KPMG report: Tax reform for tax-exempt organizations and donors

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Tax reform for tax-exempt organizations and donors

A number of provisions in both the House and Senate tax reform proposals would affect tax-exempt organizations and their donors. The charts below identify some of these provisions, whether and to what extent the proposals differ between the two chambers, and highlight where more information can be found in the KPMG reports prepared for the current version of each bill.

These charts reflect proposals as of December 3, 2017, as identified in the following KPMG reports:

- House Republican tax reform bill – Initial observations on House passed bill [PDF 1.7 MB]
- Senate tax reform bill – Initial observations on Senate passed bill [PDF 1.3 MB]

The Senate bill removed a number of provisions from the version that had been approved by the Finance Committee last month, including:

- Name and logo royalties treated as unrelated business taxable income ("UBTI")
- Repeal of tax-exempt status for professional sports leagues
- Modification of taxes on excess benefit transactions

Page numbers below refer to where additional information may be found in the KPMG reports on the House bill and the Senate bill, respectively.

Exempt organization provisions

The proposals contain numerous provisions that specifically apply to tax-exempt organizations, including certain governmental entities.

Proposal	**House bill (11/16/17)** *pages 50-51, 67-68, 97-100*	**Senate bill (12/2/17)** *pages 68-69, 95-96*
General		
Impose a 1.4% excise tax on the investment income of certain private colleges and universities *(new section 4968 or 69)*	√ *(section 5103)* Applies to endowments valued at $250,000 or more per student.	√ *(section 13701)* Applies to endowments valued at $500,000 or more per student.

	• Applies to certain related organizations	• Provides additional clarity and limitations on the application of the provision to certain related organizations
Permit section 501(c)(3) organizations to make political campaign statements in the ordinary course of their activities, provided the expenses are de minimis *(new section 501(s))*	√ *(section 5201)*	X
Enhance the reporting required by sponsoring organizations of donor advised funds ("DAFs") *(new section 6033(k)(4), (5))*	√ *(section 5202)* The House bill would require sponsoring organizations to annually report the percentage of assets paid out of DAFs and their policies on inactive accounts.	X
Compensation		
Impose an entity-level excise tax on excess compensation *(new section 4960)* The proposals would impose a 20% excise tax on compensation in excess of $1 million (and "excess parachute payments") paid by certain exempt organizations (including related organizations) to the top-5 highest compensated employees.	√ *(section 3802)*	√ *(section 13602)*
Unrelated business income tax ("UBIT")		
Subject public pension funds and other organizations exempt from tax under section	√ *(section 5001)*	X

501(a) to UBIT, even if they exclude income from tax under section 115(1) *(new section 511(d))*		
Modify the fundamental research exception *(section 512(b)(9))*	√ *(section 5002)* The House bill would limit the exclusion from UBTIfor organizations operated primarily for fundamental research to research that is made freely available to the general public.	X
Include the value of certain fringe benefits that are non-deductible under section 274 as UBTI *(new section 512(a)(6))*	√ *(section 3308)*	X
Compute UBTI separately for each unrelated trade or business *(new section 512(a)(6))*	X	√ *(section 13702)*
Private foundations		
Simplify the private foundation excise tax on net investment income to a single 1.4% rate *(section 4940)*	√ *(section 5101)*	X
Create an exception from the excess business holdings rules for independently operated philanthropic businesses *(new section 4943(g))*	√ *(section 5104)*	X
Limit private operating foundation status for art museums to those that are open to the public for at least 1,000 hours per year (new section 4942(j)(6))	√ *(section 5102)*	X

Tax-exempt (and related) organizations as businesses

The current tax reform proposals include a number of provisions that would affect tax-exempt organizations that engage in unrelated trades or businesses or that have related taxable entities. Of particular interest may be the corporate rate reduction, repeal of the corporate AMT (House bill only), the elimination of numerous business deductions and tax credits, and increased expensing.

