COMPLIMENTARY PRESENTATION

March 8, 2018 | 7:30 a.m.

Summary of the New Tax Bill

SPEAKER

Sky Moore
Partner
Greenberg Glusker LLP

Location:
The Peninsula Beverly Hills
9882 South Santa Monica Boulevard, Beverly Hills, CA 90212

RSVP by March 5th to: RSVP@GreenbergGlusker.com

Approved for 1 Hour of MCLE credit.

AGENDA

7:30 a.m. – 8:00 a.m. | Check-in/Breakfast
8:00 a.m. – 9:00 a.m. | Program

Complimentary Valet Parking

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Schuyler (Sky) M. Moore

Partner

PRACTICE AREAS

Entertainment; Corporate, Finance & Securities; Taxation

EDUCATION

J.D., UCLA School of Law, 1981; Order of the Coif

B.A., *summa cum laude*, University of California, Los Angeles, 1978; Phi Beta Kappa

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PROFILE

Schuyler (Sky) Moore, best known in Los Angeles for closing high-dollar, cross-border entertainment deals, is highly valued among dealmakers for his concise communications, willingness to quantify risk, and ability to get complex deals to the finish line as fast as possible.

"Complex and time sensitive deals are what I do best," says Sky.

He represents a broad spectrum of clients, including producers, sales agents, distributors and financiers, and has handled some of the largest transactions in Hollywood, including a number of large studio slate financing transactions (Hemisphere with Sony and Paramount, Hunan Group with Lionsgate), cross-border transactions (Reliance investment in DreamWorks), M&A transactions (Millennium, Gravitas), and single picture transactions ("The Butler," "Snowden," and "Silence"). In recent years, Sky has developed a niche practice in Hollywood-China partnerships, representing the likes of Alibaba Pictures, Pegasus Media Group, and Leomus Pictures.

Deep expertise in tax and corporate law

One unique skill Sky brings to deals and financings is his deep expertise in taxation and tax consequences. He specialized in tax in law school and has been a tax expert his entire career. He is a recognized tax authority, having written a leading tax treatise (Taxation of the Entertainment Industry) and writing numerous articles and giving seminars on a wide variety of tax issues, including on tax issues relating to real estate, partnerships, and cross border transactions.

He also possesses a broad legal knowledge base that is tapped into by his entertainment clients and colleagues, including pertinent information on recent cases, statutes, and regulations on corporate, securities, copyright, trademark, publicity, partnership, LLC, bankruptcy, entertainment matters. “Colleagues affectionately call me ‘the answer man,’” says Sky.

Streamlined process gets clients to the goal line, faster

While Sky receives praise as a very practical and business savvy advisor in matters of crafting appropriate corporate structures and unique film financing opportunities, his “trademark,” he says, is very short documents.

“I know what needs to be in a contract, and I know what doesn’t. Writing in plain English streamlines the process. I want clients to understand the contracts they are signing, so we can get to their goal faster. The longer and more complicated the document, the more likely there are contradictions and ambiguities within an agreement, and that just raises more problems.”

Complex film financing specialty

Sky has completed some of the most complex film financings of all times. For example, “The Butler” had 40 different pieces of financing, “Snowden” 15, and “Silence” had a dozen. They included tax credits, bridge financing, junior and senior mezzanine financing, junior and senior equity, bridge loans, tax credit loans, senior loans, distribution advances, and more.

“Integrating all the different pieces of financing can be challenging, and instruments are always evolving. I’m a deal maker, not a deal breaker,” he says. “But, I won’t let clients sign half-baked term sheets, deal memos, or letters of intent unless they’re not binding.”

Industry recognition

Sky is the author of The Biz, a popular book on the film industry, and the treatise, Taxation of the Entertainment Industry. He is a mainstay on Hollywood Reporter’s “Power Lawyers” list of the top 100 entertainment lawyers in the country. He is consistently listed as one of the top entertainment lawyers by Variety and was recently recognized in the publication’s annual “Dealmakers Impact Report.” The Daily Journal honored Sky as one of its Top 100 Lawyers in California, and The National Law Journal named him to its list of “Most Influential Lawyers.”

ARTICLES & MEDIA MENTIONS

Books

- The Biz: The Basic Business, Legal, and Financial Aspects of the Film Industry, Silman James Press
- Taxation of the Entertainment Industry, CCH
- What They Don't Teach You in Law School, William S. Hein & Co.

Articles

- "Summary of Tax Bill Letter," *Greenberg Glusker Client Alert*, January 27, 2018
- "Why Hollywood Movies Are Losing Market Share in China," *The Information*, January 22, 2018
- "GOP Tax Bill: Big Gains for Studios, Not for Showbiz Rank and File (Analysis)," *Yahoo!*, December 19, 2017
- "Initial Coin Offerings Premiere In Hollywood," *Forbes*, December 4, 2017
- "Hollywood and China: How to Push a Deal to Actually Close," *The Hollywood Reporter*, December 1, 2017
- "Germany's Red Arrow Buys Gravitas Ventures, Moves Into Film," *Variety*, November 8, 2017
- "Hollywood Law Shake-Up: Schuyler Moore Moves Dealmaker Team to Greenberg Glusker."
- "The China Chill in Hollywood," *Forbes*, April 25, 2017
- "The Legal Reality Of Virtual Reality," *Forbes*, March 10, 2017
- "Checklist and Commentary on Right of Publicity Claims," *Entertainment Law & Finance*, April 2016
- "Entertainment Bankruptcies," *Entertainment Law & Finance*, October 2015
- "California's Revised Tax Credit for Films," *Entertainment Law & Finance*, November, 2014
- "9 technology trends that will change the way you watch movies in 2014," *Yahoo News*, November 18, 2013
- "5 Ways Hollywood Can Cut Its Taxes," *The Hollywood Reporter*, May 17, 2013
- "The Future of Money," *Los Angeles Lawyer*, May 2013

