2019 Tax Policy Forecast Survey

Miller & Chevalier Chartered
The National Foreign Trade Council

EXECUTIVE SUMMARY

Despite TCJA Guidance, Uncertainty for U.S. Businesses Remains

Shortly after the passage of the *Tax Cuts and Jobs Act of 2017* (TCJA), we asked executives to examine its early impact and what it meant for U.S. businesses. Most respondents to our 2018 survey were optimistic about what the year would bring under TCJA, although the survey also found that for companies to understand and realize TCJA's benefits and incentives, they would need significant regulatory guidance.

As a result, we launched the 13th annual Miller & Chevalier/National Foreign Trade Council (NFTC) Tax Policy Forecast Survey with the intention of examining the impact TCJA has had on businesses and what the upcoming year will hold.

Almost 18 months after TCJA's enactment, business executives are continuing to look for regulatory guidance. Despite the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) providing a significant amount of regulatory guidance over the last year, uncertainty around key issues remains, limiting businesses' ability to plan and restructure. Accordingly, executives are unsure about TCJA's ultimate impact on their operations.

When asked how TCJA has impacted their business, almost half of our respondents stated that it has decreased their organization's taxes. But most respondents still intend to seek regulatory guidance with respect to specific provisions of TCJA. In particular, provisions such as global intangible low-taxed income (GILTI), the base erosion and anti-abuse tax (BEAT), and the limitation on the deduction of business interest expense all were identified as areas in which executives most need additional guidance from Treasury and the IRS.

With respect to the tax legislative agenda, respondents intend to seek legislative clarifications to TCJA in the form of technical corrections. In addition, respondents are focused on the enactment of tax extenders. Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) recently introduced the *Tax Extender and Disaster Relief Act of 2019*, which would retroactively extend certain tax provisions that expired at the end of 2017 and 2018 through the end of 2019. The bill does not include an extension of those provisions scheduled to expire at the end of 2019, which include the work opportunity tax credit and the controlled foreign corporation (CFC) look-through rule.

But there are significant challenges to the enactment of technical corrections, tax extenders or other tax legislation that is weighing on business executives. When asked what they believe is the greatest impediment to the enactment of tax legislation, most respondents cited the divided Congress. Now that the House is controlled by Democrats, and the Senate remains controlled by Republicans, any legislation will require bipartisan support to be enacted. Reflecting these political dynamics, when respondents were asked who will have the biggest impact on tax policy this year, Senate Majority Leader Mitch McConnell (R-KY), Speaker Nancy Pelosi (D-CA), House Committee on Ways and Means Chairman Richard Neal (D-MA), and Senator Grassley all topped the list, respectively.

Turning to the 2020 presidential elections, executives believe that President Trump will be the Republican nominee and that former Vice President Joe Biden will be the Democratic nominee.

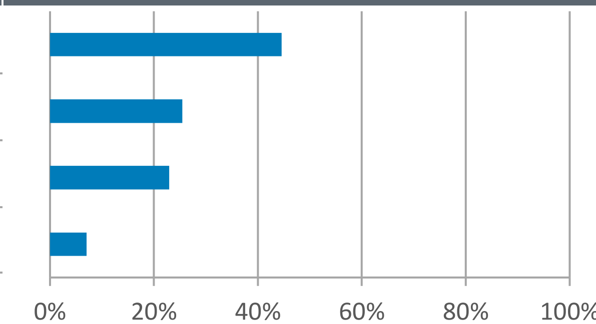
2019 Tax Policy Forecast Survey Results

Respondents were asked to complete a short questionnaire designed to elicit their thoughts and perspectives on the impact of TCJA and the direction of tax policy for businesses in 2019. The following results represent their collective input. The survey methodology can be found at the end of this report.

Q1. How did TCJA impact your organization's tax bill?

RESPONSES	%
Decrease your organization's taxes	44.59%
Had little or no impact on your organization's taxes	25.48%
Increase your organization's taxes	22.93%
Other	7.01%
Total Responses	**157**

PERCENTAGE OF TOTAL RESPONDENTS



- Almost half of respondents stated that TCJA decreased their organization's taxes. However, to understand the full impact of TCJA, additional regulatory guidance is needed.
- Respondents also cited compliance costs as an important factor in their analysis of TCJA's impact, which could be a result of the need for additional regulatory guidance.

