January 2018 Update Memorandum for

Miller & Maine's

The Fundamentals of Federal Taxation: Problems and Materials

(4th ed. 2017)

By
John A. Miller and Jeffrey A. Maine

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, NC 27701
Phone: (919) 489-7486
Fax: (919) 493-5668
www.cap-press.com

Introductory Note

In December of 2017 Congress passed and the President signed into law the Tax Cut and Jobs Act (TCJA). This act made numerous changes to the income tax as it applies to individuals, corporations and pass-through entities such as partnerships and LLC's. The leading theme of the new law is an across the board reduction of tax rates (at least temporarily). This update memorandum provides a brief summary of those changes relevant to the contents of our casebook, THE FUNDAMENTALS OF FEDERAL TAXATION: PROBLEMS AND MATERIALS (4th ed. 2017). The changes wrought by the TCJA are largely effective as of January 1, 2018.

Nearly all of the changes to the individual income tax are temporary and expire on January 1, 2026. At this point it is impossible to predict which, if any, of those changes will continue in effect after that date. Indeed, some of those provisions may be changed even sooner since there was no support for the law within the Democratic Party caucuses and the Republican Party majorities in both the House of Representatives and the Senate are quite slim as the midterm elections approach. On the other hand, should the Democratic Party gain control of Congress this year, it is unlikely to have sufficient numbers to override a presidential veto. It seems likely, then, that the TCJA changes will be in effect for at least the next three years.

Unlike the individual income tax changes, the corporate and pass-through entity tax changes are permanent (at least in the sense of having no expiration date). Over the long term the TCJA may be seen primarily as a permanent corporate tax cut augmented by temporary individual tax cuts that will ultimately expire or be renewed. It is estimated that the TCJA will add to the federal budget deficit to the tune of about $1.5 trillion over the next decade. Had the individual rate reductions been made permanent, the deficit would have been much greater. The proponents of the TCJA argue that it will ultimately stimulate the economy in ways that are beneficial to

workers as well as business owners. The critics of the Act tend toward the view that the primary beneficiaries of the new law are the well-to-do and that the costs of the additional deficit will be borne by present and future workers through higher taxes or reduced government benefits or both.

The TCJA amends or repeals (often temporarily) a number of provisions. Some of these changes may be seen as simplification efforts. Other changes are intended to increase revenues in order to offset the revenue losses arising from the rate reductions. As the reader will see, a number of the temporarily repealed provisions are deductions granted to individuals. This means that the overall benefit to any particular person of the tax rate cuts is only determinable upon a complete analysis of that person's tax situation.

Chapter 1: Introduction

Page 7:

A general comment: The TCJA changed both the individual and corporate tax rate structures. The top individual rate for 2018 is 37% (down from 39.6%). The top corporate rate is 21% (down from 35%). It is arguable that the primary impact and overall intent of the act is to reduce taxes on U.S. corporations. The motivation for this lies in the mobility of both capital and of manufacturing capability. It has been argued that lower corporate tax rates are necessary to prevent U.S. corporations from moving their operations to other countries. The hope in lowering the corporate tax rate is to encourage retention of profits in the United States. This, it is hoped, will lead to greater investment in job creation and higher pay within the United States.

For the period from 2018 through 2025 the Computational Overview excludes the Personal Exemptions. Thus:

Computational Overview

Pre-exclusions Gross Income
– <u>Exclusions</u>
Gross Income
– <u>Above-the-Line Deductions</u>
Adjusted Gross Income
<u>– Standard Deduction or Itemized Deductions</u>
Taxable Income
X <u>Tax Rates</u>
Gross Tax Liability
– <u>Tax Credits</u>
Net Tax Liability or Refund

Chapter 5: Discharge of Indebtedness

Page 84: Add to Related Matters:

Section 108(f)(5), Under the TCJA, certain student debt discharges arising from the death of the debtor are excluded from gross income.

Chapter 6: Fringe Benefits

Page 100: In the Related Matters bullet on Section 132, add the following after "Qualified moving expense reimbursement"):

The TCJA suspended this exclusion for years 2018 through 2025. See new IRC § 132(g). The exclusion, however, was preserved for U.S. Armed Forces members and their family.

Page 101: At the end of Related Matters add:

Section 274(o). The TCJA reduced the deduction the employer may take for meals provided under section 119 from 100% to 50% of the costs of such meals.

