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House Passes Tax Cuts and Jobs Act

On Nov. 16, the House passed the Tax Cuts and Jobs Act (Act). The House passed the Act mostly along party lines (with a 227-205 vote), with certain Republicans from high-tax states not voting in favor of the Act, as it includes a limit on the state and local tax deduction by allowing individuals to deduct only up to $10,000 in state and local property taxes. See our prior coverage for a discussion of the provisions included in the Act as introduced (http://www.stradley.com/insights/publications/2017/11/tax-insights-november-8-2017) and as amended (http://www.stradley.com/insights/publications/2017/11/tax-insights-november-15-2017). If the Senate passes its bill (which, as discussed below, was just passed by the Senate Finance Committee), the House and Senate will reconcile the differences between the two bills during a conference committee.

Senate Finance Committee Passes Tax Reform Bill

On Nov. 16, the Senate Finance Committee passed its version of the Tax Cuts and Jobs Act (https://www.finance.senate.gov/imo/media/doc/11.20.17%20Tax%20Cuts%20and%20Jobs%20Act.pdf) and released a manager's amendment to the chair's mark of the Tax Cuts and Jobs Act. (See our prior coverage of the chair's mark here (http://www.stradley.com/insights/publications/2017/11/tax-insights-november-15-2017).) The manager's amendment includes the following changes, among others:

- The amendment provides that RICs are exempt from the first-in first-out (FIFO) rule with regard to the cost basis of specified securities. The Senate's tax reform proposal otherwise generally provides that the cost of any specified security sold, exchanged or otherwise disposed of on or after Jan. 1, 2018, will be determined on a FIFO basis, which would prevent a taxpayer from specifically identifying which securities are sold for the purposes of determining the gain or loss on a transaction. This provision is of particular concern to exchange-traded funds taxed as RICs, which transact with authorized participants in creation and redemption units and normally use specific identification, as opposed to FIFO, as part of their planning to maintain the tax efficiency of a fund for shareholders.

- The amendment clarifies that in the case of charitable contributions of property whose fair market value exceeds their adjusted basis, the basis limitations on partner losses does not apply to the extent of the partner's distributive share of such excess.

- The amendment excludes the accumulated deferred foreign income from the REIT gross income tests. In addition, REITs would be permitted to elect to meet their distribution requirement to REIT shareholders with respect to the accumulated deferred foreign income over an eight-year period under the same installment percentages as apply to U.S. shareholders who elect to pay the net tax liability resulting from the mandatory inclusion of pre-effective-date undistributed controlled foreign corporation earnings in eight installments.

- The amendment provides the following: (1) a 20 percent credit for qualified rehabilitation expenditures with respect to a certified historic structure, and (2) that the 20 percent credit be claimed ratably over a five-year period beginning in the taxable year in which a qualified rehabilitated structure is placed in service.

- The amendment adds a new requirement for corporate taxpayers that pay dividends to shareholders. Such taxpayers are required to report the total amount of dividends paid during the taxable year and the first 2.5 months of the succeeding year. The provision would be effective for taxable years beginning after Dec. 31, 2018. The provision permits corporations to deduct zero percent of dividends in computing taxable income subject to tax under Section 11 of the Internal Revenue Code.

- The amendment imposes a three-year holding period requirement for qualification as long-term capital gain with respect to certain partnership interests received in connection with the performance of services.

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