Update on "Tax Cuts and Jobs Act" Final Negotiations and Upcoming Passage

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Congressional Republicans in both the House and the Senate came to a final agreement to finish the brief conference to iron out differences between the House and Senate passed tax bills. Late Friday, December 15th Republican conferees all signed the conference report (the full bill language and full report can be found here) while all Democrat conferees abstained from signing it, indicating that final passage of the bill in the House and Senate will likely fall along a pure party line vote. The House is set to vote on final passage of the bill Tuesday, December 19th with the Senate likely voting the following day. This would allow for President Trump to sign the bill into law by the end of the week.

The $1.5 trillion tax legislation is the largest and most far-reaching tax reform legislation in over three decades, both permanently altering or temporarily suspending longstanding federal tax provisions in both the corporate and personal tax spheres. The vast majority of the provisions in the legislation will take effect in 2018, including the reduction to the corporate tax rate to 21%.

In the original House-passed bill there was language to create a 20% import tariff for all imports from foreign jurisdictions, which would have included Puerto Rico. It also mandated a 14% tax applicable to all income earned but not distributed back to the U.S. (deferred income) since 1986. On a moving forward basis, it would have imposed a minimum income tax for foreign earnings of 10% to 12.5%. This language was not included in the final legislation that will pass this week.

Similar to the House-passed bill, the Conference bill provides for Federal taxation of pre-2018 income earned through controlled foreign corporations ("CFCs") at a 15.5% (for post-1986 earnings held in the form of cash and cash equivalents) or 8% (for all other earnings); the United States shareholder may elect to pay the resulting net tax liability in eight installments. Dividends received from CFCs out of post-2017 foreign earnings generally will not be subject to Federal income tax.

However, the bill will impact Puerto Rico by subjecting foreign derived intellectual property income to federal income taxation; at the 21% corporate tax rate, the effective tax rate on such foreign intellectual property income will vary from 10.5% to 13.125% for taxable years beginning after December 31, 2017 and before January 1, 2026, and from 13.125% and 16.406% for taxable years beginning after December 31, 2025.