Q2. Where do you need additional guidance from Treasury and the IRS regarding TCJA?

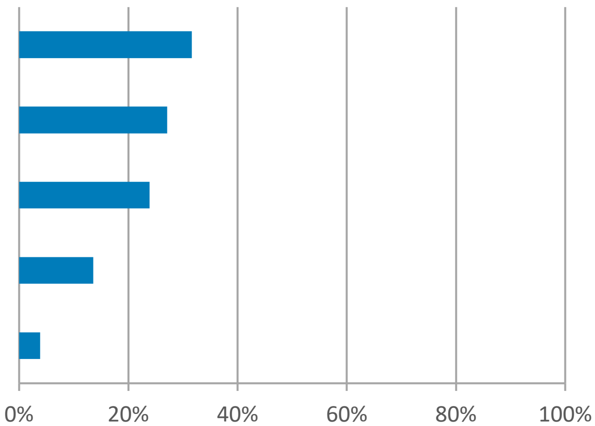
RESPONSES	RANK
Global intangible low-taxed income (GILTI)	1
No additional guidance needed	2
Base erosion and anti-abuse tax (BEAT)	3
Section 163(j) business interest deduction limitation	4
Foreign tax credits	5
100 percent bonus depreciation	6
Section 199A pass-through deduction	7
Section 965 transition tax	8

- GILTI, the BEAT, and the Section 163(j) business interest deduction limitation topped the list for areas where executives need more regulatory guidance.
- An April 2018 Memorandum of Agreement between Treasury and the Office of Management and Budget (OMB) provided the OMB's Office of Information and Regulatory Affairs (OIRA) with greater review authority over tax regulations. Meetings with OIRA staff have provided taxpayers

with another opportunity to educate regulators on issues important to them, in addition to engaging members of Congress as well as Treasury and IRS staff.

Q3. Which TCJA provision do you most want to see made permanent?

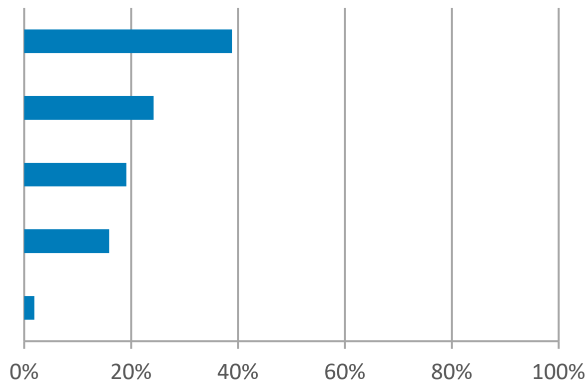
RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Use of the EBITDA definition of taxable income for purposes of the section 163(j) business interest expense deduction limitation	31.61%	
100 percent bonus depreciation	27.10%	
None	23.87%	
Section 199A pass-through deduction	13.55%	
Other	3.87%	
Total Responses	**155**	



- Although TCJA made permanent most business-related provisions, there are certain provisions that remain temporary and are set to expire in 2025. The use of the EBITDA definition of taxable income for purposes of the section 163(j) business interest expense deduction limitation, along with 100 percent bonus depreciation, are the two provisions respondents most want to see made permanent.

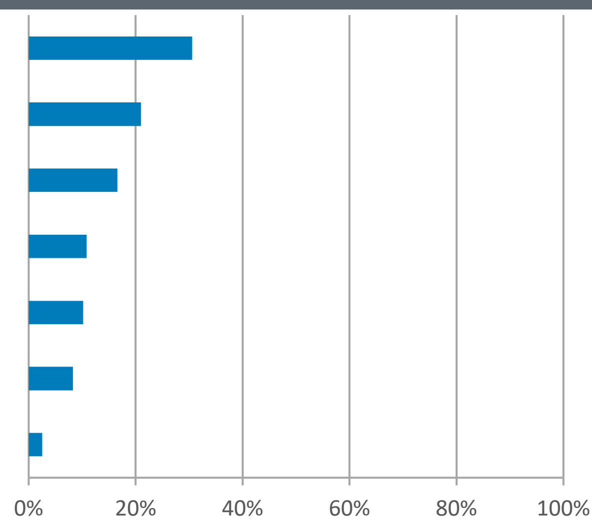
Q4. What single factor will have the most significant positive impact on U.S. tax policy in 2019?