Chapter 7: Business Expenses

Page 123: In V. Related Matters under "Other Provisions" add:

Payments for sexual harassment claims. (IRC § 162(q))

Page 123: At the end of Related Matters add:

Business Interest. The TCJA amended section 163(j) to disallow a deduction for net business interest expense of certain taxpayers in excess of 30% of a business's adjusted net taxable income. The provision does not apply to certain small businesses. IRC § 163(j).

Employer Expenses for Entertainment. The TCJA repealed deductions for entertainment when directly related to the conduct of a taxpayer's trade or business. See new IRC § 274(a). More specifically, no deduction is allowed for entertainment, amusement, or recreation activities, or facilities (including membership dues) even if related to a taxpayer's business.

Employer Meals Provided Under Section 119. The TCJA retained the 50% deduction for food and beverage expenses associated with a business. The TCJA, however, reduced the deduction an employer may take for meals provided under section 119 from 100% to 50% of the costs of such meals. See new IRC § 274(o). After 2025, the on-premises meals and section 119 meals expenses will be nondeductible.

Employer Provided Transportation. The TCJA disallows any deduction for a qualified transportation fringe and employee commuting (e.g., van pools, subway, transit cards, and qualified parking expenses), except if necessary for employee safety.

Chapter 9: Depreciation and Amortization

Pages 149-150: ***1. Section 179***

The TCJA increases the maximum amount a taxpayer may expense under section 179 to $1,000,000, and increases the phase-out threshold amount to $2,500,000. Thus, the provision provides that the maximum amount a taxpayer may expense, for taxable years beginning after 2017, is $1,000,000 of the cost of qualifying property placed in service for the taxable year. The $1,000,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $2,500,000. The $1,000,000 and $2,500,000 amounts are indexed for inflation for taxable years beginning after 2018.

Pages 150-151: ***2. Section 168(k)***

Section 168(k) has been temporarily expanded in its scope. The TCJA extends and modifies the additional first-year depreciation deduction through 2026 (through 2027 for longer production period property and certain aircraft). The 50-percent allowance is increased to 100 percent for property placed in service after September 27, 2017, and before January 1, 2023. [It provides a phase down of the bonus percentage—allowing an 80% deduction for property placed in service in 2023, a 60% deduction for property placed in service in 2024, a 40% deduction for property placed in service in 2025, and a 20% deduction for property placed in service in 2026.] In effect business are now permitted to fully expense their purchases of tangible personal depreciable property.

Chapter 10: Personal Casualty Losses

Pages 165-166: B. The Personal Casualty Loss Deduction

The personal casualty loss deduction was reduced by the TCJA to apply only to losses from presidentially declared national disasters within the meaning of section 165(i). See new IRC § 165(h)(5).This greatly narrows its availability.

Chapter 11: Other Deductible Personal Expenses

Page 183: After the first full paragraph add:

Effective in 2018 is a further restriction on the deduction of business interest in new subsection 163(j).

Page 184: At the end of the first full paragraph add:

The TCJA reduced the amount of acquisition indebtedness that can generate deductible interest to $750,000. It eliminated the home equity indebtedness interest deduction except for interest on home equity loans used to finance improvements to the property. See new IRC § 163(h)(3)(F).

Page 185: B. State and Local Taxes

Effective in 2018, the TCJA caps the aggregate state and local tax deduction at $10,000. IRC § 164(b)(6). This along with other changes will reduce the number of taxpayers who will utilize this deduction. See Chapter 12.

Page 186: D. Moving Expenses

Effective in 2018, the TCJA suspended the moving expense deduction. See new IRC § 217(k).

Page 187: E. Medical Expenses:

For tax years 2017 and 2018, the TCJA lowered the threshold for deducting medical expenses from 10% to 7.5% of the taxpayer's adjusted gross income. See new IRC § 213(a). After 2018, the 10% threshold would be applicable.

Chapter 12: The Deduction Hierarchy

Page 195: A. Itemized Deductions versus the Standard Deduction

A general comment: The TCJA raised the standard deduction for married couples to $24,000 and for single taxpayers to $12,000. See new IRC § 63(a). It also restricted the amount of the mortgage interest deduction and the state and local tax deduction. These changes mean that many fewer taxpayers will itemize than in the past.

Page 196: B. Miscellaneous Itemized Deductions

A general comment: The TCJA suspended the deduction for miscellaneous itemized deductions. Like the restrictions on the mortgage interest deduction and the state and local tax deduction, this will reduce the number of taxpayers who find it advantageous to itemize their deductions. See new IRC § 67(g).