Quoted in:

- "Sci-fi sequel runs big risk: 'Blade Runner 2049' backers bet on a follow-up to 1982 film," Blue Ridge, October 4, 2017
- "For Hollywood, the China party is over," S&P Global Market Intelligence, October 3, 2017
- “Netflix Binge Buying Shifts Deal Work for Hollywood Lawyers,” The Recorder, June 2, 2017
- "Chinese Companies Return to Cannes – But Will They Bring Their Checkbooks?" The Wrap Magazine, May 2017
- "Hollywood Deal Lawyers Wrestle With Great Squall of China," The Recorder, May 16, 2017
- "The Reckoning: Why the Movie Business Is in Big Trouble," Variety, March 27, 2017
- "Oscar Noms Show Rise in Indie Movies as Studios Pull Back on Adult Dramas," LA Times, February 24, 2017
- "Chinese Movie Stars Are Seeing Salaries Triple Thanks To China's Hollywood Ambitions," International Business Times, April 21, 2016

SPEAKING ENGAGEMENTS

•Speaker, "How the New Tax Bill Benefits Hollywood," Intercontinental Los Angeles, Century City, February 21, 2018

•Speaker, "The Grill 2017," Montage Hotel in Beverly Hills, CA, October 2-3, 2017

•Speaker, "The Business and Legal Reality of Virtual Reality, Beverly Hills Bar Association, Entertainment Law Section," Beverly Hills, CA, July 12, 2017

•Panelist, "Global Strategies: Advising Clients with Ever Growing International Ties," Motion Picture and Television Fund's Professional Advisory Network Luncheon, Los Angeles, CA, 2016

•Panelist, "Valuing and Financing Entertainment Content: Movies, Television and Online Video, From VC & Equity to Crowdfunding," Digital Hollywood 2016 Spring Conference, Los Angeles, CA, 2016

•Panelist, "Investing in China's Film Industry," Association of Film Commissioners International, Los Angeles, CA, 2016

•Moderator, "Chinawood – Chinese Investment in Hollywood," Fortieth Annual UCLA Entertainment Symposium, Los Angeles, CA, 2016

•Speaker, "Valuing and Financing Entertainment Content: Movies, Television and Online Video, From VC & Equity to Crowdfunding," The Digital Hollywood Experience's 2015 Fall Conference, Marina del Ray, CA, 2015

•Speaker, "Navigating Through Evolving Film & TV Finance Structures," Winston Baker's Film Finance Forum China, Shanghai, China, 2015

•Speaker, "LICENSING: Lights, Camera Action! Licensing Issues in the Film and Television Industry," AIPLA Spring Meeting, Los Angeles, CA, 2015

•Speaker, "Valuing and Financing Entertainment Content: Movies, Television and Online Video, From VC & Equity to Crowdfunding," The Digital Hollywood Experience's Spring 2015 Conference, Marina del Ray, CA, 2015

•Speaker, "The Future of Film Distribution," American Intellectual Property Association, 2015

•Speaker, "Navigating the Capital Stack," and "Chinese Investment in Hollywood," Film Finance Forum, 2015

•Speaker, "Financing Content in a Disintermediated World," UCLA Entertainment Symposium, Los Angeles, CA, 2014

•Speaker, "The Year in Review," "Crowdfunding," and "FATCA Withholding," Beverly Hills Bar, Beverly Hills, CA, 2014

•Panelist, "Entertainment Industry Tax Update," CalCPA Entertainment Industry Conference, Los Angeles, CA, 2014

•Panelist, "Financing Independent Film: New Business Models," Producer's Guild of America, Produced By Conference, Los Angeles, CA, 2014

•Panelist, "Bracing for Technology Impact," 5th Annual International Film Finance Forum, Cannes, France, 2014

•Panelist, "The New Hollywood Equation - Content Owners, Networks, New Platforms, Agents & Commerce," Digital Hollywood, Marina del Rey, CA, 2014

•Speaker, "Trends and Outlooks for Film Incentives and Programs," AFCI 2014 Locations Show, Los Angeles, CA, 2014

REPRESENTATIVE MATTERS

- China Film Group (the largest Chinese theatrical distribution company and state owned) and Pegasus in connection with the acquisition of two high profile U.S. film projects.
- A Greek fund called Hercules in connection with its investment in a film titled "Mena," starring Tom Cruise.
- Hunan Group on the largest Chinese investment in Hollywood to date – a multi-year slate financing with Lionsgate.
- One of the lead investors in Ratpac-Dune slate financing with Warner Brothers.
- Oliver Stone and long-time producing partner Moritz Borman producing a film based on Edward Snowden.
- Virgo Capital on the acquisition of Millennium Entertainment from Nu Image.
- Exclusive Media in connection with $100 million of film production financing.
- Toho-Towa, Kadokawa, and Lotte on their investment in Hemisphere, a $250 million slate financing transaction for large budget studio films, including Tin Tin, Men in Black III and Smurfs.

