CLEARY GOTTLIEB

December 22, 2017

2017 U.S. Tax Reform (f/k/a Tax Cuts & Jobs Act): Key Provisions

Topic	House Bill *Passed November 16, 2017*	Senate Bill *Passed December 1, 2017*	Conference Agreement *Signed into Law December 22, 2017* (Changes from Senate bill highlighted)
Corporate Rates	— Corporate tax rate lowered to 20% beginning in 2018, with corresponding changes to the dividends received deduction — Corporate AMT repealed	— Corporate tax rate lowered to 20% for taxable years beginning in 2019, with corresponding changes to the dividends received deduction — Corporate AMT retained at 20% rate, which effectively means a loss of preference items including research and development credits and expensing; it is likely this will be revised in conference	— Corporate tax rate lowered to 21% beginning in 2018, with corresponding changes to the dividends received deduction — Corporate AMT repealed
Individual Rates	— Existing 8 rate brackets changed to 4 new brackets; maximum rate of 39.6% retained for top bracket — AMT repealed	— 8 individual rate brackets retained, with slightly lower rates; maximum rate for top bracket (above $1m per couple) reduced to 38.5% — AMT exemption increased — Rate reductions, AMT exemption increase, and other individual provisions expire after 2025 — Reduced capital gains rate no longer available for dividends from foreign companies that have undertaken a 60% inversion at any time (no grandfathering)	— 8 individual rate brackets retained, with slightly lower rates; maximum rate for top bracket (above $600k per married couple) reduced to 37% — AMT exemption increased — Rate reductions, AMT exemption increase, and other individual provisions expire after 2025 — Reduced qualified dividend rate no longer available for dividends from foreign companies that undertake a 60% inversion after the enactment of the TCJA (prior inversions grandfathered)

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Pass-thru Rate	— Individuals investing in pass-thru entities taxed at 25% rate on 100% of passive business income and 30% (or less) of active business income (with a potential election to apply a different percentage based on partnership depreciable assets)	— Individuals may deduct 23% of domestic trade or business income from a partnership, S corporation or sole proprietorship; generally excluding investment income, income from services businesses and compensation • However, the deduction is generally capped at the taxpayer's allocable share of 50% of the W-2 wages paid by the partnership, S corporation or sole proprietorship — Individuals may also deduct 23% of certain REIT dividends and income from publicly traded partnerships, without regard to W-2 expense — 23% deductions expire after 2025	— Individuals may deduct 20% of domestic trade or business income from a partnership, S corporation or sole proprietorship; generally excluding investment income, income from services businesses (except engineering or architecture services) and compensation • However, the deduction is generally capped at the greater of (1) the taxpayer's allocable share of 50% of the W-2 wages paid by the partnership, S corporation or sole proprietorship, or (2) the taxpayer's share of 25% of such W-2 wages plus 2.5% of the acquisition cost of the entity's tangible assets — Individuals may also deduct 20% of certain REIT dividends and income from publicly traded partnerships, without regard to W-2 expense — 20% deductions expire after 2025
Deduction for State and Local Taxes ("SALT")	— State and local taxes are generally not deductible; however: • State and local property taxes are deductible up to $10,000; and • State and local taxes incurred in connection with a trade or business by a pass-thru entity (e.g. sales taxes) are fully deductible	— State and local taxes are generally not deductible; however: • State and local non-business property taxes are deductible up to $10,000; and • State and local property and sales taxes incurred in connection with a trade or business are fully deductible — Changes to SALT deductions expire after 2025	— State and local non-business property taxes, income taxes and/or sales taxes are deductible up to $10,000 in aggregate — State and local property and sales taxes incurred in connection with a trade or business are fully deductible — 2018 state and local taxes prepaid in 2017 are not intended to be deductible in 2017 — Changes to SALT deductions expire after 2025

