



December 8, 2017

The Honorable Kevin Brady  
Chairman  
House Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable Orrin G. Hatch  
Chairman  
United States Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Richard Neal  
Ranking Member  
House Committee on Ways and Means  
1139E Longworth House Office Building  
Washington, DC 20515

The Honorable Ron Wyden  
Ranking Member  
United States Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

RE: Conference of the House and Senate-passed versions of the Tax Cuts and Jobs Act

Dear Chairman Brady, Chairman Hatch, Ranking Member Neal and Ranking Member Wyden:

The American Institute of CPAs (AICPA) is a long-time advocate for an efficient and pro-growth tax system based on principles of good tax policy. We need a tax system that is fair, stimulates economic growth, has minimal compliance costs, and allows taxpayers to understand their tax obligations. In this regard, we urge Congress to move us closer to a fairer, simpler Tax Code that drives economic opportunities for individuals and families, while leveling the playing field for American businesses in the United States (U.S.) and abroad as it works to reconcile the House and Senate-passed versions of the *Tax Cuts and Jobs Act*.

In the interest of good tax policy, the AICPA commends the House and Senate on its expansion of the number of taxpayers who may use the cash method of accounting. We also appreciate the House's efforts to simplify the tax rules surrounding education expenses; however, we recommend that Congress offer the same maximum credit each year (as opposed to a reduced amount on the fifth year) for education-related expenses. Additionally, we applaud the preservation of the deduction for business interest expense for small businesses, expansion of the exception for small taxpayers from the uniform capitalization rules under section 263A, and simplification of the "kiddie tax." These provisions would eliminate compliance burdens for individuals and small businesses and help reduce the complexity and unfairness of the current Tax Code.

We look forward to working with Congress as this process moves forward to promote fairness, administrability and the needs of both taxpayers and tax practitioners. In this letter, we highlight some of the key issues we have identified for consideration as the conferees work to reconcile the two bills.

## **1. Alternative Minimum Tax**

The AICPA urges the conferees to adopt the House’s approach in repealing the alternative minimum tax (AMT) for individuals and corporations. The current system’s requirement for taxpayers to compute their income for both the regular income tax and AMT is a significant area of complexity requiring extra calculations and recordkeeping. The AMT also violates the transparency principle because it masks the amount a taxpayer can effectively deduct or exclude, as well as the taxpayer’s marginal tax rate. The permanent repeal of the AMT would help reduce the complexity and unfairness of the current Tax Code.

## **2. Pass-through Entities**

The AICPA applauds the efforts to provide service businesses<sup>1</sup> with the 23% deduction available to other pass-through entities and urges conferees to provide parity for all pass-through entities, regardless of their line of business, in order to achieve a fairer, simpler, and more competitive tax code. Professional services providers, such as accounting firms, are an important sector in our economy and contribute to the nation’s goals of creating jobs and better wages. Without the benefit of a fair and consistent effective rate reduction, the incentive to start or grow a business is diminished, with a corresponding loss of jobs and reduction in wages. Avoiding unnecessary exceptions from the qualified business income deduction would promote both equity and fairness. The deduction approach moves the treatment of businesses closer to parity.

We also recommend determining compensation income by codifying traditional definitions of “reasonable compensation” supplemented, if necessary, by additional guidance from the U.S. Department of the Treasury (“Treasury”) and the Internal Revenue Service.

## **3. Deduction for State and Local Taxes**

The AICPA urges the conferees to preserve the full deduction for state and local taxes paid or accrued in carrying on a trade or business. Under current tax law, C Corporations may deduct state and local income taxes in determining their taxable income. Similarly, owners of pass-through entities may deduct state and local income taxes on income earned by the pass-through entity, whether paid at the entity level or directly by the partner/owner.

The AICPA recommends that the conferees allow owners of pass-through entities to take an “above-the-line” deduction for state and local taxes paid or accrued in carrying on a trade or business, whether paid at the entity level or directly by the partner/owner.

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<sup>1</sup> Under H.R.1, as amended and passed by the Senate, “Tax Cuts and Jobs Act” dated December 2, 2017, Section 11011, the 23% deduction applies to specified service businesses whose taxable income does not exceed \$500,000 for married individuals filing jointly or \$250,000 for other individuals.

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#### **4. International Tax Provisions**

##### *Treatment of Deferred Foreign Earnings*

The AICPA recommends that the repatriation tax imposed by both the House and Senate-passed versions of the bill only apply to those taxpayers who would receive the benefit of the dividend received exemption created by the bills.

