BERENBERG CAPITAL MARKETS

# UPDATED HOUSE-SENATE TAX COMPARISON

Following the House passage of the Ways and Means Committee's H.R. 1, the Tax Cuts and Jobs Act, last week, the Senate Finance Committee (SFC) amended and passed its version of tax overhaul. Following this week's recess, the Senate will mark up the SFC's bill with a goal of passing it. *A simple majority is required for Senate passage, but assuming no Democratic support and some Republican* ***pushback, the SFC's version*** *of the tax overhaul will not face easy sailing.*

As with all tax legislation, there are perceived winners and losers—and a lot of misperceptions about who wins and who loses—and the political landscape and lobbyists are lining up as expected. In addition, while last week's amendments to the SFC's earlier tax proposal made it deficit-neutral after the 10-year projection period—as required by the Byrd Rule—some key provisions are allowed to sunset, and other complications have been added. Tax experts strive for three ideals in a tax system: *efficiency* (generating tax receipts while minimizing economic distortions and dead-weight losses), *fairness* (this of course is subjective, in the eyes of the beholder) and *simplicity*. The latest Senate version does not match up well, particularly adding unnecessary complications. If a tax provision is good, why allow it to sunset?

*We expect that that the Senate version will undergo significant further modifications, and eventually it will pass. But the final Senate version in all likelihood will differ from the House bill in important ways. Congressional leaders will then choose a House-Senate conference committee to reconcile these differences into a single bill (see Figure 1). Both the House and Senate must then each pass the single tax bill. Gaining a majority approval in the Senate in each step is the biggest stumbling block.*

*While the legislative process has momentum and we continue to expect enactment, the time frame in the remainder of 2017 is very tight.* ***Let's face it:*** *the current corporate and individual tax systems are very complex, and any overhaul also involves complexities. Accordingly, we put a higher probability on enactment in early 2018*.

The table that follows provides an updated side-by-side comparison of the House bill (H.R. 1) and the current Senate version that was approved by the SFC. Among the new changes in the SFC bill:

1) The SFC version repeals the Affordable Care Act individual mandate. This reduces Federal health-care subsidies by an estimated $318 billion over 10 years, which the SFC bill uses to cut select taxes. However, those proposed cuts are scheduled to sunset.
2) Increases the child tax credit to $2,000 from the initial proposal of $1,650. The current value of the credit is $1,000. The new proposal decreases the threshold for the credit phase out to $500,000 for married taxpayers filing a joint return from the initial proposal of $1 million (the phase-out for individual taxpayers is also $500,000).
3) Lowers the proposed income tax rates further for three brackets to [22%, 24%, 32%] from [22.5%, 25%, 32.5%].
4) Expands the scope of the 17.4% deduction of business income for pass-throughs to include more service firms.
5) Removes the earlier proposal of taxing employee stock options at vesting rather than when exercised.



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**Importantly, the SFC's proposed individual income tax cuts, increases in the child tax** credit, repeal of the individual AMT, increases in the standard deduction, and the special deduction for pass-through businesses would all expire after December 31, 2025. The reduction in the corporate tax rate to 20% would be permanent.

Table 1: Difference Between House and Senate Tax Bills (I)

