BROWNRUDNICK

2017 Tax Reform

CHEAT SHEET

On Wednesday, December 20, 2017, Congress enacted An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (formerly known as the Tax Cuts and Jobs Act), dramatically changing the U.S. tax landscape. While certain taxpayers will find their taxes simplified there are many others (*e.g.*, partners, self-employed individuals, and multinational corporations) that will face increased complexity. Below is a "cheat sheet" providing a high-level overview of some of the significant changes that will impact taxpayers. It is understood that President Trump may sign the bill into law between Christmas and New Year's Day.

INDIVIDUALS	GENERALLY APPLICABLE BUSINESS PROVISIONS
• Rates: Seven tax brackets—10, 12, 22, 24, 32, 35, and 37%, with the top rate applying to individuals earning at least \$500,000 and joint filers at least \$600,000. The reduced rates are set to expire in 2026. • Capital Gains & Dividends: Retains rates and 3.8% additional investment tax. • Standard Deduction: Nearly doubled to \$12,000 for individuals and \$24,000 for married filing jointly. Set to expire in 2026. • Personal Exemptions for Taxpayer and Dependents: Suspended until 2026. • State and Local Tax Deduction: Taxpayers may deduct up to \$10,000 of state and local taxes paid in the aggregate. Taxpayers may deduct property taxes and either income or sales taxes. You CANNOT prepay 2018 state income taxes in 2017 to accelerate the deduction. • AMT: The individual AMT remains but the exemption and phase out amounts are increased so less likely to hit as many taxpayers with joint incomes under \$1 million. • Estate Tax: Doubles the exemption to estates worth \$11 million for individuals, \$22 million for couples; but reverts to current thresholds after 2025. • Mortgage Interest Deduction: Retains deduction for existing mortgages and places a limit at \$750,000 for homes purchased after December 31, 2017. The deduction for interest on existing home equity loans is suspended. • Principal Residence Sales: Unaltered; although earlier bills imposed restrictions and income limits. • Child Tax Credit: Increased to \$2,000 for each child, \$1,400 may be refundable. • 529 Plans: Savings can be used for elementary and secondary schools (up to \$10,000 per year). • Graduate Tuition Waivers: Unaltered. Current law remains. • Charitable Deductions: Increases limits for donations to public charities from 50% of contribution base (essentially AGI) to 60% and denies deductions for payments made for college athletic event seating rights. • "Obamacare" Individual Responsibility Payment: Repealed.	• Interest Deductions: Limits deduction to 30% of a company's earnings before interest, tax, depreciation, and amortization (EBITDA) for 2018-2022. The deduction is then limited to 30% of earnings before interest and taxes (EBIT). Disallowed deductions are carried forward. There are exceptions for taxpayers with less than \$25 million in gross receipts, real property trades or businesses, and public utilities. • Cost Recovery: Accelerated bonus depreciation for qualified property (*e.g.*, 100% for property placed in service between September 2017 and December 2022). • Cash Method Accounting: Rules expanded to permit more taxpayers to use cash method reporting if they can satisfy an average gross receipts test (*i.e.*, even if the taxpayer maintains an inventory). • Like-Kind Exchanges: Now limited to real property. • Local Lobbying Deduction: Repeals exception for amounts related to lobbying local councils or similar governing bodies; now subject to general disallowance rule. • Patents & Self-Created Intangibles: No longer able to get capital gain treatment. • Profits Interests (including Carried Interest): Now a 3 year holding period. • Accrual Accounting Changes: Now requires certain accrual taxpayers to recognize income no later than the taxable year in which such income is shown as revenue on a financial statement. • FIFO Stock Sales: Senate version required FIFO or cost averaging even if shares could be separately identified. This did not make the final bill and the separately identified rules remain.

CORPORATIONS

- Corporate Rate: Reduced to 21% starting January 1, 2018.
- Dividend Received Deduction (DRD): Previously, the DRD was 70% for dividends from corporations that were not 20% owned, 80% for corporations that were 20% owned but less than 80%, and 100% for corporations that were 80% owned. The 70% DRD and 80% DRD were changed to 50% and 65%, respectively.
- Corporate Alternative Minimum Tax: Repealed.
- Net Operating Losses: No carryback is available but NOLs no longer expire and can be carried forward indefinitely. Additionally, NOLs can only be used to offset 80% of annual income (this is similar to the existing AMT NOL rules that can only offset 90% of AMT income).

PARTNERSHIPS AND OTHER "PASS-THROUGHS"

- Pass-through Deduction: Provided certain conditions are met, pass-through entity owners are eligible for a 20% deduction on business income. Deduction expires in 2026.
- Service Business Carve-out: Service businesses (*e.g.*, law, accounting, and financial services firms) are NOT eligible for the deduction UNLESS owners are under the threshold. Individual pass-through owners who earn less than $157,500 ($315,000 for married joint filers) in business profits are NOT subject to limitation on the deduction.
- S Corporation Shareholders: Electing Small Business Trust rules expanded to allow NRA as potential current beneficiary.

COMPENSATION

- New Section 83 Election: New election to defer income inclusion, made in a manner similar to a Section 83(b) election, allows certain employees of nonpublic companies the ability to defer income attributable to qualified stock (*i.e.*, options and restricted stock units and stock received in settlement thereof).
- Section 162(m) Deduction Limit Changed: Performance-based compensation and commissions no longer excluded from compensation of covered employees subject to the $1 million annual deduction limit for public companies; expands definition of covered employee (*e.g.*, CFO now included); and now certain large non-public corporations may also be subject to the rule.
- 401(k) and IRAs: These savings plans remain available although certain conversions between ROTH and Traditional IRAs have been limited.

INTERNATIONAL

There was a general shift to a territorial system as opposed to taxing U.S. corporations on their worldwide income. This was achieved through a number of new provisions, including but not limited to:

- Deduction for Dividends from 10% Owned Foreign Corporations: 100% deduction for foreign-source dividends received from certain 10% owned foreign corporations (certain PFICs excluded).
- Mandatory Deemed Repatriation: Mandatory income inclusion for un-repatriated foreign earnings taxed at 15.5% for earnings held as cash and 8% for all other earnings. Tax may be paid in installments over 8 years.
- Intangible Income: Requires current income inclusion for global intangible low-taxed income (GILTI) and provides a deduction for certain intangible income attributable to foreign sales or services (similar to a "patent box"). A purpose is to deter and minimize the benefits of "offshoring" IP.
- Base Erosion Anti-Abuse: New rules impose a minimum tax to avoid excessive earning stripping through cross-border affiliated payments.

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