

**PRESENTED AT**

26<sup>th</sup> Annual LLCs, LPs and Partnerships Conference

July 13-14, 2017

Austin, TX

## **The Sausage So Far: Tax Reform Legislative Update**

**William Bowers**

**Kevin Thomason**

Proposals	Camp Bill	House Republican's 2016 Blueprint	President Trump's 2017 Tax Return Proposal
Top Rates:			
Individuals	35% <sup>1</sup>	33% <sup>2</sup>	35% <sup>3</sup>
Business Income of Sole Proprietorships and Pass-throughs	25%/35% <sup>4</sup>	25%	15%
C Corporations	25%	20%	15%
Long-term Capital Gains and Dividends	21% <sup>5</sup>	16.5% <sup>6</sup>	20%
Net Investment Income Tax	3.8% <sup>7</sup>	Repeal as part of Healthcare Reform	Repeal

1. 3 Brackets: 10% - for income up to \$71,200; 25% - for income from \$71,200 up to \$400,000; 35% - on modified adjusted gross income above \$400,000 (married filing jointly).
2. 3 Brackets: 12% - for income up to \$79,500; 25% - for income from \$79,500 to \$233,350; 33% - for income over \$233,350 (married filing jointly). Brackets depend on filing status.
3. 3 Brackets: 10%; 25%; 35%. Unclear whether rates apply regardless of filing status; no statement of income thresholds for brackets.
4. The Camp Bill has a rate of 25% for qualified domestic manufacturing income, which is similar to the qualified production income under Section 199 of the Internal Revenue Code of 1986, as amended (the "Code"). Other types of income are subject to 35% tax rate.
5. 60% of capital gain are taxed at ordinary income rates. For example, an individual with \$100 of long-term capital gains in the 35% bracket would pay tax of \$21, an effective rate of 21%.
6. 50% of capital gain taxed at ordinary income rates. Note that this rate also applies to net investment interest income. For example, an individual with \$100 of long-term capital gains in the 33% bracket would pay tax of \$16.50, an effective rate of 16.50%.
7. Unclear whether this tax will remain, but the Bill does not repeal the tax.

Proposals	Camp Bill	House Republican's 2016 Blueprint	President Trump's 2017 Tax Return Proposal
Self-Employment Tax:			
Owners of Pass-throughs	Compensation plus 70% of Non-Separately Stated Income <sup>8</sup>	Reasonable Compensation Deemed Paid to Owners <sup>9</sup>	Not Clear <sup>10</sup>
Carried Interests:	Special Rules for Certain Businesses: Certain Amount of Income from Profits Interests Taxed as Ordinary Income <sup>11</sup>	Not Clear <sup>12</sup>	Not Clear <sup>13</sup>

8. The Camp Bill applies to owners that materially participate (within the meaning of Section 469 of the Code) in the activities of a pass-through entity. It is a radical change for S corporations and limited partners of limited partnerships.
9. Under an unspecified method, reasonable compensation will be deemed paid to its owners/operators. How reasonable compensation is determined is not addressed. Note that this would appear to possibility characterize a partner's share of capital gains as compensation.
10. Follow-up statements by Treasury or/tax release of Trump Plan indicate rules similar to Blueprint may be used to stop conversion of income that should be taxed at 25% into income taxed at 15%.
11. Proposal not applicable to real property trade or business, but is applicable to service providers of partnership engaged in the trade or business of (1) raising or retaining capital, (2) identifying, investing in or disposing of other trades or businesses, and (3) developing trades or businesses.
12. Carried interests are not addressed, although may be subsumed with requirement for payment of reasonable compensation.
13. Carried interest not addressed in one page summary released by White House, but follow-up statements suggest carried interest to be addressed.

Also available as part of the eCourse

[2017 LLCs, LPs, and Partnerships eConference](#)

First appeared as part of the conference materials for the  
26<sup>th</sup> Annual LLCs, LPs and Partnerships session

"The Sausage So Far: Tax Reform Legislative Update"