| | House | Senate Finance Committee | Comments |
|---|---|---|---|
| CORPORATE TAXES | | | |
| Rate | Permanent reduction from 35% to 20% *in 2018.* | Permanent reduction of rate to 20% *delayed until 2019.* | Delaying the lower corporate tax rate for a year would save over $100 billion. |
| Pass-through businesses | Reduction in top business income rate to 25%. *Taxes 70% of income as wages at individual rate and 30% as business income at 25%.* Professional service firms not allowed to use 25% rate. Pass-throughs cannot deduct state and local income taxes, but can deduct sales and certain property taxes. A 9% tax rate for the first $37.5k in business income for active owners/shareholders earning under $75k (amounts doubled for married households). Businesses of all types eligible for this 9% rate - will be phased in over five years. | *Lowers effective tax rate by allowing individuals to deduct 17.4% of domestic qualified business income* from a partnership, S corporation, or sole proprietorship. Limited to 50% of the W-2 wages for taxpayers with taxable income over $500k for married joint filers ($250k for individuals). The 17.4% deduction is allowed for specified service businesses whose taxable income does not exceed $500k for married joint filers ($250k for individuals). *Sunsets on December 31, 2025.* | Both versions aim to lower effective taxes on pass-through businesses, but approaches are far different. |
| Expensing of new investment | Immediate expensing - *would sunset after 5 years*. | Immediate expensing - *would sunset after five years* (six years for longer production period property and certain aircrafts). Qualified property definition expanded to include qualified film, television and live theatrical productions but excludes certain public utility property. | This would dramatically reduce complexity of current depreciation schedules. By reducing the tax on new capital, these proposals would stimulate investment and boost economic growth. The sunsetting, which reduces projected budget costs over the 10-year projection period, will lead businesses to frontload investment into the next five years. Whether future legislation will extend the expensing beyond the sunset period will be debated. |
| Deductibility of interest costs | *Caps corporate interest deductions to 30% of EBITDA.* Real estate firms and small businesses exempt. Taxpayers that paid/accrued interest on "floor plan financing indebtedness" (car dealers) would be exempt from the limit, but would not be allowed to fully expense. | *Limits the deduction of net interest expense to 30% of adjusted taxable income.* In general this allows less deduction than the House version. Allows a partner of partnership to deduct additional interest expense (beyond 30%) if certain conditions are met. Farming business can elect not to be subject to the limitation. | Moves toward evening the tax treatment of debt and equity financing. |
| Net operating loss deduction | Taxpayers would be able to deduct a net operating loss carryover or carryback only to the extent of 90% of the taxpayer's taxable income. Begins after 2017. | Limits the net operating loss deduction to 80% of taxable income. Begins after December 31, 2022. | Both versions limit value of net operating loss deductions. |

*Source: Tax Cuts and Jobs Act (H.R. 1), Senate Committee on Finance, "[Tax Cuts and Jobs Act – Chairman's Mark, Section-by-Section Summary](#)", November 16, 2017 and Berenberg Capital Markets*

Table 1: Difference Between House and Senate Tax Bills (II)

| | House | Senate Finance Committee | Comments |
|---|---|---|---|
| | | | |
| Research and experimental expenditures | Certain research and experimental expenditures required to be amortized ratably over a five-year period - no longer allowed to be depreciated over useful life. Begins after 2022. | Similar to House but begins after December 31, 2025. | |
| Other deductions | Including: repeals deduction for business entertainment and local lobbying expenses. | Including: repeals deduction for business entertainment, facility used in connection with entertainment, membership dues for certain clubs. *Disallows employer's deduction for select expenses (Effective after December 31, 2025).* | Aim of various provisions is to broaden the tax base, generate revenues, close loopholes and simplify the code. |
| *Tax Treatment of International Income* | | | |
| Territorial tax system | *Moves toward territorial.* US corporations would only be taxed on domestic earnings. New 10% tax on "high-profit" foreign subsidiaries of US firms (50% of earnings of foreign subsidiaries in excess of 7% plus the Federal short-term rate would be taxed at the new 20% rate). *A 20% excise tax applied to certain payments made by US corporations to related foreign corporations.* | *Moves toward territorial.* US corporations would only be taxed on domestic income with anti-abuse rules and a base erosion minimum tax of the excess of 10% modified taxable income over an amount equal to regular tax liability. *US corporations would include in taxable income its global intangible low-tax income (GILTI) earned by controlled foreign corporations (CFCs).* | The combination of lower corporate tax rate plus change to territorial approach moves US system closer to tax systems of most advanced nations. Both versions include complex rules designed to deter US corporations from moving production and profits overseas. |
| One-time tax on accumulated foreign profits | Accumulated profits overseas - Cash: 14%, Non-cash assets: 7% | Accumulated profits overseas - Cash: 10%, Non-cash assets: 5% | Big Treasury tax revenue generator. What will corporations do with repatriated assets? |
| | | | |
| INDIVIDUAL TAXES | | | |
| Brackets and rates | *Seven tax brackets reduced to four (12%, 25%, 35%, 39.6%). Highest rate: 39.6%. Permanent.* | *Number of tax brackets kept at seven* but rates changed to [10%, 12%, 22%, 24%, 32%, 35%, 38.5%] from [10%, 15%, 25%, 28%, 33%, 35%, 39.6%]. *Highest rate: 38.5%. Sunsets on December 31, 2025.* | |
| Standard deduction | Almost doubled for individuals from $6,350 to $12,000, and for married joint filers from $12,700 to $24,000. | Same as House version, but s*unsets on December 31, 2025.* | Reduces the portion of taxpayers who itemize deductions from one-in-three to under 10%. Simplifies tax code. |