ACCOLADES

- Listed in Chambers USA: America's Leading Lawyers for Business (Band 1 – Media & Entertainment: Transactional)
- Recognized in *Variety's* annual "Dealmakers Impact Report"
- Recognized in *Variety's* annual "Legal Impact Report"
- Named to *Hollywood Reporter's* "Top 100 Power Lawyers" list
- Selected by the D*aily Journal* as one of the top 50 entertainment lawyers in California
- Listed as one of the top 100 California lawyers by the *Daily Journal*
- Named one of the *National Law Journal's* Most Influential Lawyers
- Listed in *Best Lawyers in America*
- Listed in *Super Lawyers*

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GREENBERG GLUSKER
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January 27, 2018

To Colleagues, Friends, and Clients

Re: Summary of New Tax Bill

This letter provides a summary of the material provisions of the new tax bill. In order to make this extraordinarily complex bill somewhat understandable, I have left off a number of details and simplified the discussion, so it is critical to consult with a tax advisor based on your particular facts before relying on any description here.

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1. ESTATE AND GIFT TAX. The estate and gift tax exemption for estates of decedents dying and gifts made between 2018-2025 is approximately $11,200,000 for individuals and approximately $22,400,000 for married couples, indexed for inflation after 2018. In addition, the generation-skipping transfer tax exemption for direct skips, taxable distributions, and taxable terminations occurring between 2018-2025 is approximately $11.2 Million per person (or approximately $22.4 Million for married couples), indexed for inflation after 2018.

2. INDIVIDUALS

a. Maximum Tax Rate. For 2018-2025, the maximum individual tax rate is 37%, reaching that level at $500k if single, $600k if married filing jointly, and $300,000 if married filing separately.

b. Standard Deduction. For 2018-2025, the standard deduction is increased substantially. For 2018, the standard deduction is $24,000 if married filing jointly $18,000 if single with dependent child, and $12,000 if single or married filing separately. These amounts will be indexed for inflation after 2018.

c. Child Tax Credit. For 2018-2025, the bill increases the child tax credit to $2,000, providing that no more than $1,400 per child shall be refundable. This $1,400 limitation is indexed for inflation after 2018.

d. Casualty Losses. For 2018-2025, there is no deduction for casualty losses unless such losses are attributable to a disaster declared by the President under the Disaster Relief and Emergency Assistance Act.

e. Charitable Deductions. For 2018-2025, the income-based percentage limit for charitable contributions of cash by an individual taxpayer to public charities is increased from 50% to 60%.

f. Home Acquisition/Improvement Debt. For 2018-2025, the deduction for interest on home purchase and improvement debt is limited to debt not in excess of $750,000 ($375,000 if married filing separately). However, for debt incurred before December 15, 2017, the limit remains $1 million.

g. Home Equity Debt. For 2018-2025, there is no deduction of interest on a home equity loan that is not used to purchase or improve the home.

h. Tax Determination Costs. For 2018-2025, there is no deduction for expenses incurred in connection with the determination, collection, or refund of any tax.

i. Employee Business Expenses. For 2018-2025, business expenses incurred by an employee are not deductible.

j. State Income Taxes. For 2018-2025, an individual may not deduct any state or local income taxes, even if paid in connection with a trade or business. The only exception is to permit up to $10,000 ($5,000 for married taxpayer filing a separate return) of state income taxes and property taxes that are also not deductible (see below).

k. State Property Taxes. For 2018-25, an individual may not deduct any state property taxes except in connection with business or investment. The only exception is to permit up to $10,000 ($5,000 for married taxpayer filing a separate return) of state income taxes and such property taxes.

l. Section 529 Plans. For distributions after 2017, section 529 plans may distribute not more than $10,000 in expenses for tuition incurred during the taxable year in connection with attendance of each beneficiary at elementary or secondary school.

m. Elimination of 3% Reduction of Itemized Deductions. For 2017-2025, there is no more reduction of itemized deductions by 3% of the amount by which the taxpayer's adjusted gross income exceeds a threshold amount.

n. Medical Expenses. For 2017-2025, the threshold for deducting medical expenses is reduced from 10% of adjusted gross income to 7.5%.

o. Alimony. Effective for any divorce or separation instrument executed after 2018, alimony is no longer deductible by the payor or taxable to the payee.

p. Moving Expenses. For 2018-2025, there is no deduction for business-related moving expenses, and employer reimbursement for such expenses is taxable.

q. Obamacare Insurance Penalty. Starting in 2019, there is no longer any penalty for not carrying minimum health insurance.

r. AMT Exemption Amount. For 2018-2025, the alternative minimum tax exemption amount is increased to $109,400 for married taxpayers filing a joint return (half this amount for married taxpayers filing a separate return), and $70,300 for all other individuals. The phase-out thresholds are increased to $1,000,000 for married taxpayers filing a joint return, and $500,000 for all other individuals. These amounts are indexed for inflation after 2018.

