UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT
14th Annual Mergers and Acquisitions Institute

October 4-5, 2018
The Ritz-Carlton
Dallas, Texas

M&A After Tax Reform: A Practical Survival Guide to New Opportunities and Challenges Facing Deal Lawyers

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Impact of Tax Changes on M&A Transactions

- **Background Overview**
  - Changes in Income Tax Rates
- **Transaction Structure Considerations**
  - Acquisition Vehicle: Flow-Through vs. C-Corp
  - Alternatives
  - Traps for the Unwary
  - Acquisition Type: Asset vs. Stock
  - Acquisition Financing: Leverage
- **Other Transaction Tax Matters**
  - Purchase Price Allocation
  - Changes Impacting Foreign Operations
- **Serious Uncertainty**

Background Overview: Changes in Income Tax Rates

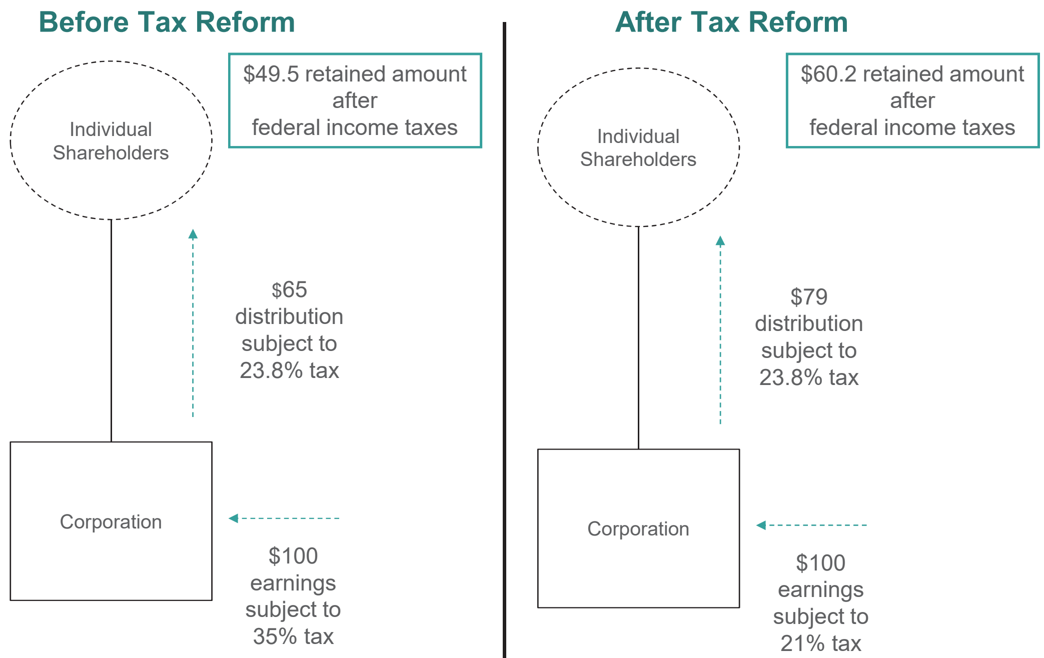
Corporate Income Tax Rates

- New Corporate Income Tax Rate: 21%
  - Prior graduated rates with top rate of 35% now 21% flat rate
  - Effective for tax years after 12/31/17 and permanent going forward
  - Fiscal year taxpayers benefit from rate change starting 1/1/18 by applying a blended rate for the fiscal year based on the number of days of the fiscal year before and after the effective date

Individual Income Tax Rates

- Reduction in Rates
  - Highest marginal rate for individuals reduced from 39.6% to 37%; 3.8% net investment income tax retained
  - 29.6% effective federal rate to the extent the 20% "pass-through deduction" under Section 199A is available

Background Overview: Changes in Income Tax Rates



50.5% combined corporate & dividend tax rate compared to 39.6% top ordinary income tax rate

39.8% combined corporate & dividend tax rate compared to 37% top ordinary income tax rate

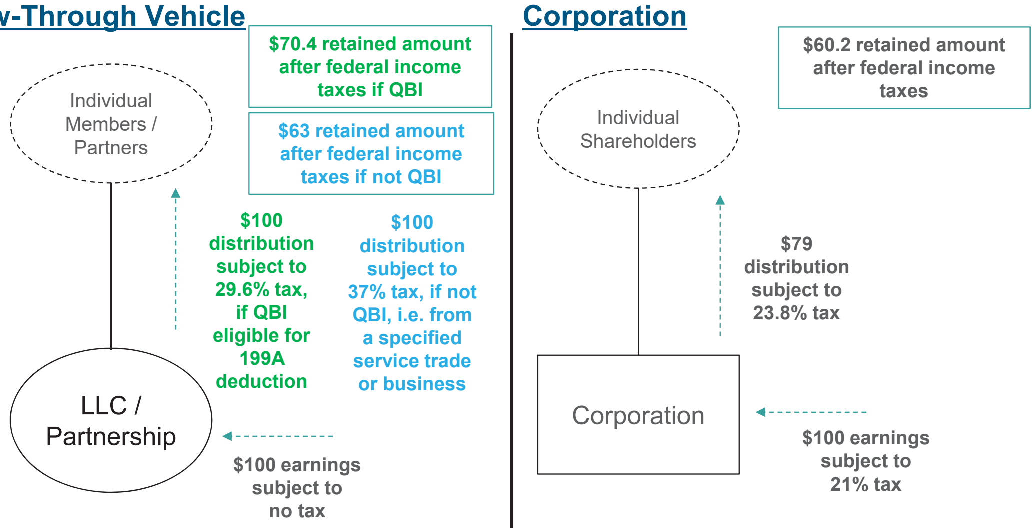
Background Overview:
Changes in Income Tax Rates

Partnership / Flow Through Income Tax Changes

- Qualified Business Income Deduction
  - 20% deduction for qualified business income through 2025 (sunset for tax years beginning after 2025), limited to greater of a) 50% of W-2 wages, or b) 25% of W-2 wages + 2.5% of capital assets
  - Meant to capture earnings from capital (and not wages)
  - Specified personal services businesses not eligible, except for taxpayers with taxable income <$157,500/$315,000 (deduction phased out over next $50k/$100k)
    - Personal services businesses include, among others, legal, financial, healthcare or any business where the principal asset is the reputation or skill of its employees or owners
  - Deduction for qualified business income may impact structure of management equity vehicles and employment companies due to the need for W-2 wages
    - Recent guidance addresses aggregation and related entity planning

Transaction Structure Considerations:
Acquisition Vehicle Comparison Flow-Though vs. C-Corp

Flow-Through Vehicle | **Corporation**



Specified service trade or businesses include (among others): **healthcare, law, financial services, and investing and investment management services**

Pre-Reform: tax rate of 39.6% would result in $60.20 retained.

39.8% combined corporate & dividend tax rate compared to 37% top ordinary income tax rate

Pre-Reform: 50.5% combined corporate and dividend tax rate would result in $49.50 retained.

Title search: M&A After Tax Reform: A Practical Survival Guide to New Opportunities and Challenges Facing Deal Lawyers

Also available as part of the eCourse
2018 Mergers and Acquisitions eConference

First appeared as part of the conference materials for the
14th Annual Mergers and Acquisitions Institute session
"M&A After Tax Reform: A Practical Survival Guide to New Opportunities and Challenges Facing Deal Lawyers"