*Source: Tax Cuts and Jobs Act (H.R. 1), Senate Committee on Finance, "Tax Cuts and Jobs Act – Chairman's Mark, Section-by-Section Summary", November 16, 2017 and Berenberg Capital Markets*

Table 1: Difference Between House and Senate Tax Bills (III)

| | House | Senate Finance Committee | Comments |
|---|---|---|---|
| | | | |
| Personal exemptions | Repeals the personal exemption for each taxpayer, taxpayer's spouse and dependents. Valued at $4,050 in 2017. | Same as House version but *sunsets on December 31, 2025.* | Value of personal exemptions folded into higher standard deduction, but impact varies among taxpayers. |
| Child tax credit | *Increased from $1,000 to $1,600* and available to more middle income households. Refundable portion limited to $1000 (Social Security number required). *Phaseout begins at $115,000 income for single taxpayers and $230,000 for joint filers.* | *Increased from $1,000 to $2,000 ($1000 refundable).* Age limit for qualifying child is increased by one year (to any child under age of 18). *Phaseout begins at taxpayer income of $500,000 (for individuals and joint filers). Sunsets on December 31, 2025.* | |
| Non-child tax credit | A $300 nonrefundable tax credit for non-child dependents and $300 credit for each taxpayer who is neither a child nor non-child dependent. *Expires after 2022.* | Provides a $500 nonrefundable credit for qualifying non-child dependents. *Sunsets on December 31, 2025.* | |
| Alternative Inflation Measure | Uses Chained CPI for adjustment of parameters in the individual tax system (not CPI). | Same as House. | The chained CPI rises more slowly than the CPI. JCT estimates this change would increase revenues by $134 billion over the 10-year projection period. |
| *Deductions* | | | |
| State and local taxes | State and local income and sales tax deduction repealed. *Property tax deduction preserved but capped at $10,000.* | *State and local income, sales and property tax deduction fully repealed. Sunsets on December 31, 2025.* | Major sticking point for Congressional Republicans in high-tax states. |
| Mortgage interest | Mortgage interest deduction for existing mortgages maintained, *but deduction for newly purchased primary residence reduced to $500k* (from current: $1 million) and disallowed for newly purchased second homes. | *Preserves the mortgage interest deduction cap at $1 million.* Repeals deduction of interest on home equity debt *(sunsets on December 31, 2025).* | Proposed $500k limit is well-above median new home price; but along with raising the standard deduction and not allowing the deduction of state and local income and sales taxes, use and value of mortgage deduction will be diminished. |
| Medical expenses | *Repeals itemized deduction for out-of-pocket medical expenses of taxpayer, spouse or dependent;* currently, only medical expenses in excess of 10% of AGI are deductible. | *Preserved - medical expenses in excess of 10% of AGI are deductible.* | |

