



The following are some of the most important changes in the *Tax Cuts and Jobs Act* Conference Agreement reached by the House and Senate affecting the commercial real estate industry:

- **Like-Kind Exchanges:** Section 1031 real estate like-kind exchanges are preserved and will continue to be eligible for tax deferral under the new tax regime. Beginning in 2018, however, like-kind exchanges of personal property will no longer be permitted.
- **Carried Interest:** in order to qualify as long-term capital gains, profits of an investment paid out as a carried interest must now satisfy a three-year holding period. This change ensures that proceeds from shorter-term investments are taxed at ordinary rates, but that long-term investments are appropriately incentivized.
- **Interest Deductibility:** For most businesses, the deductibility of interest expense will be capped at 30 percent of the entity's earnings before interest, tax, depreciation, and amortization. For a real estate trade or business, however, the full deductibility of interest payments is maintained. A taxpayer must elect out of the new interest disallowance regime. Real estate businesses electing out of interest disallowance will be required to abide by modified cost recovery rules (see below).
- **Cost Recovery:** Bonus depreciation provisions of the code, which allow businesses to deduct 50 percent of the cost of qualified property in the first year, are modified to allow for full expensing – a 100 percent deduction in the first year. However, real estate businesses will be able to claim bonus depreciation on qualified land improvements and tangible, personal property used in a real estate trade or business. Real estate businesses electing to continue their eligibility for interest deductibility must depreciate property based on of 40 years for nonresidential property (currently 39 years) and 20 years for qualified interior improvements (currently 15 years for qualified leasehold improvements). Bonus Depreciation at the 100 percent level expires after 5 years.
- **Pass-through Taxation:** Businesses organized as “pass-throughs” (partnerships, limited liability companies, limited liability partnerships) will now pay a top individual rate of 37 percent (reduced from the current 39.6 percent), and pass-through business income will be eligible for a 20 percent deduction. Combined, these provisions yield an effective top rate of 29.6 percent on business income, a 10-point reduction of the current top rate. Trusts and estates, which include many family-owned businesses, will now be able to access the new lower pass-through rate (earlier versions of the bill did not include trusts and estates). The 20 percent deduction is limited to either (a) 50 percent of W-2 wages paid, or (b) the sum of 25 percent of W-2 wages paid plus 2.5 percent of the value of capital assets, whichever is greater. These limitations apply only to businesses whose owners have income in excess of \$157,500 for single filers, and \$315,000 for married couples. Dividends received from REITs are not subject to the limitation, but certain service businesses (e.g. medical and law) are not eligible for the deduction at any income level. The addition of the 2.5 percent value of capital assets provision will allow more real estate trade or businesses to access the lower tax rates. Previous versions of the bill did not include the provision.

- **Corporate Tax Rate:** the current top corporate rate of 35 percent is reduced to 21 percent. The corporate Alternative Minimum Tax (AMT) is eliminated.
- **Estate Tax:** current exemption thresholds are doubled, from \$10.98 million for married couples to \$21.96 million. The step-up in basis is also preserved. Because of the considerable value of real estate and its appreciation over the longer-term, these provisions are critical to the industry. They help ensure that heirs are not forced to sell property just to cover their tax bill, and that family-owned developers can pass their business on to the next generation.
- **State and Local Tax Deductions:** taxpayers will face a new \$10,000 cap on state and local income, sales, and property taxes. The cap would apply to individuals. State and local taxes paid in carrying on a real estate trade or business, or in activity related to the production of income, will remain deductible.
- **Historic Preservation and Rehabilitation Tax Credits:** the 20 percent credit for certified historic structures is retained, but must be claimed over a 5-year period (4 percent each year). The 10 percent credit for non-certified structures built before 1936 is eliminated. The tax bill originally passed by the House would have eliminated the HTC altogether.
- **New Markets Tax Credits:** Prior versions of the legislation would have repealed the NMTC, which incentivizes development in distressed areas. The final conference agreement maintains the NMTC.
- **Private Activity Bonds:** The tax-preferred status of PABs is retained; it had been terminated in the House bill. PABs may play an important role as a financing mechanism in a future infrastructure bill.

[Text of *The Tax Cuts and Jobs Act*](#)

[Joint Explanatory Statement of the Conference Committee](#)

[Congressional Budget Office Cost Estimate for Conference Agreement on H.R. 1](#)