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Mortgage Interest	— For debt incurred after 11/2/17, mortgage interest deduction is limited to $500k of debt and one principal residence	— Deduction for interest on acquisition indebtedness retained and unchanged; deduction for interest on home equity indebtedness repealed — Repeal of deduction for home equity interest expires after 2025	— For debt incurred after 12/15/17, mortgage interest deduction is limited to $750k of debt and two principal residences — Deduction for interest on home equity indebtedness repealed — Changes to mortgage interest deductions expire after 2025
Itemized Deductions	— Limitations on itemized deductions (3% phase-out and 80% cap) are repealed — Many miscellaneous itemized deductions are repealed, but deductions for investment interest and investment advisory fees (among others) are retained, subject to the 2% floor	— Limitations on itemized deductions (3% phase-out and 80% cap) are repealed — All miscellaneous itemized deductions (including investment advisory fees) are repealed — Changes to itemized deductions expire after 2025	— Limitations on itemized deductions (3% phase-out and 80% cap) are repealed — All miscellaneous itemized deductions (including investment advisory fees) are repealed — Changes to itemized deductions expire after 2025
Estate and Gift Tax	— Beginning in 2018, applies to estates over $10m (up from $5m) — Repealed entirely after 2023 — Basis step-up on inheritance at death retained	— Beginning in 2018, applies to estates over $10m (up from $5m) — Basis step-up on inheritance at death retained — Changes to estate tax expire after 2025	— Beginning in 2018, applies to estates over $10m (up from $5m) — Basis step-up on inheritance at death retained — Changes to estate tax expire after 2025

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Expensing	— 100% of cost of qualified property acquired and placed in service before 2023 is immediately deductible — "Qualified property" is depreciable tangible property (including used property); excludes stock, intangibles, real estate, and any other property used in a real estate business — The maximum annual amount of the immediate deduction available for qualified property acquired by small businesses would be increased to $5m (from $500k) for taxable years through 2022 — Depreciation of real property unchanged	— 100% of cost of qualified property acquired and placed in service before 2023 is immediately deductible, with the percentage of the cost that is immediately deductible stepping down annually after that until it is phased out completely for property placed in service after 2026 (or 2027, in the case of certain property with longer production periods) — "Qualified property" is depreciable tangible property first placed in service by the taxpayer; excludes stock, intangibles, real estate, and public utility property — The maximum annual immediate deduction for qualified property acquired by small businesses is increased to $1m (from $500k) — Recovery period for depreciation of real property (other than land) reduced to 25 years (from 27.5—39 years under current law) for any real property placed in service after December 31, 2017 • However, for any real property business that elects out of the interest expense limitations described below, the recovery period for real property (other than land) is 40 years for nonresidential real property and 30 years for residential real property for all taxable years beginning in 2018 (*i.e.*, no grandfathering for property placed in service before 2018)	— 100% of cost of qualified property acquired and placed in service before 2023 is immediately deductible, with the percentage of the cost that is immediately deductible stepping down annually after that until it is phased out completely for property placed in service after 2026 (or 2027, in the case of certain property with longer production periods) — "Qualified property" is depreciable tangible property (including used property acquired from an unrelated party); excludes stock, intangibles, real estate, and public utility property — The maximum annual immediate deduction for qualified property acquired by small businesses is increased to $1m (from $500k) — No reduced recovery period for real property — For any real property business that elects out of the interest expense limitations described below, the recovery period for real property (other than land) is extended from 39 years to 40 years for nonresidential real property, and from 27.5 years to 30 years for residential rental property, for all taxable years beginning in 2018 (*i.e.*, no grandfathering for property placed in service before 2018)