s. Section 1044. Section 1044, which permitted tax-free capital gain on the roll over of certain publicly-traded securities, is repealed for sales after 2017.

t. Sale of Patents. For sales after 2017, there is no capital gain treatment for the sale of a patent, invention, model, design, secret formula, or process (whether or not patented) that is held by either the taxpayer who created the property or a taxpayer with a substituted or transferred basis from the taxpayer who created the property. Critically, the section amended was Section 1221(a)(3), and an old IRS Revenue Ruling (IRS Rev. Rul. 55-706) held that this section only applies to individuals and one-person loan-outs and should not apply to intangible property created by an entity through its employees, unless it is a one-person loan-out.

u. Expatriated Corporation Compensation. Effective for corporations that expatriate after December 22, 2017, the excise tax on the value of stock compensation held by insiders of the corporation is increased from 15% to 20%.

v. Carried Interest in Partnership. Commencing with sales after 2017, there is now a three year holding period requirement to obtain long-term capital gain treatment on the sale of an interest in a partnership that was received for services in connection with an active business of raising and investing capital.

3. DEFERRAL ON QUALIFIED STOCK

a. In General. The bill permits certain employees to elect to defer, for income tax purposes only (FICA and FUTA are not affected), the income attributable to the receipt of "Qualified Stock."

b. Qualified Stock. "Qualified Stock" is very narrow and must meet all of the following requirements:

i. The employee must receive the stock only in connection with the exercise of an option or in settlement of a phantom stock grant. Oddly, Qualified Stock does not include grants of restricted stock, but it appears possible to effectively convert restricted stock to Qualified Stock by giving the employee a short-term option to buy restricted stock;

ii. The employee cannot have the right to sell the stock to, or otherwise receive cash in lieu of stock from, the corporation;

iii. The employee cannot make a Section 83(b) election to be taxed on the value of the stock on the date it is issued;

iv. The employee cannot be (1) a one-percent or more owner of the corporation at any time during the ten preceding calendar years, (2) anyone who is, or has been at any prior time, the chief executive officer or chief financial officer of the corporation, (3) a family member of an individual described above, or (4) one of the four highest compensated officers of the corporation during any of the ten preceding taxable years;

v. The corporation issuing the stock (a) cannot be publicly traded and (b) must have a written plan under which, in the same calendar year, not less than 80 percent of all employees who provide services to the corporation in the United States (or any U.S. possession) are granted stock options or phantom stock with the same rights and privileges to receive Qualified Stock (other than number of shares as long as it is more than a de minimis amount). This requirement will preclude most corporations from granting Qualified Stock;

vi. In the preceding calendar year, the corporation cannot have purchased any of its outstanding stock unless at least 25% of the total dollar amount of the stock so purchased is Qualified Stock and the determination of which individuals from whom such stock is purchased is made on a reasonable basis; and

vii. The corporation must notify the employee at the time of granting the option or phantom stock that the stock is potentially Qualified Stock and the consequences of making the deferral election.

c. <u>Election</u>. An election to defer income ("deferral election") with respect to Qualified Stock must be made no later than thirty days after the first time the employee's "right in the stock is substantially vested or is transferable." It is not clear whether this election must be made (a) at the time the option or phantom stock vests or (b) at the time the stock is issued, so for now it would be safe to make the election at both times.

d. <u>Timing of Income Recognition and Deduction</u>. If an employee elects to defer income under the provision, the income is taxed on the earliest of (1) the first date the Qualified Stock becomes transferable, including to the employer; (2) the date the employee is no longer an employee of the corporation; (3) the first date on which any stock of the employer becomes publicly traded; (4) five years after the first date the employee's right to the stock becomes substantially vested; or (5) the date the employee revokes the deferral election. The corporation's deduction is deferred until the date the employee recognizes income, and this is another reason that corporations may not want to issue Qualified Stock.

e. <u>Amount and Character of Income Recognition</u>. The amount of income taxed at the end of the deferral period is based on the value of the stock at the time the stock first becomes substantially vested, even if the stock has dropped in value after that time. The income is treated as wages and is taxed as ordinary income.

f. <u>Reporting and Withholding</u>. The corporation must withhold income taxes (presumably from other compensation otherwise owed to the employee) at the time the employee recognizes income at the highest income tax rate. The employer must report the deferred income on Form W-2 (1) for the year of deferral and (2) for the year the income is taxed.

g. 409A. Qualified Stock is not subject to the potential penalties on deferred compensation under 409A.

h. Effective Date. The provision is effective for options or phantom stock exercised after 2017.