Proposal	**House bill (11/16/17)** *pages 27-28, 35-36, 50*	**Senate bill (12/2/17)** *pages 39-41, 53-54*
Replace graduated corporate income tax rates with flat 20% tax rate *(section 11(b))*	√ *(section 3001)* The new rates would take effect for tax years beginning after December 31, 2017.	√ *(section 13001)* The new rates would take effect for tax years beginning after December 31, 2018.
Repeal of corporate AMT *(sections 55-59)*	√ *(section 2001)*	X
Eliminate deduction for entertainment expenses and certain fringe benefits *(section 274)* The proposal generally repeals the present-law exception to the deduction disallowance for entertainment, amusement, or recreation that is directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business (and the related rule applying a 50% limit to such deductions). It generally retains the deduction for food and beverage expenses associated with a trade or business.	√ *(section 3307)* The House bill would disallow deductions for (1) a de minimis fringe that is primarily personal in nature, (2) a qualified transportation fringe, including costs of operating a facility used for qualified parking, and (3) an on-premises athletic facility provided by an employer to its employees, including costs of operating such a facility.	√ *(section 13304)* The Senate bill would eliminate the deduction for food and beverages provided for the convenience of the employer or through an employer-operated eating facility that qualified as a de minimis fringe benefit. This provision would not be effective until after 2025.

	In addition, it would disallow a deduction for entertainment expenses paid as part of a reimbursement arrangement to a tax-exempt entity.	

Tax-exempt organizations as employers

The tax reform proposals also affect compensation paid by tax-exempt organizations to their employees. In addition to provisions affecting retirement plans and deferred compensation, the proposals would modify compensation by changing the taxability of certain fringe benefits, imposing excise taxes on certain compensation, and increasing UBTI for certain organizations.

Proposal	**House bill (11/16/17)** *pages 19-21, 23-24*	**Senate bill (12/2/17)** *pages 30-32*
Modification of employer-provided housing exclusion *(section 119)*	√ *(section 1401)* The House bill would limit the exclusion for employer-provided housing to $50,000 annually and would phase out the exclusion for highly compensated employees.	X
Repeal exclusion for qualified tuition reductions made by 170(b)(1)(A)(ii) tax-exempt colleges and universities *(section 117(d))*	√ *(section 1204)*	X
Taxable fringe benefits *(section 132)*	√ *(section 1405)*	√ *(section 11049)*

The proposals would include in taxable income moving expense reimbursements.	The House bill would also include as taxable income: • Employer-provided education assistance *(section 1204)* • Employer contributions to Archer Medical Savings Accounts *(section 1311)* • Employee achievement awards *(section 1403)* • Adoption assistance *(section 1406)*	The exclusion for moving expense reimbursements is suspended for taxable years beginning after 12/31/17 and before 1/1/26. • The Senate bill would also include as taxable income qualified bicycle commuting expenses for taxable years beginning after 12/31/17 and before 1/1/26 *(section 11048)*

Tax-exempt bond provisions

The proposals address and modify certain rules relating to tax-exempt bonds.

Proposal	**House bill (11/16/17)** *pages 58-59*	**Senate bill (12/2/17)** *pages 81-82*
Termination of private activity bonds *(section 103(b))*	√ *(section 3601)* The House bill would eliminate the tax-exempt treatment of interest received from "qualified 501(c)(3)" bonds as well as certain other bonds.	X
Repeal of advance refunding bonds *(section 149(d))*	√ *(section 3602)*	√ *(section 13532)*

The proposal would tax the interest earned on bonds used to pay the principal, interest, or redemption price on a prior governmental or qualified 501(c)(3) bond issued more than 90 days before redemption.		

Donors

In addition to proposed amendments to the charitable contribution deduction (discussed below), a number of other provisions may be of interest to donors of tax-exempt organizations: e.g., an increased standard deduction, modification or repeal of the AMT, modification or repeal of the estate tax, lower tax rates, and a repeal of the overall limit on itemized deductions.

Charitable contribution deduction	**House bill (11/16/17)** *pages 21-22*	**Senate bill (12/2/17)** *pages 28, 96-97*
Increase the 50% AGI limit to 60% for cash contributions *(section 170(b)(1))*	√ *(section 1306(a))*	√ *(section 11023)* Applies to taxable years beginning after 12/31/17 and before 1/1/26.
Deny the deduction for college athletic event seating rights *(section 170(l))*	√ *(section 1306(b))*	√ *(section 13703)*
Repeal substantiation exception for contributions reported by donees *(section 170(f)(8)(D))*	√ *(section 1306(d))*	√ *(section 13704)*
Adjust the charitable mileage rate for inflation *(section 170(i))*	√ *(section 1306(c))*	X

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