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GMS Flash Alert

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United States - Senate and House Tax Bills: Considerations for Global Mobility Programs

On November 9, 2017, the U.S. House Ways and Means Committee approved H.R. 1, the "Tax Cuts and Jobs Creation Act" and ordered the bill to be reported (hereinafter "the House bill")[1] to the House Rules Committee. Later that same day, Senate Finance Committee Chairman Orrin Hatch (R-UT) released his mark (hereinafter "the Senate mark"),[2] which is scheduled for markup November 13, 2017.

This GMS *Flash Alert* compares the House bill with the Senate mark and offers insights into what these proposals may mean for both global mobility programs and individual assignees.

WHY THIS MATTERS

If either the House bill or Senate mark or some compromise proposal becomes law, it would represent the most comprehensive reform to U.S. tax law in over thirty years. Although the House bill and Senate mark have similar goals, such as reducing the tax burden of businesses and individuals and simplifying tax compliance, how each proposal goes about achieving these goals is very different. Global mobility programs should begin considering how existing assignment policies will be affected should these proposals become law.

Tax Provisions Affecting Individuals

Ordinary Income Tax Rates

Both proposals would alter the current income rate structure under which individuals are taxed, although the House bill would represent a more drastic departure from current law. While the Senate mark would retain the current number of tax brackets at seven (but slightly lower the rates in effect at each bracket), the House bill would reduce the number of brackets to four. The following table illustrates the differences between each proposal and existing law by filing status:

2018 Current Law		House Bill		Senate Mark	
	Single		Single		Single
Tax Rate	If taxable income is:	Tax Rate	If taxable income is:	Tax Rate	If taxable income is:
10%	$0 to $9,525	12%	$0 to $45,000	10%	$0 to $9,525
15%	$9,526 to $38,700			12%	$9,526 to $38,700
25%	$38,701 to $93,700	25%	$45,001 to $200,000	22.5%	$38,701 to $60,000
28%	$93,701 to $195,450			25%	$60,001 to $170,000
33%	$195,451 to $424,950	35%	$200,001 to $500,000	32.5%	$170,001 to $200,000
35%	$424,951 to $426,700			35%	$200,001 to $500,000
39.6%	$426,701 or more	39.6%	$500,001 or more	38.5%	$500,001 or more

2018 Current Law		House Bill		Senate Mark	
	Married Filing Joint		Married Filing Joint		Married Filing Joint
Tax Rate	If taxable income is:	Tax Rate	If taxable income is:	Tax Rate	If taxable income is:
10%	$0 to $19,050	12%	$0 to $90,000	10%	$0 to $19,050
15%	$19,051 to $77,400			12%	$19,051 to $77,400
25%	$77,401 to $156,150	25%	$90,001 to $260,000	22.5%	$77,401 to $120,000
28%	$156,151 to $237,950			25%	$120,001 to $290,000
33%	$237,951 to $424,950	35%	$260,001 to $1,000,000	32.5%	$290,001 to $390,000
35%	$424,951 to $480,050			35%	$390,001 to $1,000,000
39.60%	$480,051 or more	39.6%	$1,000,001 or more	38.5%	$1,000,001 or more

2018 Current Law		House Bill		Senate Mark	
	Married Filing Separate		Married Filing Separate		Married Filing Separate
Tax Rate	If taxable income is:	Tax Rate	If taxable income is:	Tax Rate	If taxable income is:
10%	$0 to $9,525	12%	$0 to $45,000	10%	$0 to $9,525
15%	$9,526 to $38,700			12%	$9,526 to $38,700
25%	$38,701 to $78,075	25%	$45,001 to $130,000	22.5%	$38,701 to $60,000
28%	$78,076 to $118,975			25%	$60,001 to $145,000
33%	$118,976 to $212,475	35%	$130,001 to $500,000	32.5%	$145,001 to $195,000
35%	$212,476 to $240,025			35%	$195,001 to $500,000
39.6%	$240,026 or more	39.6%	$500,001 or more	38.5%	$500,001 or more