4. BUSINESS INCOME DEDUCTION OTHER THAN FOR C CORPORATIONS

a. In General. For 2018-2025, individual taxpayers, trusts, and estates may deduct the lesser of (1) 20% of "Qualified Business Income" ("QBI") and, for taxpayers with income over a certain level, (2) the greater of (i) 50% of W-2 wages paid or (ii) the sum of 25% of W-2 wages paid plus 2.5% of the original cost of tangible personal and depreciable real business property. The limit in clause (2) above is phased in at income levels above $157,500 ($315,000 in the case of a joint return), indexed for inflation after 2018. This limitation is fully phased in for a taxpayer with taxable income in excess of the threshold amount plus $50,000 ($100,000 in the case of a joint return). Assuming the benefit of the full 20% deduction, the net tax rate on QBI is 29.6%.

b. QBI. QBI is income that is either:

i. Effectively connected with a U.S. (including Puerto Rico) trade or business. This wording has been used for a long time to determine what income of foreign taxpayers is subject to U.S. tax, so there is a large body of law defining it; or

ii. Ordinary income from REIT dividends, qualified cooperative dividends, and qualified publicly traded partnership income.

c. Excluded Income. QBI does not include any of the following

i. Compensation for Services. QBI does not include "reasonable compensation paid to the taxpayer by the trade or business for services," including guaranteed payments from a partnership to a partner for services. Critically, it is not clear if the IRS can deem the taxpayer to receive reasonable compensation, particularly from sole proprietorships (including single member LLCs) and partnerships.

ii. Other Income. QBI does not include income from short or long-term capital gains, dividends, commodities, or foreign currency.

d. Limitation for Certain Service Businesses. The deduction for QBI is phased out for income over a certain level if the QBI is attributable to certain service businesses listed below. The phase out starts at an income level of $157,500 ($315,000 in the case of a joint return), indexed for inflation after 2018. The deduction is fully phased out for a taxpayer with taxable income in excess of the threshold amount plus $50,000 ($100,000 in the case of a joint return). The specific service businesses subject to this limit are as follows:

i. Services for health, law, consulting, athletics, financial services, performing arts (in front of the camera or on stage), brokerage services, or investment; and

ii. Any trade or business where the principal asset of such trade or business is the reputation or skill of one or more of its employees or owners.

e. Pass-Through Entities. In the case of a partnership or S corporation, the provision applies at the partner or shareholder level. Each partner takes into account the partner's allocable share of the income and loss and W-2 wages of the entity.

f. QBI Losses. Solely for purposes of calculating the 20% deduction, net losses from QBI carry forward to reduce QBI (and thus the 20% deduction) in following years.

5. C CORPORATIONS. All the provisions discussed in this section apply only to C corporations.

a. 21% Tax Rate. There is now a flat tax rate of 21% for taxable years beginning after 2017. The rate is much lower for foreign income, as discussed in Section 8 below. This low rate creates a huge incentive to use corporations with retained earnings, since if the tax on dividends can be delayed for just a few years, the present value of the combined corporate and dividend tax rate is less than the 37% rate on ordinary income applicable to individuals. In addition, the new bill left in old section 1202, which permits a complete exclusion of up to $10 million of gain on the sale of stock received directly from corporations in an active business with less than $50 million of assets. The battleground will now shift to the accumulated earnings tax (a 20% tax on earnings retained beyond the reasonable needs of the corporation), the personal holding company tax (a 20% tax on personal holding company income), and Section 269A (IRS is permitted to reallocate income of personal service corporations formed or availed of to avoid or evade income tax).

b. AMT. The alternative minimum tax is repealed for C corporations for taxable years beginning after 2017.

c. Dividends Received. For dividends received after 2017, the effective rate on dividends received by a corporation from another U.S. corporation is 10%, reduced to 7% if the recipient owns 20% or more of the payor, and 0% if the recipient owns 80% or more of the payor.

d. Non-Shareholder Contributions to Capital. For payments made after December 22, 2017, the term "contributions to capital" for tax free treatment does not include (1) any contribution in aid of construction or any other contribution as a customer or potential customer and (2) any contribution by any governmental entity or civic group (other than a contribution made as a shareholder).

e. $1 Million Limit on Deducting Compensation. Effective for taxable years beginning after 2017, the bill makes a number of changes to the $1 million limit on deducting compensation paid by publicly traded companies to "covered employees."

i. Publicly Traded. The bill expands the companies covered by this provision to include companies with publicly traded debt, even if the stock is not publicly traded.

ii. Covered Employees. The bill expands the definition of covered employee to include both the principal executive officer and now the principal financial officer if the individual holds one of these positions at any time during the taxable year. Covered employees also include the three other most highly compensated officers for the taxable year. If an individual is a covered employee with respect to a corporation for a taxable year beginning after 2016, the individual remains a covered employee for all future years.

iii. Stock and Contingent Amounts. The bill eliminates the exceptions for commissions and performance-based compensation, including stock options, from the definition of compensation subject to the deduction limit. Compensation paid pursuant to a plan is exempt if the right to participate in the plan is part of a written binding contract with the covered employee in effect on November 2, 2017, but ceases to apply to amounts paid after there has been a material modification or renewal of the contract.