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
U.S. economy	38.85%	
Trump administration's priorities	24.20%	
Democratic control of the House	19.11%	
Republican control of the Senate	15.92%	
Other	1.91%	
Total Responses	**157**	



Q5. What single factor will have the most significant negative impact on U.S. tax policy in 2019?

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Inability of congressional leaders and the White House to reach agreement	30.57%	
Divided Congress	21.02%	
Over-politicization of tax issues	16.56%	
Federal deficit	10.83%	
2020 presidential elections	10.19%	
Government shutdown	8.28%	
Other	2.55%	
Total Responses	**157**	



- The largest percentage of respondents’ belief that the U.S. economy will have a positive impact on U.S. tax policy in 2019 – despite thinking that the inability of congressional leaders and the White House to reach agreement is the most significant negative impact – provides a glimmer of hope for the tax policy outlook this year.
- It is worth noting that although the 2020 presidential election is not viewed as having a substantial negative impact on tax policy in 2019, we expect that as the year continues, the election will have more of an effect.

Q6. What additional changes to the Internal Revenue Code would you like to see enacted?

RESPONSES	RANK
Technical corrections	1
Extension or permanence of temporary TCJA provisions	2
Extension or permanence of previously expired provisions and expiring provisions	3
Infrastructure investment incentives	4
Internal Revenue Service reform	5
Retirement savings incentives	6
Disaster relief incentives	7

- Respondents are most interested in technical corrections to TCJA and extension or permanence of temporary TCJA provisions.
- In December 2018, a technical corrections package was passed by the House of Representatives as part of the *Retirement, Savings, and Other Tax Relief Act of 2018*. In addition, outgoing House Committee on Ways and Means Chairman Kevin Brady released a discussion draft of the *Tax Technical and Clerical Corrections Act* in early January 2019. Neither measure was enacted into law. The Joint Committee on Taxation Bluebook also identified numerous technical corrections needed with respect to TCJA.
    - Although a technical corrections package has not advanced legislatively to date due to larger political considerations, the tax-writing committees continue to evaluate taxpayer suggestions for additional technical corrections in the hopes that a legislative vehicle develops at some point this year.
- Senate Finance Committee Chairman Chuck Grassley and Ranking Member Ron Wyden recently introduced the *Tax Extender and Disaster Relief Act of 2019*, which in part would retroactively extend tax provisions that expired at the end of 2017 and 2018 through the end of 2019. The bill does not include an extension of those provisions scheduled to expire at the end of 2019, including the work opportunity tax credit and the CFC look-through rule.

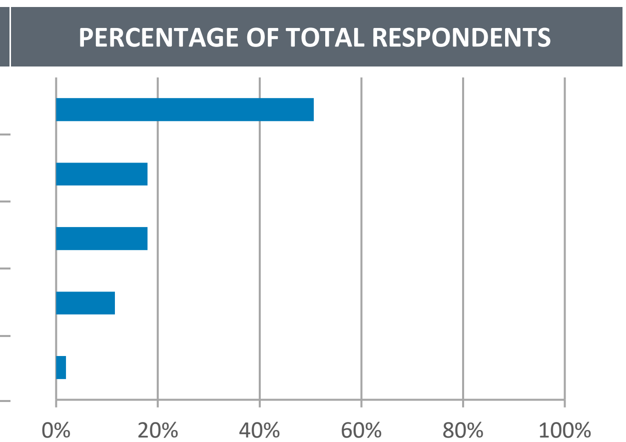
Q7. With the newly divided Congress, what legislation do you expect to be enacted into law in 2019?

RESPONSES	RANK
None	1
Technical corrections	2
Retirement savings incentives	3
Internal Revenue Service reform	4
Infrastructure investment incentives	5
Extension or permanence of previously expired provisions and expiring provisions	6
Disaster relief incentives	7
Extension or permanence of temporary TCJA provisions	8

- Due to the current divided Congress, along with a limited window of opportunity given the impending 2020 elections, respondents do not expect much legislation to be enacted in 2019. Those respondents who do expect legislation to be enacted believe it will come in the form of technical corrections, retirement savings incentives, and IRS reform.

