home Mortgage Interest	Limit reduced to $500,000 of acquisition debt, mortgage on second homes no longer allowed	Maintain current limit of $1,000,000 of acquisition debt, maintain deduction for interest paid on mortgage on primary & secondary homes
Deduction for State & Local taxes	Repeal deduction for state and local income taxes, but allow deduction for real estate tax (capped at $10,000)	Repeal deduction for state and local taxes, but allow deduction for real estate tax (capped at $10,000)
Deduction for Medical Expenses	Eliminated	Retain with slight change for 2017 & 2018
Deduction for Charitable Contributions	No major change	No major change
Other Deductions	Repeal deduction for personal casualty losses, moving expenses, student loan interest	Repeal deduction for personal casualty losses, moving expenses. student loan interest deduction retained
Alimony	For divorce decree or separation agreements effective after 2017, Alimony will no longer be deductible by the payor and includable in payees income	No change, alimony continues to be deductible by payor and includable in payees income

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	HOUSE BILL	SENATE BILL
FOR INDIVIDUALS		
Exclusion of Gain on Sale of personal residence	Increase in time period of ownership from 2 out of last 5 years to 5 out of last 8 years. Exclusion only available once every 5 years Phased out for joint filers at $500,000 of AGI (Adjusted Gross Income)	Increase in time period of ownership from 2 out of last 5 years to 5 out of last 8 years. Exclusion only available once every 5 years
Estate Tax	Double current exemption from $5,600,000 per person to $11,200,000 per person for deaths after 2017 Estate tax Repealed after 2023. Beneficiaries will continue to get a step up in basis in property	Double current exemption from $5,600,000 per person to $11,200,000 per person for deaths after 2017
3.8% Net Investment Income Tax	Retained	Retained

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Nina Heft is a Principal with over 25 years of experience as a tax advisor. Before joining the PSB Boisjoli team in 2001, Nina ran the expatriate tax services group of another major Montreal accounting firm.

Nina is a seasoned tax expert who specialises in US taxation, US and cross-border tax planning (including income tax and inheritance tax), US corporate tax returns, and individual US tax returns for Canadians and US citizens living in Canada. She also provides her clients with the taxation advice they need for compliance issues and expansion into US and Canadian markets.

Her substantial portfolio of clients primarily includes US citizens living in Canada, Canadian individuals investing in US real estate and partnerships, as well as Canadian companies operating franchises and subsidiaries in the United States, across a wide range of business sectors. Nina is especially interested in real estate and wholesale. Real estate brokerage firms regularly call on her expertise in order to provide their clients with specialised and up-to-date US taxation advice.