6. GENERAL PROVISIONS FOR ALL TAXPAYERS

a. 100% Deduction for Certain Property. Remarkably, all taxpayers can now deduct 100% of the cost of almost all new or used "Qualified Property" purchased after September 27, 2017 with no limit, under revised Section 168(k). The 100% allowance is phased out by 20% per calendar year for property placed in service in taxable years beginning after 2022. Qualified Property includes the following property if used in a trade or business:

i. Almost all tangible personal property;

ii. Software;

iii. Any qualified film, television, or live theatrical production placed in service after September 27, 2017, and before 2027, for which a deduction otherwise would have been allowable under Section 181 (i.e., 75% of production costs incurred in the United States). For purposes of this provision, the deduction is permitted at the time of the first commercial exhibition to an audience.

b. Section 179

i. Increase in Deduction. The bill 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. The $1,000,000 and $2,500,000 amounts are indexed for inflation for taxable years beginning after 2018. Given the 100% deduction under Section 168(k) (discussed above), Section 179 is primarily relevant for tangible personal property that is affixed to real estate (see below) and that would not be deductible under Section 168(k).

ii. Expansion of Property. Section 179 applies to personal tangible property used in a trade or business, including certain property that becomes affixed to real estate and that would generally be subject to depreciation under the rules applicable to real estate. The bill expands the definition of qualified real property eligible for section 179 expensing to include any of the following improvements to nonresidential real property: roofs; heating, ventilation, air-conditioning units, fire protection and alarm systems, and security systems.

c. Repeal of Section 199. Section 199, which provided an exemption for a portion of income from certain U.S. production activities, is repealed effective for tax years starting after 2017 (but for tax years starting after 2018 for C corporations).

d. Net Operating Losses. For net operating losses arising in taxable years beginning after 2017 and before 2026, the net operating loss deduction may not be carried back and is limited to 90% (80% for taxable years beginning after 2022) of taxable income in subsequent years.

e. Entertainment Costs. Commencing in 2018, no deduction is allowed for expenses incurred with respect to (1) an activity generally considered to be entertainment (including meals), amusement or recreation, (2) membership dues with respect to any club organized for business, pleasure, recreation or other social purposes, or (3) a facility or portion thereof used in connection with any of the above items.

f. Meals for Employees. For 2018-2025, employers may deduct only 50% of the cost of providing meals to employees for the convenience of the employer. Such amounts paid after 2025 are not deductible.

g. Research Expenditures. Research or experimental expenditures are required to be capitalized and amortized ratably over a five-year period for amounts paid in taxable years beginning after 2021. This does not include expenditures for land or for depreciable property used in connection with research or experimentation, but it does include the depreciation and depletion allowances of such property.

h. Government Fines. Effective for amounts paid after 2017, no deduction is permitted for any amount paid at the direction of a government in relation to the violation of any law. An exception applies to payments that the taxpayer establishes are either restitution or amounts required to come into compliance with any law and that are identified in the court order or settlement agreement as restitution, remediation, or required to come into compliance.

i. Sexual Harassment Payments. Effective for amounts paid after 2017, no deduction is permitted for any amount paid for any settlement, payout, or attorney fees related to sexual harassment or sexual abuse if such payments are subject to a nondisclosure agreement.

j. Family and Medical Leave Credit. Effective for wages paid in taxable years beginning after 2017, eligible employers (see below) can claim a general business credit equal to 12.5% of the amount of wages paid to qualifying employees (see below) during any period in which such employees are on family and medical leave if the rate of payment under the program is at least 50% of the wages normally paid to the employee. The credit is increased by 0.25% (but not above 25%) for each percentage point by which the rate of payment exceeds 50% of normal wages. The maximum amount of family and medical leave that may be taken into account with respect to any employee for any taxable year is twelve weeks. An eligible employer is one who has in place a written policy that allows all qualifying full-time employees not less than two weeks of annual paid family and medical leave, and who allows all less-than-full-time qualifying employees a commensurate amount of leave on a pro rata basis. A qualifying employee is one that has worked for the employer for at least one year and earns less than $72,000, subject to an inflation adjustment each year after 2018.

k. Business Losses. For 2018-2025, net business losses of a taxpayer other than a C corporation are allowed against non-business income only up to $250,000 (or $500,000 in the case of a joint return), indexed for inflation after 2018. Any unused net business losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years.

l. Deduction of Inventories and Overhead. For tax years starting after 2017, taxpayers that are not "tax shelters" (which includes pass-through entities that allocate more than 35% of their losses to passive investors) and that have average annual gross receipts (aggregating affiliates) for the three-taxable-year period ending with the prior taxable year of not more than $25 million, indexed for inflation after 2018 ("Under $25 million Taxpayers"), may deduct 100% of the cost of inventories and overhead.

m. Business Interest

i. In General. For tax years starting after 2017, taxpayers other than Under $25 Million Taxpayers may not deduct business interest in excess of the sum of (1) business interest income plus (2) 30% of their "adjusted business taxable income" for the taxable year. The amount of any business interest not allowed as a deduction may be carried forward perpetually.

ii. Adjusted Business Taxable Income. "Adjusted business taxable income" means the taxable business income of the taxpayer computed without regard to (1) the amount of any net operating loss deduction; (2) business interest income, and (3) for taxable years before 2022, depreciation, amortization, or depletion. Thus, the test becomes stricter after 2022.

iii. Pass-Through Entities. In the case of partnerships and S corporations, the limitation is applied at the entity level.

iv. Real Property. Real property businesses can elect to be exempted from the limitation by agreeing to use the alternative depreciation system, which results in somewhat longer depreciation periods for buildings.

n. Use of Cash Method. For tax years starting after 2017, Under $25 million Taxpayers are now allowed to use the cash method of accounting.

o. Section 1031. Like-kind exchanges under Section 1031 are limited to real property for exchanges occurring after 2017.

p. Accrual Method. For tax years starting after 2017, accrual method taxpayers may not defer taxable income beyond when it is recognized on their non-tax financial statements.

q. Technical Termination of Partnerships. For partnership taxable years starting after 2017, the bill repeals Section 708(b)(1)(B), which provided for technical terminations of a partnership if 50% or more of the interests in the partnership were transferred within one year.

r. S Corporations. Effective after 2017, a nonresident alien individual may be a current beneficiary of a trust that is permitted to hold shares in an S corporation, because the trust itself is subject to tax at the highest individual tax rate.