Pages 197-198: C. Personal and Dependency Exemptions

A general comment: The TCJA suspended the personal and dependency exemptions. This detriment is partially counterbalanced by an increased child tax credit and by a new family credit. The dependency rules of section 152 remain significant because of their relationship to the family credit which is addressed in Chapter 15. See new IRC § 151(d)(4) & (5).

Page 208: V. Related Matters

The 3% Rule. The TCJA suspended the overall limitation on itemized deductions for years 2018 through 2025.

Chapter 13: Timing Rules and Related Principles

Page 215: C. The Accrual Method

1. Income under the Accrual Method. **Add at the end of the paragraph:**

Under the TCJA, the "all events" test is satisfied no later than the year in which income is recognized for financial accounting purposes (recognized on an applicable financial statement). See new IRC § 451(b). Under this provision, an accrual method taxpayer will include an item in income under section 451 upon the earlier of (1) when the all events test is met or (2) when the taxpayer includes such item in revenue in an applicable financial statement. This new book conformity requirement may cause acceleration in the recognition of income for taxpayers. Note that accrual method taxpayers without an applicable or other specified financial statement will continue to determine income inclusion under the all events test. Note further that there are some exceptions to the new book conformity requirement (e.g., installment sales agreements under section 453).

Page 215: a. Prepayments. At the end of the paragraph add:

The TCJA amended section 451 to codify the current deferral method of accounting for prepayments for goods and services provided under Revenue Procedure 2004-34. This allows taxpayers to elect to defer inclusion of prepayments to the end of the year following the year of receipt if such income is deferred for financial statement purposes. See new IRC § 451(c).

Page 216: a. Inventory Accounting

General comment: Although businesses that have inventory must generally use the accrual method of accounting for tax purposes, the TCJA expanded an important exception. Under the TCJA, businesses with average annual gross receipts of $25 million or less (based on the prior three years) are permitted to use the cash method of accounting even if the business has inventories. See new IRC § 471(c). Pre-TCJA, the threshold was only $1 million. As in the past, businesses qualifying for the exception may account for inventory as incidental materials and supplies.

Page 228: V. Related Matters. Delete the second and third bullets, and add a new bullet:

The TCJA. Under the TCJA, a C corporation or partnership with a C corporation partner may use the cash method only if, for each prior tax year, its average annual gross receipts (based on the prior three tax years) do not exceed $25 million (indexed for inflation after 2018). See new IRC § 448(c).

Chapter 14: Ordinary Tax Rates and Taxpayer Classifications

Page 231: *Computing a Final Tax Liability*

The TCJA temporarily repealed the personal exemptions and dependency exemptions. Thus, computing a final tax liability now looks like this:

Computational Overview

Pre-exclusions Gross Income
– <u>Exclusions</u>
Gross Income
– <u>Above-the-Line Deductions</u>
Adjusted Gross Income
<u>– Standard Deduction or Itemized Deductions</u>
Taxable Income
X <u>Tax Rates</u>
Gross Tax Liability
– <u>Tax Credits</u>
Net Tax Liability or Refund

Page 231: B. The Rate Structure for Ordinary Income

A general comment: The TCJA changed the progressive ordinary rate structure to seven rates; 10%, 12%, 22%, 24%, 32%, 35% and 37%. The new brackets, like the old ones, are indexed for inflation. The new rate tables are set out below. Like most of the TCJA income tax changes applicable to individuals, these rates are only effective for tax years 2018 through 2025.

"(2) RATE TABLES.—

"(A) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—The following table shall be applied in lieu of the table contained in subsection (a):

"If taxable income is:	The tax is:
Not over $19,050	10% of taxable income.
Over $19,050 but not over $77,400	$1,905, plus 12% of the excess over $19,050.
Over $77,400 but not over $165,000	$8,907, plus 22% of the excess over $77,400.
Over $165,000 but not over $315,000	$28,179, plus 24% of the excess over $165,000.
Over $315,000 but not over $400,000	$64,179, plus 32% of the excess over $315,000.
"If taxable income is:	**The tax is:**
Over $400,000 but not over $600,000	$91,379, plus 35% of the excess over $400,000.
Over $600,000	$161,379, plus 37% of the excess over $600,000.

