House/Senate/Conference Tax Reform Comparison Guide
Preliminary Staff Analysis
American Bankers Association
December 16, 2017

Business Tax Rates

House: C corp 20 percent effective 2018; pass-through 25 percent; effective 2018/ Problematic calculations in the pass-through rate push banks into a default 70 percent (ordinary) / 30 percent (business) and significantly reduce the benefits. Different treatment for active and passive shareholders.

Senate: C corp 20 percent, effective 2019; pass-through entities are given a 23 percent deduction (based on business income), effective 2018, that drops the top effective rate to roughly 30 percent. Similar to the individual tax provisions, it is subject to a 2025 sunset.

Conference: C corp 21 percent, effective 2018; pass-through entities are given a 20 percent deduction (based on business income), effective 2018, that (coupled with a decrease in the top individual rate to 37 percent) drops the top effective rate to roughly 30 percent. No distinction between active and passive shareholders. The deduction now applies to trusts. Similar to the individual tax provisions, the pass-through deduction is subject to a 2025 sunset.

Interest Expense

House: Deductions for net business interest expense will be restricted. Banks as taxpayers should not be affected by this restriction. Businesses with gross receipts of $25 million or less are exempt. For other business taxpayers, the limitation will be based on the amount that net business interest expense exceeds 30 percent of adjusted income. Important exceptions are also provided for real estate, agriculture and other selected businesses. Effective 2018.

Senate: Generally similar to the House, although small business exemption is $15 million.

Conference: Generally follows the House, including the $25 million exemption, although there is a more restrictive calculation for adjusted income for the 30 percent limitation that follows Senate rules for 2018-21.

ABA staff analysis does not provide, nor is it intended to substitute for, professional legal advice.

Tax Credits

House: R&D and low income housing credits continued. New markets, historic and other credits eliminated. Energy credits generally continue existing schedule for availability.

Senate: R&D, low income housing and new market and other credits appear to be continued. Some restrictions on historic credits.

Conference: Generally follows the Senate and retains most credits.

Capital Expensing

House: 100 percent expensing for all non-real property capital expenditures made from September 27, 2017 through 2022. After 5 years, existing provisions with 50 percent expensing and Section 179 apparently will be restored.

Senate: Generally similar to the House, although there is now a phase out of the 100 percent expensing after the 5 years in 20 percent increments through 2026.

Conference: Generally follows the Senate.

Net Operating Losses

House and Senate: Generally similar provisions. Net operating loss carrybacks are eliminated. Carryforward of net operating losses appear to be allowed an indefinite life, subject to a 90 percent limitation. In the Senate bill, the limitation drops to 80 percent after 2022.

Conference: Carryback continues to be eliminated; 80 percent limitation effective immediately.

FDIC Premiums

House, Senate and Conference: Generally similar provisions. The deduction for FDIC premiums is eliminated for banks with assets over $50 billion. For banks with assets between $10 billion and $50 billion, the deduction is eliminated proportionally based on asset size.

Deferred Compensation

House, Senate and Conference: No change from existing law; restrictions were removed from the House and Senate bills in the final amendment prior to the committee votes

ABA staff analysis does not provide, nor is it intended to substitute for, professional legal advice.

Credit Unions and Farm Credit System

House, Senate and Conference: Unfortunately, the proposals and final bill do not address the historic inequality of taxation between business entities providing the same services.

Tax Accounting

House: No provisions.

Senate: The proposal modifies the rules for recognition of income by requiring a taxpayer to recognize income no later than the tax year in which such income is recognized for financial reporting purposes. For banks, this provision would appear to impact current deferrals of credit card fee income under the OID rules. The bill defers the effective date for OID related items to 2019 and allows a company to apply a 6 year “Section 481” adjustment period. In addition, there was originally uncertainty as to the potential application of the rule to mortgage servicing rights. A technical correction has been made to make it clear the provision does not apply to MSRs. For remaining items that might be impacted, the rule applies to taxable years after 2017 with an apparent mandatory change in accounting method.

Conference: Generally follows Senate, including exception for MSRs.

Corporate AMT

House: AMT repealed.

Senate: AMT retained; as currently structured would be a significant issue.

Conference: AMT repealed.

International Taxation

House and Senate: The proposals provide for the establishment of a territorial system of international taxation. To address base erosion concerns, a variety of provisions are proposed. For previously untaxed deferred foreign income, there is a deemed repatriation and taxable event. The House and Senate bills had similar repatriation rules with slightly different rates. There is a two tier tax rate structure. 14 percent (House) /14.5 percent (Senate) for taxpayers with cash and cash equivalents and 7 percent (House) / 7.5 percent (Senate) for taxpayers with earnings invested in property, plant and equipment.

Conference: Generally in line with the description at left. Repatriation rates are now at 15.5 percent and 8 percent, respectively. Selected base erosion provisions have been updated or changed.

Municipal Securities

House: Several new restrictions, including eliminating private activity and advance refunding bonds.

Senate: Only advance refunding bonds are eliminated.

Conference: Only advance refunding bonds are eliminated.

Other Issues of Particular Concern to Banks

- **BOLI / COLI**: No apparent change.
- **FIFO basis calculations:** No change to current treatment.

ABA staff analysis does not provide, nor is it intended to substitute for, professional legal advice.

Selected Individual Provisions

House: Individual brackets of 12 percent, 25 percent, 35 percent and 39.6 percent. Top rate applies to AGI (MFJ) of $1 million or more. Doubling of standard deductions, elimination of personal exemptions, child tax credits expanded. Mortgage interest deduction subject to $500,000 cap, down from $1 million, and applies to new debt; no deduction for second home or HELOCs. Charitable deductions retained, property tax deduction retained (capped at $10,000), state income tax deduction eliminated. Individual AMT eliminated starting after 2017. federal estate tax applicable exclusion amount is doubled to $10 million, indexed for inflation, starting after 2017. After 2023, the estate and generation-skipping transfer tax is repealed. Retirement savings benefits substantially retained.

Senate: Current number of individual brackets maintained. Top rate of 38.5 percent applies to AGI (MFJ) of $1 million or more. Doubling of standard deductions, elimination of personal exemptions, child tax credits expanded. Mortgage interest deduction retained with no change to $1 million cap or second homes; no deduction for HELOCs. Appears to apply to new and existing debt. Charitable deductions retained, property tax deduction retained (capped at $10,000), state income tax deductions eliminated. Individual AMT retained with an increase in exemption amounts and phaseouts. Federal estate tax applicable exclusion amount is doubled to $10 million, indexed for inflation. Retirement savings benefits substantially retained. All individual provisions are subject to a 2025 sunset.

Conference. Individual brackets of 10 percent, 12 percent, 22 percent, 24 percent, 32 percent, 35 percent and 37 percent. Top rate of 37 percent applies to AGI (MFJ) of $600,000 or more. Doubling of standard deductions, elimination of personal exemptions, child tax credits expanded and additional amounts made refundable. Mortgage interest (new cap of $750,000 for total first and second homes); existing mortgages grandfathered. No deduction for HELOCs. Appears to apply to new and existing HELOC debt. Charitable deductions retained. State tax (income, property, sales) deductions allowed with a cap of $10,000. Individual AMT is retained with an increase in exemption amounts and phaseouts. Federal estate tax applicable exclusion amount is doubled to $10 million, indexed for inflation. Retirement savings benefits substantially retained. All individual provisions are subject to a 2025 sunset

Questions? Contact ABA's John Kinsella or Curtis Dubay for more information.

ABA staff analysis does not provide, nor is it intended to substitute for, professional legal advice.