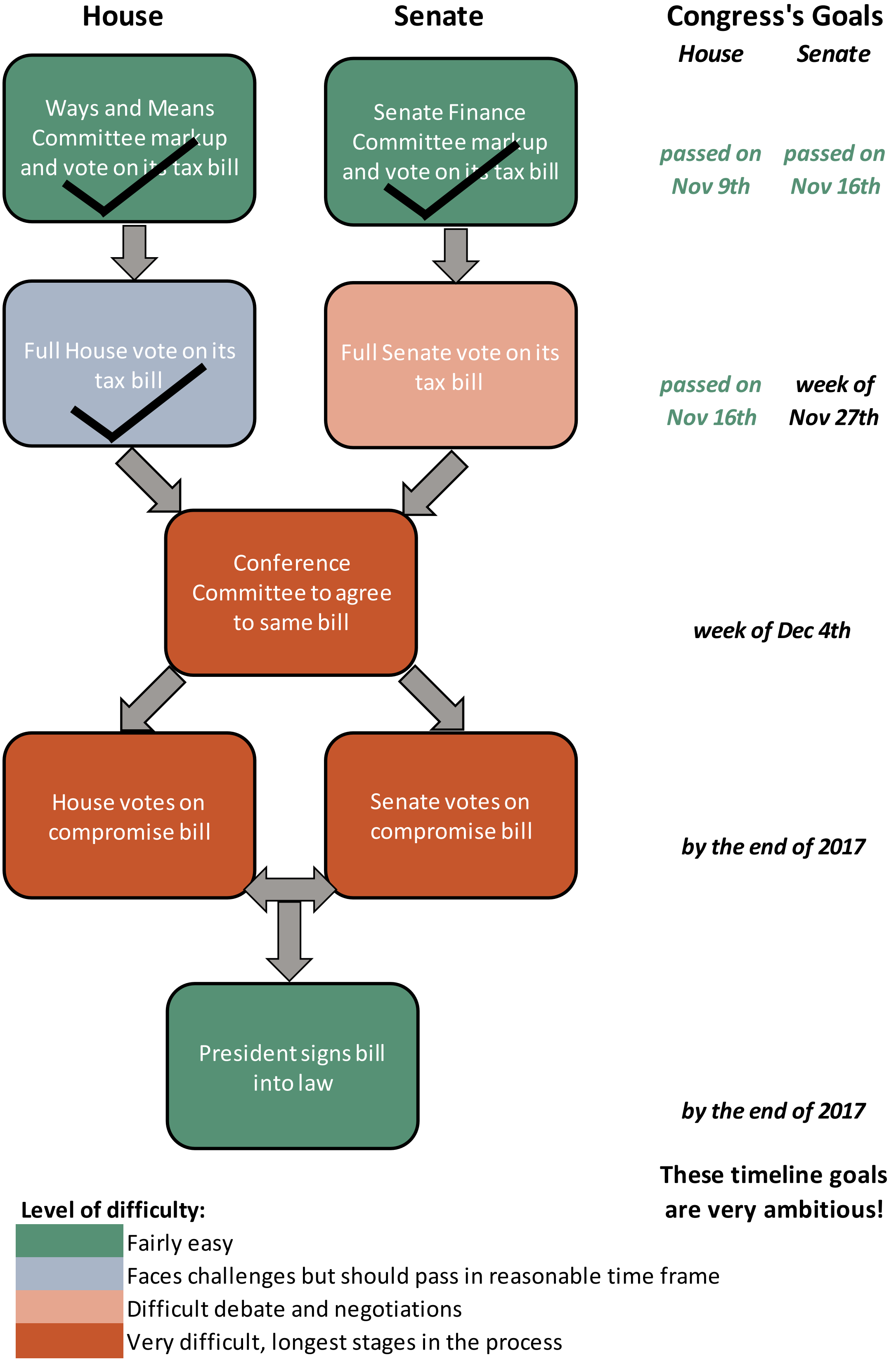
*Source: Tax Cuts and Jobs Act (H.R. 1), Senate Committee on Finance, "Tax Cuts and Jobs Act – Chairman's Mark, Section-by-Section Summary", November 16, 2017 and Berenberg Capital Markets*

Table 1: Difference Between House and Senate Tax Bills (IV)

| | House | Senate Finance Committee | Comments |
|---|---|---|---|
| | | | |
| Earned income tax credit | Preserves | Preserves | |
| Charitable contributions | The 50% of AGI limitation for cash contributions increased to 60%. Other minor modifications to disallow deduction of certain charitable contributions. | Increases income-based percentage limit for certain charitable contributions to public charities and other organizations from 50% to 60%. *Sunsets on December 31, 2025.* | |
| Retirement savings | Pre-tax contribution limit to 401K savings plans left unchanged. | Pre-tax contribution limit to 401K savings plans left unchanged. | |
| *Other Individual* | | | |
| Alternative Minimum Tax | Repeals | *Repeals until 2025, then reinstates after.* | In its current form, affects (increases) the taxes of around 4 million households. |
| Estate tax | Burden reduced by doubling the exemption to $11 million through 2023; *estate tax repealed after 2024.* | *Burden reduced by doubling the exemption to $11 million, sunsetted after 2025. Does not repeal estate tax.* | Source of contention between certain House and Senate members. Big Treasury tax receipt loss -- benefits concentrated among high-wealth households. |
| *Other Key Provisions* | | | |
| Affordable Care Act individual mandate | Preserves | *Repeals* | Repealing the mandate increases revenues by a projected $318 billion during 10-year budget period. |

*Source: Tax Cuts and Jobs Act (H.R. 1), Senate Committee on Finance, "Tax Cuts and Jobs Act – Chairman's Mark, Section-by-Section Summary", November 16, 2017 and Berenberg Capital Markets*

Figure 1: Legislative Path to Tax Reform Enactment




Source: Berenberg Capital Markets

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