

## **Hatch modification to Amendment #25 (Hatch #25)**

The amendment is modified to read as follows:

Short title: To provide modifications, clarifications, and additions to the Chairman's mark of the Tax Cuts and Jobs Act

Description of Amendment: The amendment makes the following clarifications, modifications, and additions to provisions in the Chairman's mark:

### *Modifications and clarifications*

- Modification of limitation on excessive employee remuneration

The amendment adds a transition rule so that the proposed changes to section 162(m) do not apply to any remuneration under a written binding contract which was in effect on November 2, 2017, and which was not modified thereafter in any material respect.

- Excise tax based on investment income of private colleges and universities

The amendment clarifies that the related-party rule of the provision applies only to assets held for the educational institution and to investment income that relates to assets held for the educational institution.

- Charitable contributions and foreign taxes taken into account in determining limitation on allowance of partner's share of loss

The amendment clarifies that a partner's distributive share of loss takes into account the partner's distributive share of charitable contributions and foreign taxes for purposes of the basis limitation on partner losses. In the case of a charitable contribution of property whose fair market value exceeds its adjusted basis, the basis limitation on partner losses does not apply to the extent of the partner's distributive share of such excess.

- Limitation on deduction for interest

The amendment clarifies that the limitation, which does not apply to certain regulated public utilities, also does not apply to certain electric cooperatives.

- Treatment of deferred foreign income upon transition to participation exemption system of taxation

The amendment excludes the accumulated deferred foreign income from the REIT gross income tests. In addition, REITs would be permitted to elect to meet their distribution requirement to REIT shareholders with respect to the accumulated deferred foreign income over an eight-year period under the same installment percentages as apply to U.S.

shareholders who elect to pay the net tax liability resulting from the mandatory inclusion of pre-effective-date undistributed CFC earnings in eight installments.

- Modification of credit for clinical testing expenses for certain drugs for rare diseases or conditions

The amendment puts the Orphan Drug Credit rate at 27.5 percent (instead of current law's 50 percent rate), would have reporting requirements similar to those required in sections 48C and 48D, and, would further modify the mark by striking any base amount calculation and by striking the limitation regarding qualified clinical testing expenses to the extent such testing relates to a drug which has previously been approved under section 505 of the Federal Food, Drug, and Cosmetic Act.

- Modification of deduction for meals provided at convenience of the employer

The amendment provides that the effective date for the provision described in the Chairman's modification to the Chairman's mark is taxable years beginning after December 31, 2025.

- Modification of net operating loss deduction

The amendment provides that the effective date for the provision described in the Chairman's modification to the Chairman's mark is taxable years beginning after December 31, 2022.

- Revenue Dependent Repeals

The amendment adds a reporting requirement for research and experimental expenditures in taxable years beginning after December 31, 2024, detailed reporting of cost of goods sold, related party payments broken down by type and separately stated, reporting with respect to all foreign derived intangible income, and a certification under penalties of perjury that income that qualifies for the deduction does not relate to the sale of products into the United States. In the case of any failure to make the return required under this section containing the information required by such section on the date prescribed thereof (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to file such return, an amount equal to \$1,000 for each day during which such failure continues, but the total amount imposed under this subsection with respect to any return shall not exceed \$250,000.

- Cost basis of specified securities determined without regard to identification

The amendment provides that regulated investment companies are exempt from the first-in first-out rule.

- Modification of rehabilitation credit

The amendment provides: (1) a 20 percent credit for qualified rehabilitation expenditures with respect to a certified historic structure; and (2) that the 20 percent credit be claimed ratably over a five-year period beginning in the taxable year in which a qualified rehabilitated structure is placed in service.

- Relief for retirement plan distributions and modification of casualty loss deduction for the Mississippi River Delta flood disaster area

The amendment modifies the Chairman's modification to the Chairman's mark by adding to the definition of "Mississippi River Delta flood disaster area" an area with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act before March 31, 2016, by reason of severe storms and flooding occurring in Louisiana, Texas, and Mississippi during March of 2016.

The amendment also provides that a qualified Mississippi River Delta flooding distribution is a distribution from an eligible retirement plan made on or after March 1, 2016, and before January 1, 2018, to an individual whose principal place of abode on March 1, 2016, was located in the Mississippi River Delta disaster area and who has sustained an economic loss by reason of the severe storms and flooding giving rise to the Presidential disaster declarations.

Finally, the amendment provides that in in the case of a personal casualty loss which arose in the Mississippi River Delta flood disaster area on or after March 1, 2016, where such loss was attributable to the severe storms and flooding giving rise to the Presidential declarations, such losses are deductible without regard to whether aggregate net losses exceed ten percent of a taxpayer's adjusted gross income, although in order to be deductible the losses must exceed \$500 per casualty. Additionally, such losses may be claimed in addition to the standard deduction.

#### *Additions*

- Free File Program

The amendment codifies and permanently extends the Free File Program, first created by negotiated public rulemaking in 2002.

- To unify the tax treatment of whistleblower awards

The amendment provides an above-the-line deduction for attorney fees and courts costs paid by, or on behalf of, a taxpayer in connection with any action involving a claim under State False Claims Acts, the SEC whistleblower program, and the Commodity Futures Trading Commission whistleblower program.

- To improve the IRS whistleblower program

The amendment modifies section 7623 to define collected proceeds eligible for awards to include: (1) penalties, interest, additions to tax, and additional amounts, and (2) any proceeds under enforcement programs that the Treasury has delegated to the IRS the authority to administer, enforce, or investigate, including criminal fines and civil forfeitures, and violations of reporting requirements. This definition would also be used to determine eligibility for the enhanced reward program under which proceeds and additional amounts in dispute exceed \$2,000,000. Collected proceeds amounts would be determined without regard to whether such proceeds are available to the Secretary.

- Stock compensation of insiders in expatriated corporations

The amendment increases the excise tax on stock compensation in an inversion from 15 percent to 20 percent.

- Repeal of deduction for local lobbying expenses

The amendment disallows deductions for lobbying expenses with respect to legislation before local government bodies (including Indian tribal governments). The provision would be effective for amounts paid or incurred on or after the date of enactment.

- Dividends paid reporting and deduction

The amendment adds a new requirement for corporate taxpayers that pay dividends to shareholders. Such taxpayers are required to report the total amount of dividends paid during the taxable year and the first 2 ½ months of the succeeding year. The provision would be effective for taxable years beginning after December 31, 2018. The provision permits corporations to deduct zero percent of dividends in computing taxable income subject to tax under section 11.

In the case of any failure to make the return required under this section containing the information required by such section on the date prescribed thereof (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to file such return, an amount equal to \$1,000 for each day during which such failure continues, but the total amount imposed under this subsection with respect to any return shall not exceed \$250,000.

- Partnership interest held in connection with the performance of services

The amendment imposes a three-year holding period requirement for qualification as long-term capital gain with respect to certain partnership interests received in connection with the performance of services.

Offset: N/A