2018 Current Law		House Bill		Senate Mark	
Tax Rate	Head of Household If taxable income is:	Tax Rate	Head of Household If taxable income is:	Tax Rate	Head of Household If taxable income is:
10%	$0 to $13,600	12%	$0 to $67,500	10%	$0 to $13,600
15%	$13,601 to $51,850			12%	$13,601 to $51,800
25%	$51,851 to $133,850	25%	$67,501 to $200,00	22.5%	$51,801 to $60,000
28%	$133,851 to $216,700			25%	$60,001 to $170,000
33%	$216,701 to $424,950	35%	$200,001 to $500,000	32.5%	$170,001 to $200,000
35%	$424,951 to $453,350			35%	$200,001 to $500,000
39.60%	$453,351 or more	39.6%	$500,001 or more	38.5%	$500,001 or more

KPMG NOTE

Whether an assignee would benefit from lower overall taxation under either of the proposed rate structures would depend on that assignee's circumstances. Both proposals would slightly expand the number of people falling into the 25 percent bracket, significantly expand the number of people falling into the 35 percent bracket (due to significantly lower threshold for 35 percent), and significantly reduce the number of people falling into the top bracket (particularly for married taxpayers filing jointly for whom the threshold at which the highest rate of tax applies is more than doubled). Assignees who anticipate that their individual income tax rates will be lower in future years may want to defer income to those future years, which in turn could delay any corporate tax deduction related to that income. Employers may want to consult with their service provider for potential tax planning strategies around maximizing any corporate deduction.

Any change to the individual income tax rates would likely affect the overall cost of international assignments, but its impact on a global mobility program will depend upon that program's assignee population. Lower rates could result in U.S. outbound assignments becoming more expensive, as the U.S. hypothetical tax offset would be lower. Conversely, lower rates could result in U.S. inbound assignments becoming less expensive, as the actual U.S. tax cost for an employer would be lower.

Tax Rates on Capital Gains and Dividends

Both proposals would keep in place the current tax rates applicable to net capital gains and qualified dividends of zero, 15, or 20 percent (depending on the taxpayer's level of taxable income), with higher rates applicable to gains from collectibles (28%) and unrecaptured depreciation (25%). Both retain the same "breakpoints" for application of these rates as under current law. For 2018 the zero-percent rate would apply to married couples with taxable income of up to $77,200 (one-half of that for single taxpayers). The 20-percent rate would apply to married couples with taxable income over $479,000 ($425,800 for single taxpayers). The 15-percent rate would apply to taxpayers with taxable income between these breakpoints. The breakpoints would be indexed for inflation for tax years after 2017.

Standard Deduction and Personal Exemption

Both proposals would raise the standard deduction to nearly double its current level. The Senate mark would increase the standard deduction from its 2018 amount of $13,000 to $24,000 for married couples filing jointly ($24,400 under the House bill), from $9,550 to $18,000 for Head of Household filers ($18,300 under the House bill), and from $6,500 to $12,000 for unmarried individuals ($12,200 under the House bill).

The proposed increase in the standard deduction, in conjunction with the repeal of many itemized deductions (discussed below), is intended to significantly reduce the number of taxpayers who itemize their deductions and thus to simplify the tax return preparation process. The increased standard deduction is also intended to compensate for the loss of the deduction for individual exemptions ($4,150 for 2018), which would be repealed under both proposals.

Itemized Deductions

Both proposals would eliminate or limit many deductions; however, both proposals would also repeal the overall limitation on itemized deductions.

State and Local Tax Deductions

Both proposals would eliminate the deduction for state and local income and sales taxes. The House bill would limit the deduction for state and local real estate property tax to $10,000 (unless incurred in carrying on a trade or business), while the Senate mark would eliminate that deduction entirely.

KPMG NOTE

Both proposals would eliminate the deduction for foreign (non-U.S.) real property taxes, which could increase assignment costs. A foreign national on a long-term assignment in the United States has previously been allowed a deduction for property taxes paid on a foreign residence. Under these proposals, this deduction is no longer allowed unless the tax liability is incurred in carrying on a trade or business. If the individual is on a tax equalized program and the company is paying all the U.S. (host country) taxes, this will increase the cost of the assignment to the employer.