"(B) HEADS OF HOUSEHOLDS.—The following table shall be applied in lieu of the table contained in subsection (b):

"If taxable income is: **The tax is:**
Not over $13,600 .... 10% of taxable income.
Over $13,600 but not over $51,800 .... $1,360, plus 12% of the excess over $13,600.
Over $51,800 but not over $82,500 .... $5,944, plus 22% of the excess over $51,800.
Over $82,500 but not over $157,500 .... $12,698, plus 24% of the excess over $82,500.
Over $157,500 but not over $200,000 .... $30,698, plus 32% of the excess over $157,500.
Over $200,000 but not over $500,000 .... $44,298, plus 35% of the excess over $200,000.
Over $500,000 .... $149,298, plus 37% of the excess over $500,000.

"(C) UNMARRIED INDIVIDUALS OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS.—The following table shall be applied in lieu of the table contained in subsection (c):

"If taxable income is: **The tax is:**
Not over $9,525 .... 10% of taxable income.
Over $9,525 but not over $38,700 .... $952.50, plus 12% of the excess over $9,525.
Over $38,700 but not over $82,500 .... $4,453.50, plus 22% of the excess over $38,700.
Over $82,500 but not over $157,500 .... $14,089.50, plus 24% of the excess over $82,500.
Over $157,500 but not over $200,000 .... $32,089.50, plus 32% of the excess over $157,500.
Over $200,000 but not over $500,000 .... $45,689.50, plus 35% of the excess over $200,000.
Over $500,000 .... $150,689.50, plus 37% of the excess over $500,000.

"(D) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—The following table shall be applied in lieu of the table contained in subsection (d):

"If taxable income is: **The tax is:**
Not over $9,525 .... 10% of taxable income.
Over $9,525 but not over $38,700 .... $952.50, plus 12% of the excess over $9,525.
Over $38,700 but not over $82,500 .... $4,453.50, plus 22% of the excess over $38,700.
Over $82,500 but not over $157,500 .... $14,089.50, plus 24% of the excess over $82,500.
Over $157,500 but not over $200,000 .... $32,089.50, plus 32% of the excess over $157,500.
Over $200,000 but not over $300,000 .... $45,689.50, plus 35% of the excess over $200,000.
Over $300,000 .... $80,689.50, plus 37% of the excess over $300,000.

Page 236: D. Alternative Minimum Tax

General comment: The TCJA retained the individual AMT, but increased the AMT exemption amounts and phase out thresholds for individuals. For single taxpayers, the exemption amount for 2018 is $70,300 ($109,400 for joint filers) and the phase out threshold for 2018 is $500,000 ($1,000,000 for joint filers). IRC § 55(d)(4). Note that the TCJA repealed the corporate AMT.

Page 240: At the end of Related Matters add:

IRC Section 1 Inflation Adjustment. The TCJA changed the method of calculating inflation adjustments for the tax system. This will affect the changes in tax brackets from year to year. The new method should reduce the size of such adjustments in the future. Unlike the other changes to the individual income tax made by the TCJA, **this change is permanent**.

Treatment of business income. The TCJA provides a new deduction for certain business income of individuals (owners of sole proprietorships and owners of pass-through entities). This deduction has the effect of lowering the effective tax rate on such income. See new IRC § 199A.

Chapter 15: Tax Credits

Page 243: 2. *The Child Tax Credit*

A general comment: The TCJA temporarily increases the child tax credit to $2,000 per qualifying child. The credit is further modified to temporarily provide for a $500 nonrefundable credit for qualifying dependents other than qualifying children. The provision generally retains the present-law definition of dependent. See new IRC § 24. These changes must be balanced against the suspension of the personal and dependency exemptions addressed in Chapter 12. Up to $1,400 of the child tax credit is refundable under certain circumstances. In order to obtain the credit, the child in question must have a duly issued social security number.

Chapter 17: Capital Gains and Losses

Page 256: c. Self-Created Copyright and Similar Property—Section 1221(a)(3)

The TCJA narrowed the definition of capital asset by excluding a self-created patent, invention, model or design, secret formula or process. Thus, at least under *general characterization* rules, gains or losses from the sale of these assets are no longer treated as gains or losses from the sale of a capital asset. See new IRC § 1221(a)(3). According to the legislative history, profits and losses arising from everyday activity should be taxed as ordinary income and loss. Interestingly, the TCJA did not repeal section 1235. As discussed in Chapter 29, section 1235 is a *special characterization* provision that may provide desired long-term capital gain treatment for sales of self-created patents.

Page 271: Add the following at the end of the bullet "Net Investment Income:

The TCJA left in place the 3.8% net investment income tax.