Under the bills, “any U.S. shareholder of a specified foreign corporation must include in income its pro rata share of the undistributed, non-previously-taxed post-1986 foreign earnings of the corporation,” calculated as of a date specified in the provisions. The rate of tax on such foreign earnings would depend on the whether the foreign earnings have been retained in the form of cash or cash equivalents or reinvested in the foreign subsidiary’s business. Under an election, payment of the tax imposed would take place over an 8-year period.

The AICPA is concerned that non-corporate shareholders would have this repatriation tax imposed on their subsidiaries’ deferred foreign earnings, yet would not receive the benefit of the dividend received exemption on future earnings included in the provisions. We recognize the rationale for imposing a one-time tax on deferred earnings held by corporate owners. Those shareholders will generally not have U.S. tax imposed on their future foreign earnings and would have the ability to use the cash generated for U.S. based operations. However, non-corporate shareholders would remain subject to U.S. tax on any future foreign earnings which they elect to repatriate.

##### *Inbound Transfers of Intangible Property*

The AICPA urges the conferees to maintain and expand the Senate’s approach regarding the treatment for intangible property distributed from a Controlled Foreign Corporation (CFC) to a domestic corporation which is a U.S. shareholder of that CFC. Under this provision, the fair market value of the intangible property is treated as not exceeding the adjusted basis of the property immediately before the distribution. However, this beneficial treatment is only permitted for distributions received by a domestic corporation from a CFC with respect to its U.S. shareholder which occur before the last day of the third taxable year of such CFC that begins after December 31, 2017.

The positive policy objectives of this provision, which encourage businesses to transfer foreign located intangible property to the U.S., warrant making the provision permanent. In addition, such permanent extension should also apply this treatment to newly acquired foreign based intangible property to further promote the policy objectives.

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## **5. Head of Household Paid Preparer Due Diligence**

The AICPA applauds the efforts to reduce fraudulent claims for head of household status. However, the proposed process would add to the multiple layers of due diligence requirements with which tax practitioners are already required to comply, such as section 6694 preparer penalty regulations and Treasury's Circular 230 rules. We urge the conferees to consider simplified approaches that recognize taxpayers are responsible for the accuracy of their returns.

## **6. Repeal Technical Terminations**

We urge the conferees to adopt the House's approach in repealing section 708(b)(1)(B) relating to technical terminations of partnerships. The AICPA has long advocated for repealing this provision, which results in the technical termination of the entity for tax purposes only (i.e., the legal entity continues) and treatment of the partnership as a newly formed entity. In tax compliance, the earlier filing of the partnership return often goes unnoticed and penalties are assessed because companies are unaware of the accelerated filing deadline. The acceleration of the filing date of the tax return, the reset of depreciation lives, and the selection of new accounting methods arguably serve more as a trap for the unwary than a process to help prevent tax abuse.

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As Congress moves forward with tax reform, we urge the conferees to consider appropriate transitional provisions. For example, we recommend providing penalty relief for estimated payments due prior to the later of June 30, 2018, or 120 days after the effective date of the legislation. Taxpayers and preparers need sufficient time to determine the appropriate estimated tax payments for businesses and individuals that may have a dramatically different tax liability in the 2018 year as a result of tax reform.

The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We welcome the opportunity to discuss these comments on the *Tax Cuts and Jobs Act* or to answer any questions that you may have.

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If you have any questions, please contact Jeffrey A. Porter, Chair of the AICPA Tax Reform Task Force, at (304) 522-2553, or [jporter@portercpa.com](mailto:jporter@portercpa.com); Melanie Lauridsen, AICPA Senior Manager of Tax Policy & Advocacy, at (202) 434-9235, or [melanie.lauridsen@aicpa-cima.com](mailto:melanie.lauridsen@aicpa-cima.com); Lakecia Foster, AICPA Director of Congressional & Political Affairs, at (202) 434-9208, or [lakecia.foster@aicpa-cima.com](mailto:lakecia.foster@aicpa-cima.com); or me at (408) 924-3508 or [annette.nellen@sjsu.edu](mailto:annette.nellen@sjsu.edu).

Sincerely,



Annette Nellen, CPA, CGMA, Esq.  
Chair, AICPA Tax Executive Committee

cc: House of Representatives Conferees  
United States Senate Conferees  
The Honorable Paul Ryan, Speaker, House of Representatives  
The Honorable Mitch McConnell, Majority Leader, United States Senate  
The Honorable Nancy Pelosi, Minority Leader, House of Representatives  
The Honorable Charles E. Schumer, Minority Leader, United States Senate  
The Honorable David Kautter, Assistant Secretary (Tax Policy), Department of the Treasury