Casualty Losses

Both proposals would generally eliminate the deduction for personal casualty and theft losses; however, the Senate mark would retain the deduction if the loss was incurred in a disaster declared by the President. Under the House bill, individuals who sustained a personal casualty loss arising from hurricanes Harvey, Irma, or Maria would retain the benefit of the deduction.

Medical Expenses

The Senate mark does not alter the itemized deduction for qualified medical expenses, allowing a deduction for such expenses to the extent they exceed 10 percent of adjusted gross income (AGI). The House bill would eliminate the deduction for medical expenses.

Alimony

The Senate mark does not change current treatment of alimony, which allows a deduction for the payor of alimony, and characterizes alimony received as taxable income to the recipient. The House bill would eliminate that treatment.

Moving Expenses

Both proposals would repeal the exclusion for qualified moving expense reimbursements and the deduction for qualified moving expenses. Both would retain the exclusion for reimbursements made to members of the Armed Services when the move is related to their service orders.

KPMG NOTE

Repeal of the deduction for moving expenses would increase the cost of sending employees on international assignment after taking into account the gross-up for taxes. On the other hand, lack of a tax deduction could simplify administration for employers – it may be feasible to simply provide employees with a moving allowance and not require them to account for their moving expenses.

Charitable Contributions

The deduction for charitable contributions would be largely retained in its current form, but both proposals would alter the rule whereby a deduction for cash contributions to a public charity are limited to 50 percent of a taxpayer's AGI, increasing the limit to 60 percent.

Deduction for Mortgage Interest

Both proposals would retain the deduction for mortgage interest but would add additional limitations.

The Senate mark would retain current rules permitting deductions for interest on acquisition indebtedness of up to $1 million on the taxpayer's principal residence and a second home. It would repeal the deduction for home equity indebtedness.

The House bill imposes more restrictions, limiting the deduction for home acquisition indebtedness to debt of $500,000 for mortgages taken out after November 2, 2017. (Existing deductible home acquisition debt would be "grandfathered".) The House bill would allow the deduction only for the taxpayer's principal residence, not for a second home, and like the Senate mark it would not permit a deduction for home equity debt that was not used to acquire or improve the taxpayer's residence.

Tax Preparation Expenses

Both proposals would eliminate the deduction for tax preparation expenses.

Miscellaneous Itemized Deductions

While the House bill would eliminate the deduction for unreimbursed employee business expenses, the Senate mark would repeal all miscellaneous itemized deductions that are subject to the two-percent-of-AGI limitation, which would include unreimbursed employee business expenses as well as appraisal fees for casualty losses and charitable contributions, investment fees and expenses, and certain repayments of income.

Education Expenses – Education Tax Credits and Student Loan Interest

The House bill would consolidate the current two education tax credits (the lifetime learning credit and the American Opportunity Credit), and extend the benefit to a fifth year of post-secondary education, while eliminating the deduction for student loan interest. The Senate mark would not alter these benefits in their current form.

Exclusion of Gain from Sale of Principal Residence

Both proposals would amend the exclusion for gain from sale of a principal residence by increasing the period for which the taxpayer must have owned and used the property as a principal residence from two of the previous five years to five of the previous eight years. The exclusion could be claimed only once every five years.

In addition, the House bill (but not the Senate mark) would make the exclusion subject to phase-out for taxpayers whose average modified AGI for the current and two prior years is in excess of $500,000 ($250,000 for single filers).

KPMG NOTE

The changes to the exclusion of gain from the sale of a principal residence could have significant implications on tax equalization calculations. For example, taxpayers on international assignment often have additional items of compensation which increase their AGI. The proposed changes in the House bill add a phase-out to the exclusion which would mean that a taxpayer whose AGI has been increased due to assignment allowances may not be able to take full advantage of the home sale exclusion, or may even lose the benefit entirely. If the taxpayer is part of a tax equalization program, the company might bear the burden of "equalizing" this additional tax liability. Also, the longer home use requirement (increased from two to five years) may make employees less mobile.