Chapter 20: The Charitable Contribution Deduction

Page 295: 3. Sections 170(b)(1)(A) & (B). Add the following at the end of the section:

The TCJA increased the AGI limitation for charitable contributions of cash made by individuals to public charities to 60% (up from the current limitation of 50%). See new IRC § 170(b)(1)(G).

Page 312: After "Stadium Tickets," add the following:

Note that the TCJA repealed the deduction for amounts paid in exchange for college athletic event seating rights.

Chapter 23: Hobby Losses

Page 346: At the end of Related Matters, add the following new bullet:

Gambling Losses. The TCJA clarifies that "losses from wagering transactions" include any deduction otherwise allowable that is incurred in carrying on any wagering transaction. Under this law change, someone's otherwise deductible expenses in traveling to or from a casino are subject to the limitation. See new IRC § 165(d).

Chapter 24: Like Kind Exchanges

Page 350: Omit the first and second full paragraphs and insert in their place:

The TCJA limits the application of section 1031 to exchanges of real property. Thus, the provision no longer applies to tangible personal property or intangible property. See new IRC § 1031(a)(1). Note that section 1031 continues to be inapplicable to exchanges of real property held primarily for sale.

Chapter 27: Limitations on Deductions

Page 390: C. The Passive Loss Rules

General comment: The TCJA made a significant change to the treatment of non-passive losses of taxpayers other than C corporations. Under the TCJA, an "excess business loss" for the year (defined as $250,000 for individuals and $500,000 for joint filers) would not be allowed for the year. Instead, it would be treated as part of the taxpayer's net operating loss (NOL) and carried forward to future years (and allowed for a year up to 90% of the taxpayer's taxable income). See new IRC § 461(l).

Chapter 28: Intellectual Property Development and Acquisitions

Page 403: 2. Deductibility under Section 174—Research and Experimental Expenditures

General comment: The TCJA repeals section 174(a) (immediate expensing of research and experimental expenditures) beginning in 2022. Under the new law, specified research and experimental expenditures (including software development costs) paid or incurred after December 31, 2021, must be capitalized and amortized ratably over a five-year period. For research outside the United States, the amortization period is lengthened to fifteen years. Also, under the new law, any remaining basis of retired or abandoned property with respect to which research and experimental expenditures were paid or incurred, may not be recovered in the year of retirement or abandonment, but instead must be continued to be amortized over the remaining amortization period. See new IRC § 174.

Chapter 29: Intellectual Property Sales and Licenses

Page 425: 2.a. Section 1235: Transfers of All Substantial Rights to Patents

Although the TCJA excluded self-created patents and inventions from the definition of capital asset (see new IRC § 1221(a)(3)), it did not repeal section 1235. Thus, if the requirements of section 1235 are met, an inventor can still receive long-term capital gain treatment on the sale of his or her invention.

Chapter 30: Assignment of Income

Page 458: At the end of Assignments to Business Entities, add a new paragraph:

The TCJA added a complex new provision to the tax law. This provision, IRC section 199A, grants a deduction to certain pass-through business entities such as partnerships or LLCs equal to 20% of their adjusted gross income. The purpose of this provision is to create rough parity between businesses operated as corporations and businesses operated as pass-throughs (following the large income tax rate reduction granted to corporations by the TCJA discussed in Chapter 37). This new provision has the potential to set off a new wave of tax planning by individuals through the use of pass-throughs to receive their income. The provision has some guardrails to prevent this. Whether those guardrails are adequate remains to be seen.

Page 458: At the end of International Assignments of Income, add:

The TCJA adopted a number of "carrot" and "stick" measures to prevent multinationals from shifting assets and related income offshore. In addition to carrot approaches, such as lowering the corporate tax rate and providing a 100% deduction for dividends received from foreign subsidiary corporations, the TCJA added a minimum tax on "global intangible low-taxed income" and adopted a number of anti-base erosion measures (e.g., a minimum tax on deductible payments, such as royalties, made to a foreign affiliate). To deal with the $2.6 trillion in earnings stacked offshore, the TCJA adopted a deemed repatriation tax (15.5% on foreign earnings attributable to liquid assets and an 8% tax on earnings attributable to illiquid assets). All of these provisions have the potential to set off a new wave of tax planning for multinationals with mobile income.

Chapter 31: Alimony and Support

Page 459: The TCJA repeals code sections 71 and 215, which are the subject of this chapter. This change is effective for any divorce or separation instrument executed after December 31, 2018. This means that in the future all property transfers between spouses and former spouses incident to divorce will be governed by the rules of section 1041 which is the subject of Chapter 32.