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NOLs	— For NOLs arising in 2018 and later, carrybacks are repealed and carryforwards are indefinite (with inflation adjustment) — Beginning in 2018, NOLs are only deductible against 90% of taxable income, no matter when the NOLs arose (*i.e.* no grandfathering)	— For NOLs arising in taxable years *ending* in 2018 and later (*i.e.*, including 2017 NOLs for some companies), carrybacks are repealed and carryforwards are indefinite — For NOLs arising in taxable years *beginning* in 2018 and later, NOLs are deductible only against 90% of taxable income for taxable years 2018 through 2022, and against 80% of taxable income for taxable years 2023 and later — Pre-2018 NOLs are grandfathered from both rules	— For NOLs arising in taxable years *ending* in 2018 and later (*i.e.*, including 2017 NOLs for some companies), carrybacks are repealed and carryforwards are indefinite — For NOLs arising in taxable years *beginning* in 2018 and later, NOLs are deductible only against 80% of taxable income for 2018 and later — Pre-2018 NOLs are grandfathered from both rules
Accounting Methods	— No change from current law	— For accrual method taxpayers with audited financial statements, income generally is taken into account for tax purposes no later than it is taken into account for book purposes — This rule does not apply to income in connection with mortgage servicing contracts — This rule would generally take effect beginning in 2018, but would be delayed until 2019 for original issue discount	— For accrual method taxpayers with audited financial statements, income generally is taken into account for tax purposes no later than it is taken into account for book purposes — This rule does not apply to income in connection with mortgage servicing contracts — This rule would generally take effect beginning in 2018, but would be delayed until 2019 for original issue discount

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Interest Expense Deductions	— "Worst of" two rules will apply to all debt outstanding on 1/1/18 (no grandfathering) — First Rule: deduction for net business interest expense limited to 30% of EBITDA; disallowed interest can be carried forward for 5 years • Interest incurred in a real property business not subject to this limitation — Second Rule: in multinational groups, U.S. borrowers' deduction for net interest expense capped at 110% of the U.S. share of the group's overall EBITDA	— "Worst of" two rules will apply to all debt outstanding on 1/1/18 (no grandfathering) — First Rule: deduction for net business interest expense limited to 30% of adjusted taxable income; disallowed interest can be carried forward indefinitely • At taxpayer's election, interest incurred in a real property business is not subject to this limitation • "Adjusted taxable income" means taxable income without regard to non-business income/deductions, business interest, the 23% deduction for pass-thru income, and NOL deductions — Second Rule: in multinational groups, U.S. borrowers' deduction for net interest expense capped at a percentage of the U.S. share of the group's overall leverage, initially 130% in 2018 but phased down to 110% for taxable years beginning in 2022 and after	— Deduction for net business interest expense limited to 30% of adjusted taxable income; disallowed interest can be carried forward indefinitely • At taxpayer's election, interest incurred in a real property business is not subject to this limitation • "Adjusted taxable income" means taxable income without regard to non-business income/deductions, business interest, the 20% deduction for pass-thru income, NOL deductions, and (for taxable years beginning before 2022) depreciation and amortization deductions (*i.e.*, EBITDA through 2021 and EBIT in 2022 and after) — Rule applies to all debt outstanding on 1/1/18 (no grandfathering) — No limitation based on worldwide leverage
Carried Interest	— For capital gains recognized with respect to services-related investment partnership profits interests, 3-year holding period to qualify as long-term capital gains; otherwise, characterized as short-term capital gains	— For capital gains recognized with respect to services-related investment partnership profits interests, 3-year holding period to qualify as long-term capital gains; otherwise, characterized as short-term capital gains	— For capital gains recognized with respect to services-related investment partnership profits interests, 3-year holding period to qualify as long-term capital gains; otherwise, characterized as short-term capital gains
Gain on Sale of Partnership Interest	— No change from current law	— When a foreign person sells an interest in a partnership that is engaged in a U.S. trade or business, some or all of the gain is taxable; effective for sales on or after November 27, 2017 — 10% withholding tax on entire sales proceeds applies to foreign individual or corporate sellers of a partnership interest (with secondary liability on the partnership to withhold if transferee does not)	— When a foreign person sells an interest in a partnership that is engaged in a U.S. trade or business, some or all of the gain is taxable; effective for sales on or after November 27, 2017 — 10% withholding tax on entire sales proceeds applies to foreign individual or corporate sellers of such a partnership interest (with secondary liability on the partnership to withhold if transferee does not); effective for sales after December 31, 2017