Q8. Which one of the following revenue raisers will Congress pursue to fund new initiatives and balance the budget?

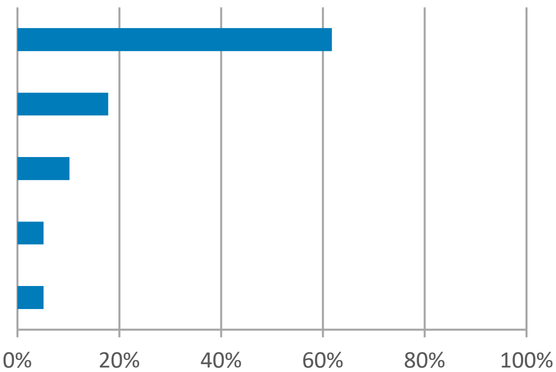
RESPONSES	%
Corporate income tax rate increase	50.64%
Rollback of other TCJA provisions	17.95%
Individual income tax rate increase	17.95%
Carbon tax	11.54%
Other	1.92%
Total Responses	**156**



- Fifty-one percent of respondents stated that Congress will seek to increase the corporate income tax rate to fund new initiatives and balance the budget.
- It is anticipated that there will be several proposals by congressional Democrats to raise the corporate tax rate, but it is expected that congressional Republicans and the White House will likely reject such proposals.
  - It should be noted, however, that last fall, President Trump suggested he would be amenable to increasing the corporate tax rate to pay for a significant middle-class tax cut.

Q9. What do you believe is the greatest impediment to the enactment of U.S. tax code changes?

RESPONSES	%	PERCENTAGE OF TOTAL RESPONDENTS
Divided Congress	61.78%	
Lack of agreement on desired revenue impact	17.83%	
Lack of administration priority	10.19%	
Focus on other fiscal policy issues	5.10%	
Other	5.10%	
Total Responses	**157**	



- The largest percentage of respondents to Question 5 said that the most significant negative impact on U.S. tax policy in 2019 would be the inability of congressional leaders and the White House to reach agreement and the current divided Congress. Accordingly, it is not surprising that 62 percent of respondents to Question 9 also stated that the divided Congress will be the greatest impediment to the enactment of tax code changes this year

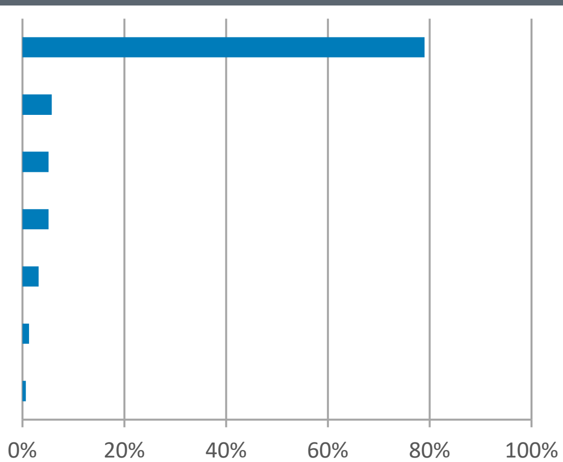
Q10. Who will have the most significant impact on tax policy in 2019? (Rank top three with number one being most influential)

RESPONSES	RANK 1	RANK 2	RANK 3	WEIGHTED RANK (SCORE)
Senate Majority Leader Mitch McConnell	40	31	24	1 (206)
Speaker Nancy Pelosi	33	25	27	2 (176)
Representative Richard Neal	31	22	14	3 (151)
Senator Chuck Grassley	17	27	22	4 (127)
Representative Kevin Brady	12	12	21	5 (81)
Senate Minority Leader Chuck Schumer	6	18	27	5 (81)
Representative Kevin McCarthy	6	10	3	6 (41)
Senator Ron Wyden	5	6	8	7 (35)
Representative Alexandria Ocasio-Cortez	4	3	8	8 (26)
Total Responses				**154**

- Now that the House is controlled by Democrats, and the Senate remains controlled by Republicans, any legislation will require bipartisan support to be enacted.

Q11. Who do you think will be the 2020 Republican nominee for President?