7. TAX EXEMPT ENTITIES

a. Excess Compensation Excise Tax. For tax years starting after 2017, tax-exempt entities are liable for an excise tax equal to 21% of the sum of (1) any remuneration in excess of $1 million paid to the five highest compensated employees by the entity for a taxable year and (2) any excess parachute payment paid by the entity to a covered employee.

b. UBTI**.** For tax years starting after 2017, tax-exempt entities may not offset a net loss from one trade or business against income from an unrelated trade or business.

8. FOREIGN PROVISIONS

a. Section 367 and 482

i. Active Trade or Business Exception. For transfers after 2017, the bill repeals the active trade or business exception under Section 367, so a transfer of a foreign active trade or business to a foreign corporation will no longer be exempt from immediate tax on any gain.

ii. Goodwill and Going Concern. For transfers in taxable years starting after 2017, any gain on the transfer of goodwill (both foreign and domestic) and going concern value to a foreign corporation is subject to immediate taxation.

b. Sale of Partnership Interest. Effective for sales of a partnership interest by a foreign taxpayer after November 26, 2017, gain or loss is treated as effectively connected with a U.S. trade or business by looking through to the assets of the partnership. The purchaser of the partnership interest is required to withhold 10% of the amount realized on the sale or exchange of a partnership interest unless the seller certifies that the seller is not a nonresident alien individual or foreign corporation. If the purchaser fails to withhold the correct amount, the partnership is required to deduct and withhold from distributions to the purchasing partner the amount the purchaser failed to withhold.

c. Interest Allocation. Effective for taxable years starting after 2017, members of a U.S. affiliated corporate group must allocate interest expense based on the adjusted tax basis of assets (not fair market value) for purposes of calculating foreign source income.

d. Base Erosion Tax. For tax years starting after 2017, C corporations with more than $500 million of annual gross receipts (aggregating affiliates) have to pay tax of 10% on all deductible payments to foreign related parties.

e. Tax on Existing Foreign Retained Earnings

i. In General. For the tax year that begin in 2017, every U.S. taxpayer that owns 10% or more of the voting stock of an applicable foreign corporation (see below) must include in income for that tax year its pro rata share of the accumulated deferred foreign income of the corporation.

ii. Applicable Foreign Corporation. An applicable foreign corporation is either (a) a controlled foreign corporation ("CFC") or (b) any other foreign corporation (other than "passive foreign investment companies") if at least one U.S. shareholder is a U.S. C corporation that owns 10% or more of the stock of the foreign corporation.

iii. Rate of Tax. The tax rate depends upon whether the deferred earnings are held in cash or other assets. The cash portion is taxed at a 15.5% rate, and the non-cash portion is taxed at an 8% rate. The cash position consists of all cash, net accounts receivables, liquid assets, publicly traded property, government securities, certificates of deposit, commercial paper, and short-term obligations.

iv. Foreign Tax Credit. If the U.S. taxpayer is a C corporation, it is entitled to a deemed foreign tax credit for a portion of any foreign taxes paid by the foreign corporation.

v. Installments. The resulting tax may be paid over an eight-year period. The payments for each of the first five years is 8% of the net tax liability, the sixth installment is 15% of the net tax liability, increasing to 20% for the seventh installment and the remaining balance of 25% in the eighth year.

f. Foreign Derived Intangible Income. Effective for taxable years beginning after 2017, U.S. C corporations are entitled to a very low rate of tax on income referred to as "foreign-derived intangible income" ("FDII"), although the name is really a misnomer.

i. Calculation of FDII. The calculation of FDII is as follows:

(a) Start with the total net income of the domestic corporation.

(b) Then deduct:

(i) Any dividends or deemed dividends attributable to a CFC;

(ii) Any income attributable to a foreign branch (presumably to encourage US activities); and

(iii) An amount equal to 10% of the corporation's adjusted basis of tangible personal and real property.

(c) The remainder is "Deemed Intangible Income."

(d) Now determine the percentage of Deemed Intangible Income that is "foreign derived" (which is different than foreign source). This includes income from (a) property (including intangible property) that is sold, leased, or licensed by the taxpayer to any person who is not a United States person for a foreign use or (2) services provided by the taxpayer to any person, or with respect to property, not located within the United States, even if the services are rendered in the United States. For example, a lawyer in the U.S. rendering services to foreign clients could incorporate to use this provision, although they would have to deal with other potential taxes discussed at Section 5.a above.