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UBTI of Governmental Entities	— State pension plans and certain other state and local governmental entities are subject to tax on UBTI — Applies to taxable years beginning after 12/31/17, with no grandfathering for existing investments	— No change from current law	— No change from current law
Deferred Compensation	— New deferral provision for certain types of broad-based employee equity may apply for private companies — Limit on deduction for compensation in excess of $1m applies to expanded group of covered employees; no performance-based compensation exception	— New deferral provision for certain types of broad-based employee equity may apply for private companies — Limit on deduction for compensation in excess of $1m applies to expanded group of covered employees; no performance-based compensation exception; grandfathering available for compensation vested prior to 2017 under existing contracts	— New deferral provision for certain types of broad-based employee equity may apply for private companies — Limit on deduction for compensation in excess of $1m applies to expanded group of covered employees; no performance-based compensation exception; grandfathering available for compensation vested prior to 2017 under existing contracts

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Deemed Repatriation	— One-time transition tax is imposed on earnings of non-U.S. subsidiaries – 14% on liquid assets; 7% on illiquid assets — Taxpayers can elect to pay the tax over 8 years — Tax applies to earnings on November 2, 2017 or December 31, 2017, whichever is greater — Tax applies to *all* 10% U.S. shareholders (not just corporations) of foreign corporations that are CFCs or that have at least one 10% shareholder that is a U.S. corporation; rate unclear for individuals — Foreign tax credits limited; section 78 gross-up limited in proportion to taxable portion of earnings	— One-time transition tax is imposed on earnings of non-U.S. subsidiaries, in the last taxable year beginning before 2018 – for corporations, 14.5% on liquid assets and 7.5% on illiquid assets; for individuals, 16.4% on liquid assets and 8.5% on illiquid assets (for 2017 income inclusions and based on a marginal rate of 39.6%) — Taxpayers can elect to pay the tax over 8 years, subject to triggering events — Tax applies to earnings on November 9, 2017 or December 31, 2017, whichever is greater — Tax applies to *all* 10% U.S. shareholders (not just corporations) of foreign corporations that are CFCs or that have at least one 10% shareholder that is a U.S. corporation — Special recapture (at 35% rate) for corporations that expatriate within 10 years — Election available to preserve NOLs — Foreign tax credits limited; section 78 gross-up applies only to creditable portion of foreign taxes	— One-time transition tax is imposed on earnings of non-U.S. subsidiaries, in the last taxable year beginning before 2018 – for corporations, 15.5% on liquid assets and 8% on illiquid assets; for those taxable as individuals, 17.54% on liquid assets and 9.05% on illiquid assets (for 2017 income inclusions and based on a marginal rate of 39.6%) — Taxpayers can elect to pay the tax over 8 years, subject to triggering events — Tax applies to earnings on November 2, 2017 or December 31, 2017, whichever is greater — Tax applies to *all* 10% U.S. shareholders (not just corporations) of foreign corporations that are CFCs or that have at least one 10% shareholder that is a U.S. corporation — Special recapture (at 35% rate) for corporations that expatriate within 10 years — Election available to preserve NOLs — Foreign tax credits limited; section 78 gross-up limited in proportion to taxable portion of earnings