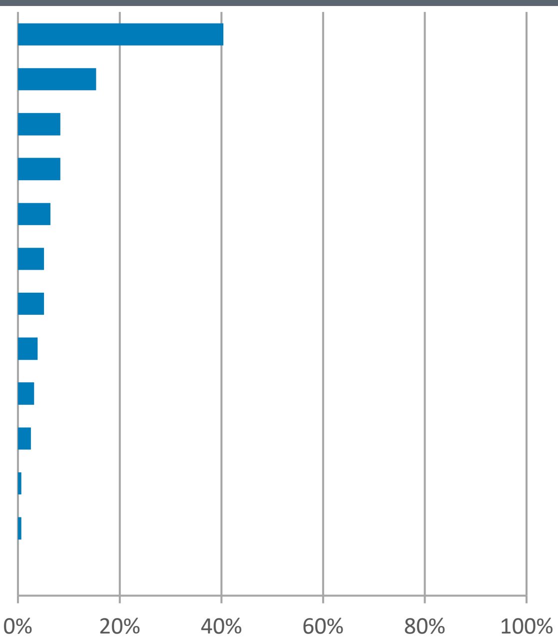
RESPONSES	%	PERCENTAGE OF TOTAL RESPONSES
President Donald Trump	78.98%	
Governor John Kasich	5.73%	
Senator Ted Cruz	5.10%	
Vice President Mike Pence	5.10%	
Other	3.18%	
Senator Jeff Flake	1.27%	
Senator Ben Sasse	0.64%	
Total Responses	**157**	



- In the 2018 survey, 64 percent of respondents believed that President Trump would be the Republican nominee for President. As we get closer to the 2020 election, respondents believe that the likelihood President Trump is the nominee has increased.

Q12. Who do you think will be the 2020 Democratic nominee for President?

RESPONSES	%	PERCENTAGE OF TOTAL RESPONSES
Vice President Joseph Biden	40.38%	
Senator Kamala Harris	15.38%	
Senator Bernie Sanders	8.33%	
Secretary Hillary Clinton	8.33%	
Representative Beto O'Rourke	6.41%	
Senator Elizabeth Warren	5.13%	
Other	5.13%	
Senator Cory Booker	3.85%	
Senator Sherrod Brown	3.21%	
Senator Kirsten Gillibrand	2.56%	
Representative Tulsi Gabbard	0.64%	
Secretary Julián Castro	0.64%	
Governor John Hickenlooper	0.00%	
Total Responses	**156**	



- In the 2018 results, 46 percent of respondents believed Vice President Biden would be the Democratic nominee for President, while this year he dropped to about 40 percent. The change can possibly be attributed to the fact that he only recently announced a 2020 presidential bid, along with the large field of candidates who have in fact made such formal announcements.
- Secretary Julián Castro, Senator Kamala Harris, and Representative Tulsi Gabbard announced a presidential bid before the survey period, while Senators Bernie Sanders, Elizabeth Warren, and Cory Booker announced presidential bids during the survey period.
- Former Representative Beto O'Rourke, Senator Kirsten Gillibrand, Vice President Joseph Biden, and Governor John Hickenlooper announced presidential bids after the survey period ended. Senator Sherrod Brown announced he will not run for President after the survey period ended.

Methodology

In February 2019, Miller & Chevalier Chartered and the National Foreign Trade Council distributed a survey via email to leading business tax executives, including vice presidents, directors, and managers of tax, at a broad cross section of U.S.- and foreign-based multinational companies.

Industries surveyed include manufacturing, oil and gas, retail, insurance, utilities, financial institutions, automotive, healthcare, defense, hospitality, and agriculture, among others. The survey was completed by 157 executives.

Due to rounding and questions where respondents could select more than one answer, certain final percentages may not equal 100 percent.

We appreciate and thank those who contributed their views and shared their experiences.

For more information, please contact:

Marc J. Gerson
Miller & Chevalier Chartered
202-626-1475
mgerson@milchev.com

Jorge E. Castro
Miller & Chevalier Chartered
202-626-5859
jcastro@milchev.com

Loren C. Ponds
Miller & Chevalier Chartered
202-626-5832
lponds@milchev.com

Catherine G. Schultz
National Foreign Trade Council
202-887-0278, ext. 104
cschultz@nftc.org