

Comparisons of the Senate & House Bills

Senate Bill

Under the Senate Bill, C-corps and individual shareholders pay a combined rate on taxable income of 36% plus NIIT¹ (without considering the benefit of the additional 12.5% dividends paid deduction) an 11.5% benefit vs. current law, which is permanent.

MLPs and individual owners pay a combined rate on taxable income of 38.5 % (because individual owners get no benefit from the 17.4% deduction as a result of the wage limitation on the deduction) plus the 3.8% NIIT. The exception from the wage limitation for incomes under \$500,000 is irrelevant when talking about the effect of tax rates on MLP equity prices, since loss of investors in the higher income brackets will drive down unit prices for all. This results in MLPs and their individual owners being taxed at a higher rate than C-corps and their shareholders (and, after taking into account the non-deductibility of state income taxes, at a higher rate than under current law).

REITs and individual shareholders pay a combined rate on taxable income of 31.8% (because REIT shareholders are not subject to the wage limitation on the 17.4% deduction) plus the NIIT. This results in MLPs and their individual owners being taxed at a significantly higher rate than REITs and their individual owners.

House Bill

C-corps and individual shareholders pay a combined rate on taxable income of 36% plus NIIT.

MLPs and their individual owners (who are passive investors) pay a combined rate on taxable income of 25% plus 3.8% NIIT. Generally, active individual owners pay the reduced rate on 30% of their MLP income with the remaining 70% being taxed at their individual rate. As a result, MLP income, like all pass-through income, is taxed at a significantly lower rate than C-corp income under the House Bill. This differential is similar to the current law differential between pass-throughs and C-corps and keeps the policy commitment made in the Unified Framework, agreed to by the Big Six.

REITs and all individual shareholders pay a combined rate on taxable income of 25% plus 3.8% NIIT. This results in MLPs and REITs and their individual passive owners being treated similarly under the House Bill.

REITs & MLPs

Under current tax law, MLPs and REITs are attractive to individual owners as high dividend paying securities and thus “compete” to some extent for the investments by individuals. Under current law, MLPs, however are more complex to individual owners because of the K-1 partnership tax form and multi-state taxable income passed through to an owner. REIT owners receive a simple 1099 form with no pass through of state taxable income. The Senate Bill increases this competitive advantage that REITs already enjoy by the tax rate disparity (as discussed above).

Moreover, REITs are more attractive to tax exempt (dividends are tax free) and foreign investors (lower US tax rate and withholding on dividends) than MLPs (tax exempts are taxed at regular ordinary income rates; foreigners are taxed at ordinary rates and withheld upon at highest ordinary income rates). Thus, the Senate Bill reduces the relative attractiveness of an MLP (which already has a smaller investor base than REITs) as an investment to individual owners as compared to REITs.

¹ NTD: The effective NIIT rate varies under the tax proposals, since NIIT does not apply to amounts used to pay taxes at the corporate level (since they are never distributed to an individual).