One of the last-minute, late-night changes Senate Republicans made to their tax-overhaul plan may mean higher taxes for corporations, including technology firms, than the bill's drafters intended, experts say.

As amended, the Senate tax bill would preserve the existing 20 percent corporate alternative minimum tax, a levy designed to stymie companies' tax avoidance that applies to fewer than 1 percent of U.S. companies under current law.

But under the Senate plan, retaining the AMT could prevent companies from making use of planned tax breaks related to intellectual property, to spending on new equipment and to research and development. The AMT may fall hardest on technology and utilities companies—though the snag would apply broadly, experts say.

“The fact is, almost everyone who's a corporate taxpayer is going to be an AMT taxpayer” under the bill, said Bret Wells, a tax law professor at the University of Houston.

Shares of technology companies dropped Dec. 4. An index of technology companies on the S&P 500 fell around 2 percent. The Nasdaq 100 Tech Index fell 1.8 percent.

Already, the U.S. Chamber of Commerce is seeking the AMT's repeal—as the Senate bill would have done before changes were made. Seeing the provision retained in the legislation was "a very unpleasant surprise," Caroline L. Harris, the organization's chief tax counsel, wrote in an article on a chamber website.

"Repeal of the AMT has long been one of the policy pillars for pro-growth tax reform," Harris wrote.

'Drafting Error'

Under existing rules, every corporation must calculate its tax bill according to both the regular corporate income tax and the AMT, and pay whichever is higher. With the corporate AMT at 20 percent and the current corporate rate at 35 percent, most companies have ended up paying tax calculated at the higher regular corporate rate.

A simple “drafting error” most likely left the AMT in the Senate bill at 20 percent—even though the overall corporate rate would be reduced—said Jennifer McCloskey, director of government affairs at the Information Technology Industry Council, a group that represents tech companies including Google, Oracle and Amazon. Congress should repeal the AMT completely or cut it to a level proportionate to the new 20 percent corporate tax rate, she said.

“What member of Congress would say, ‘you know what would get my vote on tax reform? You need to undermine the most popular part of the tax code, the R&D tax credit,’” McCloskey said Dec. 4 in an interview. Addressing the AMT will be one of her group's “top priorities” going forward, she said.

'Work as Intended'

Julia Lawless, a spokeswoman for the tax-writing Senate Finance Committee, said lawmakers would work to make sure that tax breaks—like the research and development tax credit—“work as intended.”
“The goal of this bill is to ensure American job creators can successfully compete around the globe,” Lawless said.

House and Senate leaders this week will begin working on a compromise between their differing versions of tax legislation—with the goal of delivering agreed-upon legislation to President Donald Trump before the end of this year. One key difference will be the corporate AMT—which would be repealed under the bill that the House approved last month.

The levy is designed to prevent companies from using deductions, making it essentially a flat rate that can't be substantially lowered. Without the AMT, companies could use various deductions proposed in the Senate bill—including provisions for intellectual property and for research and development—to winnow their tax bills. But because of the way the AMT is calculated, it would snare virtually every company under the bill, according to tax experts.

'Foreign-Derived' Income

In other words, a company's tax bill that is based on a 20 percent AMT, which doesn't allow many deductions, would always be higher than the same company's bill at the regular 20 percent corporate rate—which would allow various deductions that would lower the ultimate bill.

Such deductions would include a measure designed to induce companies that rely on intellectual property to house it in the U.S., instead of with overseas units. Situating such intangible property offshore with subsidiaries in low-tax jurisdictions—and then paying those subsidiaries for its use—has been a key tax-cutting strategy for many such companies.

The Senate bill seeks to address that strategy by setting up a special, discounted tax rate of 12.5 percent for “foreign-derived” income related to IP—provision that experts say could prompt more companies to hold such property in the U.S.

Leaving the corporate AMT in place would effectively put that lower rate off-limits, though. The provision doesn't jibe with several other planned deductions or tax breaks, suggesting that the AMT is bound to be reworked by House and Senate negotiators as they meet in a so-called conference committee to fashion a compromise.

Retaining the corporate AMT would also affect companies’ ability to use full and immediate write-offs for capital spending on plants and equipment—which the legislation's backers have billed as one of its main pro-growth provisions. That deduction would be available for five years—and then, under the Senate bill, it would phase out in later years to lower levels. Taking such deductions isn't possible under the current corporate AMT rules, which apply far more restrictive limits on depreciation.

Because the AMT “doesn’t seem to work with some core elements of the overall tax reform package, it can’t survive conference in its current form,” said Michael Mundaca, the co-leader of the Ernst & Young Americas Tax Center.

Only 10,222 corporations filed returns for 2013 showing that they owed the corporate AMT, according to the latest Internal Revenue Service data. That's less than 0.2 percent of the 5,887,804 corporate returns filed that year.

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