(e) Now multiply Deemed Intangible Income by the percentage that is "foreign derived." That is FDII.

ii. Tax Rate. The effective tax rate on FDII to C corporations is 13.125% through 2025. In taxable years beginning after 2025, the effective tax rate on FDII is 16.4%.

g. Global Intangible Low-Taxed Income. Effective for tax years starting after 2017, Subpart F is broadly expanded to include income referred to as "global intangible low-taxed income" ("GILTI"), although the name is really a misnomer.

i. Calculation of GILTI. The calculation of GILTI is as follows:

(a) Start with the total income of the CFC.

(b) Then deduct:

(i) Income effectively connected with a U.S. trade or business (since it is already subject to U.S. tax);

(ii) Subpart F income of the CFC (since the U.S. corporation is already subject to U.S. tax on this income);

(iii) Income that is subject to foreign tax of at least 18.9%; and

(iv) An amount equal to 10% of the corporation's adjusted basis of tangible personal and real property.

(c) The remainder is GILTI.

ii. Tax Rate for Individuals. Individuals are taxed on GILTI at the regular individual tax rate, since the GILTI inclusion does not qualify for the 20% tax rate on qualified dividends. Unless a section 962 election is made (discussed below), individual taxpayers are not subject to additional tax when the CFC pays a dividend out of the GILTI, and they do not get a deemed foreign tax credit for foreign taxes paid by the CFC. However, individuals may make an election under Section 962 to be taxed on GILTI in the same manner as C corporations, in which case they would get a deemed foreign tax credit for foreign taxes paid by the CFC and would be taxed at the corporate tax rate. If this election is made, it is not clear if individuals are taxed at the standard 21% corporate tax rate or if they qualify for the lower tax rate discussed below. In either event, if individuals do make this election, they are subject to regular income tax on any actual dividends out of GILTI that are later distributed by the CFC.

iii. Tax Rate for C Corporations. U.S. C corporations are taxed on GILTI at only a 10.5% rate for tax years starting in 2017-2025 and 13.125% thereafter. C corporations are also allowed a deemed foreign tax credit for 80% of any foreign taxes on GILTI paid by the CFC. For example, if the CFC pays foreign tax of at least 13.125%, the U.S. C corporation would not owe any tax on GILTI (13.125% x 80% equals the 10.5% tax rate).

iv. Effect on Film Studios. Film studios will no doubt want to incorporate their foreign branches as CFCs (if not already done) in order to get the much lower tax on GILTI. The only potential impediment is the tax on the value of the foreign branches under Section 367, since that section is now expanded to include goodwill and going concern value.

h. Dividends Received Deduction. Effective for tax years starting after 2017, U.S. C corporations that own more than 10% of the stock of either (a) a CFC or (b) any other foreign corporation (other than passive foreign investment companies) are not taxed at all on dividends received from such corporations that are attributable to foreign source income as long as the foreign corporation cannot get a deduction or other foreign tax benefit from the payment. If the U.S. corporation sells its stock in the foreign corporation, the portion treated as a dividend under Section 1248 is also exempt from U.S. tax.

i. No Tax Credit. The U.S. corporation is not permitted any foreign tax credit or deduction for any foreign taxes paid or withheld by the foreign corporation with respect to the dividend.

ii. Priority of Subpart F. Subpart F income (including GILTI) is deemed to be paid by a CFC before it pays dividends, so if the foreign corporation is a CFC, the exclusion for dividends actually received will only apply to any remaining income of the CFC. This basically leaves income that is subject to foreign tax of at least 18.9% and an amount equal to 10% of the corporation's adjusted basis of tangible personal and real property.

i. Source of Income for Inventory. Effective for taxable years beginning after 2017, income from sale of inventory is sourced to the location where the property is produce, not where it is sold.

j. Subpart F Ownership

i. Attribution. Effective for taxable years of foreign corporations beginning after 2017, stock of a foreign corporation owned by a foreign person is attributed to a related U.S. person for purposes of determining whether the related U.S. person is a U.S. shareholder of the foreign corporation and, therefore, whether the foreign corporation is a CFC. The pro rata share of a CFC's subpart F income that a U.S. shareholder is required to include in gross income, however, continues to be determined based on direct or indirect ownership of the CFC, without application of the new downward attribution rule.

ii. 10% of Value. Effective for taxable years of foreign corporations starting after 2017, Subpart F will include as a "U.S. shareholder" any U.S. person who owns 10% or more of the total value (previously, just vote) of the stock of a foreign corporation.

k. Hybrid Transactions. Effective for taxable years starting after 2017, no deduction is permitted for any payments that meet all of the following criteria:

i. The payor treats the payment as interest or royalties;

ii. The payments are made to a foreign related party;

iii. The foreign related party is not subject to tax on the payment; and

iv. Either:

(a) The payment is made to or by a "hybrid entity." A hybrid entity is any entity which is either: (1) treated as fiscally transparent for U.S.

income tax purposes but as a taxpaying entity in the foreign jurisdiction where it is formed or (2) treated as fiscally transparent in the foreign jurisdiction where it is formed but treated as a corporation for U.S. income tax purposes; or

(b) The payment is not treated as interest or royalties to the foreign related party.

Sincerely,

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Schuyler M. Moore