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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

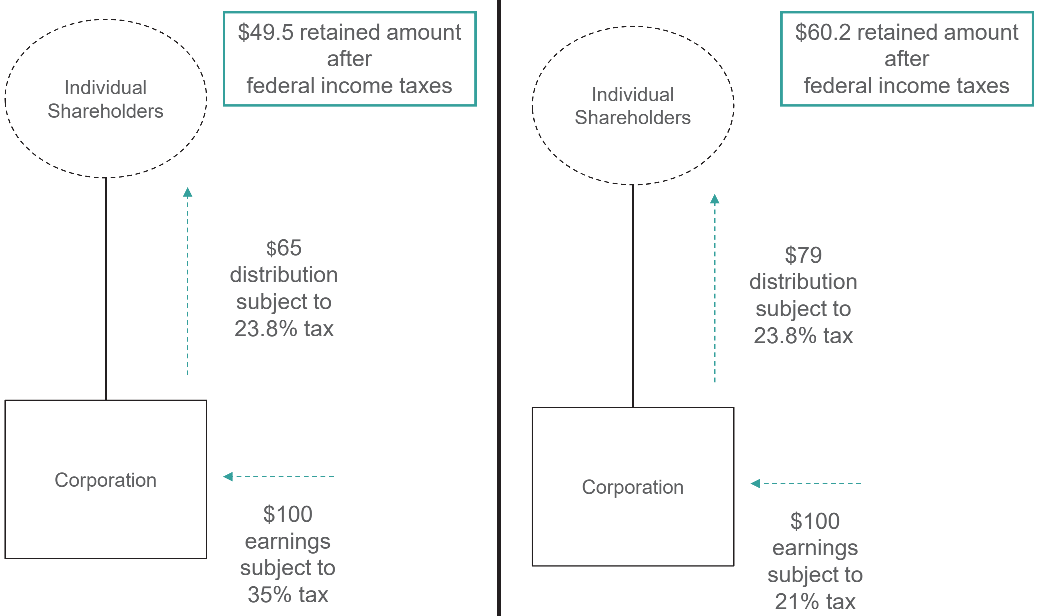
- New Corporate Income Tax Rate: 21%
  - Prior graduated rates with top rate of 35% now 21% flat rate
  - Effective for tax years after 12/31/17 and permanent going forward
  - Fiscal year taxpayers benefit from rate change starting 1/1/18 by applying a blended rate for the fiscal year based on the number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

Before Tax Reform | **After Tax Reform**



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

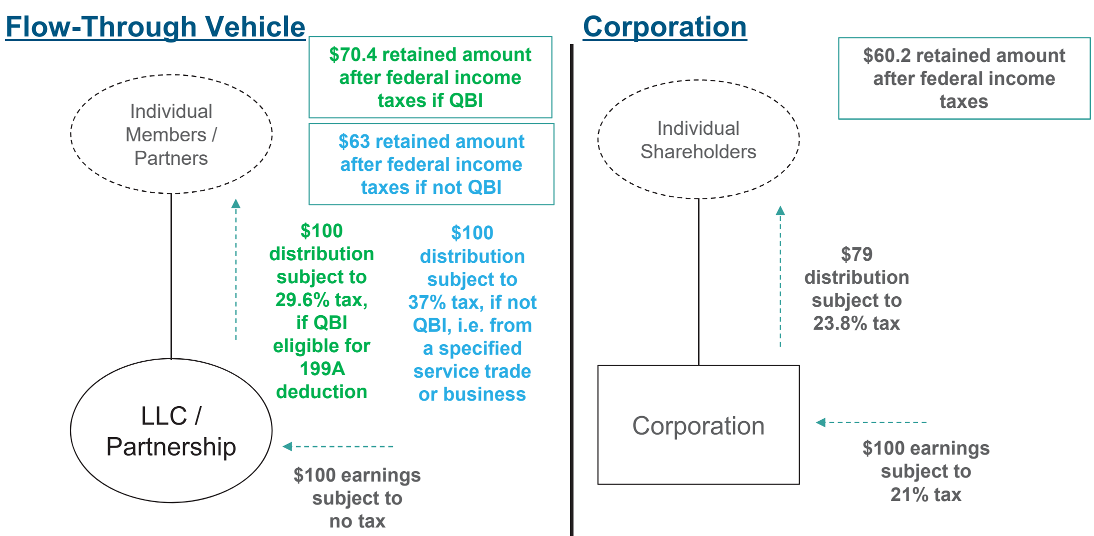
39.8% combined corporate & dividend tax rate compared to 37% top ordinary income tax rate

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



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
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