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Participation Exemption	— Dividends received by a U.S. corporation from a 10%+ foreign subsidiary are exempt from tax, if attributable to foreign source income — Exemption does not apply to dividends received by non-corporate taxpayers; exemption does not apply to gains from sale of shares (although gains recharacterized under section 1248 can be exempt) — 6-month holding period requirement to qualify for exemption — Section 956 repealed with respect to U.S. corporate shareholders	— Dividends received by a U.S. corporation from a 10%+ foreign subsidiary are exempt from tax, if attributable to foreign source income — Exemption does not apply to hybrid dividends (deductible by the foreign subsidiary), dividends received by non-corporate taxpayers, or gains from sale of shares (although gains recharacterized as dividends under section 1248 can be exempt) — 1-year holding period requirement to qualify for the exemption — Section 956 repealed with respect to U.S. corporate shareholders	— Dividends received by a U.S. corporation from a 10%+ foreign subsidiary are exempt from tax, if attributable to foreign source income — Exemption does not apply to hybrid dividends (deductible by the foreign subsidiary), dividends received by non-corporate taxpayers, or gains from sale of shares (although gains recharacterized as dividends under section 1248 can be exempt) — 1-year holding period requirement to qualify for the exemption — No section 956 repeal, so deemed dividends from upstream loans and guarantees from CFCs, and other investments by CFCs in U.S. property, will be taxable, but "real" dividends may not be.
CFC Attribution Rules	— Attribution rules expanded to allow "downwards attribution" from foreign persons to U.S. persons, which could cause foreign corporations to be treated as CFCs when significantly less than 50% of the equity is directly or indirectly owned by U.S. shareholders	— Attribution rules expanded to allow "downwards attribution" from foreign persons to U.S. persons, which could cause foreign corporations to be treated as CFCs when significantly less than 50% of the equity is directly or indirectly owned by U.S. shareholders — U.S. shareholder status expanded to ownership by 10% of value, not just voting power	— Attribution rules expanded to allow "downwards attribution" from foreign persons to U.S. persons, which could cause foreign corporations to be treated as CFCs when significantly less than 50% of the equity is directly or indirectly owned by U.S. shareholders — U.S. shareholder status expanded to ownership of 10% by value OR vote, not just voting power

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Base Erosion: Deductible Payments to Foreign Affiliates	*Excise Tax/ECI Election*: — Starting in 2019, 20% excise tax on deductible payments from U.S. corporations and branches to foreign affiliates, excluding certain securities, commodities and service transactions, as well as interest and other payments — Taxpayers can elect to avoid the excise tax by treating the outbound payments, less deemed expenses, as ECI to the foreign recipient, with 80% foreign tax credit available — Groups with aggregate outbound payments of $100 million or less are exempted from the excise tax	*Base Erosion and Anti-Abuse Tax ("BEAT")*: — Corporations owe a minimum tax on their taxable income after adding back "base erosion payments" (deductible payments to foreign affiliates) • The minimum tax rate is 10% in 2018 through 2025 and 12.5% in 2026 and later years • Increased rates apply to U.S. banks and registered securities dealers: 11% in 2018 through 2025 and 13.5% in 2026 and later years — The tax due equals the excess of (a) the minimum tax rate applied to corporation's taxable income after adding back base erosion payments, over (b) the corporation's tax liability at the regular corporate rate • In calculating tax liability at the regular corporate rate, research credits are excluded in 2018 through 2025, and all credits are excluded in 2026 and later years — Base erosion payments do not include cost of goods sold (except for newly expatriated corporations) or certain payments for services and pursuant to derivatives, but there are no exclusions for interest or other financial transactions	*Base Erosion and Anti-Abuse Tax ("BEAT")*: — Corporations owe a minimum tax on their taxable income after adding back "base erosion payments" (deductible payments to foreign affiliates) • The minimum tax rate is 5% in 2018, 10% in 2019 through 2025 and 12.5% in 2026 and later years • Increased rates apply to U.S. banks and registered securities dealers: 6% in 2018, 11% in 2019 through 2025 and 13.5% in 2026 and later years — The tax due equals the excess of (a) the minimum tax rate applied to corporation's taxable income after adding back base erosion payments, over (b) the corporation's tax liability at the regular corporate rate • In calculating tax liability at the regular corporate rate, research credits and 80% of low-income housing and energy credits are excluded in 2018 through 2025, and all credits are excluded in 2026 and later years — Base erosion payments do not include cost of goods sold (except for newly expatriated corporations) or certain payments for services and pursuant to derivatives, but there are no exclusions for interest or other financial transactions — Base erosion payments include reinsurance premiums