Exclusion for Employer-Provided Housing

The exclusion for housing and meals provided to employees and their spouses and dependents when provided for the convenience of the employer, which includes "camp housing," would be limited by the House bill to $50,000 per year ($25,000 for married individuals filing separately) and would be subject to phase-out for taxpayers who meet the current definition of "highly compensated employees" (generally those with wages in excess of $120,000, adjusted annually for inflation). The exclusion would also be limited to one residence. The Senate mark does not alter this exclusion.

KPMG NOTE

Valuation of camp housing may become an issue, as the value received by the employee may not be the same as the amount paid by the employer to provide the housing.

Alternative Minimum Tax

Both proposals would repeal the alternative minimum tax (AMT), with the result that income tax liability would be calculated under a single-rate structure.

KPMG NOTE

Under current law, incentive stock options are treated as compensation at exercise for AMT purposes. The repeal of AMT would mean incentive stock options would only be subject to federal income tax when sold.

Contributions to Retirement Plans

Despite some speculation that the excludible amount for contributions to section 401(k) plans could be reduced, the House bill would retain this at its current level ($18,000 for 2017, increasing to $18,500 for 2018, plus a "catch-up contribution" of up to $6,000 for individuals aged 50 or older). The Senate mark would eliminate the catch-up contribution for an individual who received wages of $500,000 or more in the prior year.

Child Tax Credit

The Senate mark proposes to raise the child credit to $1,650 from its current level of $1,000 (the House bill proposes that this amount should be $1,600). Like the House bill, the Senate mark allows that up to $1,000 of the child tax credit would be refundable, but the Senate mark raises the maximum age of an eligible child by one year to age 17. The Senate mark adds a nonrefundable credit of $500 for other dependents, while the House bill proposes a similar but temporary credit of $300, and extends that credit to the taxpayer (and spouse, if they file jointly). Under the Senate mark, to receive the refundable portion of the credit, the Social Security Number of each qualifying child must be included on the tax return. The House bill also would require that a valid Social Security Number be provided for any child for whom the credit is claimed. An Individual Taxpayer Identification Number would no longer be acceptable.

Both bills retain a phase-out of the child tax credit and dependent credit, but raise the level at which a phase-out would be applicable. The income levels at which these credits are subject to phase-out would increase from $110,000 to $1,000,000 for joint filers, and from $75,000 to $500,000 for single filers. The House bill raises the thresholds also, but not as high: to $230,000 for joint filers and $115,000 for single filers.

Credit for Adoption Expenses

The original draft of the House bill contained a provision that would have repealed the credit for qualified adoption expenses, but this was deleted from the final version of the House bill, meaning that the adoption credit would be retained in its current form. The Senate mark also makes no changes to the adoption credit.

Estate Tax

The Senate mark would increase the estate and gift tax exemption from its current level of $5.49 million to $10 million. That amount would be indexed for inflation. By contrast, the House bill would increase the estate tax exemption to $10.98 million, and would entirely repeal the estate tax and generation-skipping transfer tax for individuals who die after December 31, 2023.

FOOTNOTES:

1 See the text of the bill, H.R. 1, "Tax Cuts and Jobs Act."

See the announcement of the bill on the House of Representatives' Committee on Ways and Means website.

For discussion and analysis of H.R. 1, see GMS *Flash Alerts* 2017-157 (November 2, 2017), 2017-161 (November 7, 2017), 2017-162 (November 9, 2017) and 2017-164 (November 10, 2017).

For discussion of the Unified Framework document, see GMS *Flash Alert* 2017-143, September, 28, 2017.

2 See the text of the Chairman's Mark of the Senate Tax Cuts and Jobs Act.

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Join KPMG LLP's Global Mobility Services for a webinar December 12, 2017

KPMG LLP's Global Mobility Services will be hosting a webinar on December 12, 2017 at 2 pm EST to discuss tax reform and global mobility policy considerations. Registration will open soon, so look for the registration link on our Global Mobility homepage at www.kpmg.com/us/globalmobility.

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