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- **Planning Considerations.**

- AALU is aware of several questions about the potential secondary impacts of this provision. We are working to clarify these finer points. We will follow-up with a detailed piece on this issue in January—if you have questions, please call us: 202.742.4638.

### **Executive Compensation/Retirement Benefits**

- **Deduction for Excessive Remuneration.**<sup>15</sup> The Act repeals the exceptions for commissions and performance-based compensation from the \$1 million yearly limit on the deduction for compensation with respect to a covered employee of a publicly traded corporation. A "covered employee" includes the CEO, CFO, and the three highest paid employees of the corporation.
- **IRA Conversions.** The ability of individuals to recharacterize a conversion of a traditional IRA to a Roth IRA goes away after 2017.<sup>16</sup>
- **Planning Considerations:**
  - ***Ensure Deductibility of Performance-Based Compensation Paid to Covered Employees in 2017.*** Public companies should ensure they have taken all actions necessary to accrue the liability for the payment of performance-based compensation to be paid for 2017.
  - ***Review IRA Conversion Planning.*** Any desired recharacterization of a prior conversion to a Roth IRA back to a traditional IRA ***needs to be done before year-end.*** With the lowering of tax rates under the Act, the desirability of a Roth IRA may be diminished, so a recharacterization may be suggested, particularly for older individuals.

### **TAKE-AWAYS**

It appears almost certain that the Act will be signed into law by year-end, and will have a significant effect on individuals and businesses at all income levels for years to come. The breadth and complexity of the changes will require time to analyze before advisors and clients can fully understand the complete impact of reform on planning. Initial impressions, however, indicate that there will be continued and unique opportunities for life insurance, legacy, and business succession planning, particularly involving the use of the higher transfer tax exemptions and the tax rules for the treatment of pass-through and other closely-held businesses.



## NOTES

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### DISCLAIMER

**This information is intended solely for information and education and is not intended for use as legal or tax advice. Reference herein to any specific tax or other planning strategy, process, product or service does not constitute promotion, endorsement or recommendation by AALU. Persons should consult with their own legal or tax advisors for specific legal or tax advice.**

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<sup>1</sup> Act §11061.

<sup>2</sup> Act §§11061, 11002.

<sup>3</sup> The issue arises due to the fact that determination of the federal estate tax involves a technical calculation that includes gifts in the tentative taxable estate, and then provide a credit for the amount of gift tax that would have been payable with respect to gifts if the rate schedule in effect at the decedent's death had been applicable at the time of the gifts. The applicable statutes do not say whether to use the gift credit amount that applied at the time of the gift or at the time of death — and this is what leads to the uncertainty according to some commentators. The resolution would likely specify both the tax rates and the credit amount that should be used in the calculation, if the exclusion amounts differ between the time of the gifts and the time of death.

<sup>4</sup> The applicable section of §11061 of the Act specifically reads as follows: “MODIFICATIONS TO ESTATE TAX PAYABLE TO REFLECT DIFFERENT BASIC EXCLUSION AMOUNTS” - The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out [the section increasing the basic exclusion amount] with respect to any difference between (A) the basic exclusion amount under [IRC] section 2010(c)(3) applicable at the time of the decedent's death, and (B) the basic exclusion amount under such section applicable with respect to any gifts made by the decedent.”

<sup>5</sup> Act §11001.

<sup>6</sup> Act §12003.

<sup>7</sup> See Act §§11021,11041.

<sup>8</sup> Act §11042.

<sup>9</sup> Act §11043.

<sup>10</sup> Act §§11045, 11027, and 11051.

<sup>11</sup> Act §11027

<sup>12</sup> Act §11023.

<sup>13</sup> Act §11011.

<sup>14</sup> Act §§13520, 13521, 13522.

<sup>15</sup> Act §13601.

<sup>16</sup> Act §13611.