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		— To the extent interest expense is non-deductible under the rules described in "Interest Expense Deductions" above, it is deemed paid to unrelated parties for purpose of this base erosion tax, which maximizes the deductible interest paid to related persons and subject to this base erosion tax — BEAT applies only to corporations with at least $500m in annual gross receipts and for which base erosion payments represent at least 4% of total deductions — Includes foreign corporations if ECI meets the $500m and 4% tests	— To the extent interest expense is non-deductible under the rule described in "Interest Expense Deductions" above, it is deemed paid to unrelated parties for purpose of this base erosion tax, which maximizes the deductible interest paid to related persons and subject to this base erosion tax — BEAT applies only to corporations with at least $500m in annual gross receipts and for which base erosion payments represent at least 3% of total deductions (2% for U.S. banks and securities dealers) — Includes foreign corporations if ECI meets the $500m and 3%/2% tests
Base Erosion: CFC Excess Returns	*Foreign High Returns*: — U.S. shareholders of CFCs are subject to current tax on 50% of a CFC's net income (excluding ECI, subpart F income, active financing income, and certain other amounts) in excess of a deemed rate of return on the CFC's tangible assets — 80% foreign tax credit available for corporate U.S. shareholders — Deemed return is reduced by the CFC's interest expense — A CFC would need to pay tax at an effective rate of at least 12.5% in order to avoid this rule	*Global Intangible Low-Taxed Income*: — U.S. corporate shareholders of CFCs are subject to current tax on 50% of a CFC's net income (excluding ECI, subpart F income, and certain other amounts) in excess of a deemed rate of return on the CFC's tangible assets in taxable years through 2025, and on 62.5% of such income in 2026 and later years • 80% of foreign taxes are creditable (subject to special rules) • Deemed return not reduced by interest expense • In order for a U.S. corporate shareholder to avoid this rule, a CFC would need to pay foreign tax at an effective rate of at least 12.5% in taxable years through 2025, and 15.6% in 2026 and later years — Non-corporate U.S. shareholders subject to current tax on 100% of each CFC's net income in excess of the deemed rate of return, with no foreign tax credit	*Global Intangible Low-Taxed Income*: — U.S. corporate shareholders of CFCs are subject to current tax on 50% of a CFC's net income (excluding ECI, subpart F income, and certain other amounts) in excess of a deemed rate of return on the CFC's tangible assets in taxable years through 2025, and on 62.5% of such income in 2026 and later years • 80% of foreign taxes are creditable (subject to special rules) • Deemed return is reduced by interest expense • In order for a U.S. corporate shareholder to avoid this rule, a CFC would need to pay foreign tax at an effective rate of at least 13.125% in taxable years through 2025, and 16.41% in 2026 and later years — Non-corporate U.S. shareholders subject to current tax on 100% of each CFC's net income in excess of the deemed rate of return, with no foreign tax credit

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Reduced Rate Applicable to U.S. Company's Intangible Income from Foreign Activities	— No change from current law	— Special 12.5% tax rate (increased to 15.625% in 2026 and later years) for a U.S. corporation's "foreign-derived intangible income," which is income related to services provided and goods sold by the U.S. corporation for a foreign use, calculated in a similar manner as "global intangible low-taxed income." — CFCs may distribute appreciated intangible property to U.S. shareholders before 2021 without triggering current tax on the built-in gain	— Special 13.125% tax rate (increased to 16.41% in 2026 and later years) for a U.S. corporation's "foreign-derived intangible income," which is income related to services provided and goods sold by the U.S. corporation for a foreign use, calculated in a similar manner as "global intangible low-taxed income." — No exemption for pre-2021 distributions of appreciated intangible property from CFCs
Base Erosion: Outbound Transfers of Intangibles and Other Business Assets	— No change from current law	— Outbound transfers of workforce in place, goodwill (foreign and domestic), and going concern value are subject to tax under section 367(d) — Gain must be recognized on outbound transfers of all other business assets (section 367(a)(3) exception repealed)	— Outbound transfers of workforce in place, goodwill (foreign and domestic), and going concern value are subject to tax under section 367(d) — Gain must be recognized on outbound transfers of all other business assets (section 367(a)(3) exception repealed)
Base Erosion: Hybrid Payments	— No change from current law	— Interest and royalty payments to related parties are not deductible if amount is not taxable to recipient (or includible under subpart F)	— Interest and royalty payments to related parties are not deductible if amount is not taxable to recipient (or includible under subpart F)