Chapter 33: Education Benefits and Costs

The TCJA modifies section 529 plans to allow such plans to distribute not more than $10,000 in expenses for tuition incurred during the taxable year in connection with the enrollment or attendance of the designated beneficiary at a public, private or religious elementary or secondary school. This limitation applies on a per-student basis, rather than a per-account basis. Thus, under the provision, although an individual may be the designated beneficiary of multiple accounts, that individual may receive a maximum of $10,000 in distributions free of tax, regardless of whether the funds are distributed from multiple accounts. Any excess distributions received by the individual would be treated as a distribution subject to tax under the general rules of section 529. (Note the $10,000 annual per student limitation does not apply to distributions to post-secondary school expenses.)

Chapter 37: Overview of Entity Taxation

Page 563: 1. C Corporations

A general comment about the first paragraph:

The TCJA lowered the corporate tax rates permanently. The top rate for 2018 forward is 21%. It is arguable that the primary impact and overall intent of the TCJA is embodied in this change. The motivation for this tax cut lies in the mobility of both capital and of manufacturing capability. It has been argued that lower corporate tax rates are necessary in order to prevent U.S. corporations from moving their operations and profits to other countries. The hope in lowering the corporate tax rate is to encourage increased operations and retention of profits in the United States. This, it is hoped, will lead to greater investment in job creation and higher pay within the United States.

Page 568: At the end of "*3. Tax Treatment of Partnership Income*," add a new paragraph;

The TCJA added a complex new provision to the tax law. This provision, IRC section 199A, grants a deduction to certain pass-through business entities equal to 20% of their adjusted gross income. (There are numerous limitations on the income eligible for the deduction.) The purpose of this provision is to create rough parity between businesses operated as corporations and businesses operated as pass-throughs (following the large income tax rate reduction granted to corporations by the TCJA discussed above). This new provision has the potential to set off a new wave of tax planning by individuals through the use of pass-throughs to receive their income. The provision has some guardrails to prevent this. Whether those guardrails are adequate remains to be seen.

Chapter 40: Overview of International Income Taxation

Page 614: V. Related Matters. Delete the bullets dealing with Section 199 (since the TCJA repealed the deduction for domestic production activities provided under section 199), and add the following new bullet:

Tax Cuts and Jobs Act (TCJA): The TCJA made several changes to U.S. international income taxation that in tandem with the greatly reduced corporate income tax rates were intended to encourage U.S. businesses to report and pay income taxes in the U.S. rather than use foreign subsidies to lodge their earnings outside of the U.S. While these provisions are too complex for detailed treatment in this book they may be summarized as follows:

- Adopt a 100% deduction for dividends received from foreign subsidiary corporations. See new IRC § 245A (providing a dividends received deduction for the foreign-source portion of dividends received from a foreign subsidiary). This change moves the United States from a "worldwide tax system" closer to a "territorial tax system" for earnings of foreign subsidiaries that are neither subpart F income, nor subject to a minimum tax rule discussed below.
- Create a deemed repatriation of earnings held abroad by foreign subsidiaries of U.S. corporations, taxed at a special low rate (15.5% applicable to foreign earnings attributable to liquid assets and an 8% rate applicable to foreign earnings attributable to illiquid assets). See new IRC § 965.
- Adopt a minimum tax on "global intangible low-taxed income" (GILTI). See new IRC § 951A. Thus, in addition to generally retaining current subpart F of the Code (which immediately taxes certain classes of income), the TCJA subjects a new, very broad, class of income (GILTI) to immediate taxation at a reduced rate.
- Adopt a "Base Erosion Anti-Abuse Tax" (BEAT), an anti-base erosion measure that imposes a minimum tax on certain deductible payments, such as royalties, to a foreign affiliate. See new IRC § 59A.
- Create a special deduction for certain foreign-derived intangible income. See new IRC § 250. This provision, in effect, grants the benefit of a reduced tax rate to a new class of income earned directly by a U.S. corporation (foreign derived intangible income).

Chapter 41: Overview of Estate and Gift Taxation

Page 619: *4. The Unified Credit*: Add after the first two paragraphs:

The TCJA increased the applicable exclusion amount from $5,000,000 (before any inflation adjustment) to $10,000,000 per person. Inflation adjustments from 2011 will continue to apply. This substantial increase means that less than 1% of all taxpayers will pay any federal wealth transfer taxes. See new IRC § 2010(c)(3)(C).