

Key International Tax Changes From the One Big Beautiful Bill Act

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On July 4th, 2025, President Trump signed into law the One Big Beautiful Bill Act ("OBBBA"). This alert expands upon our Firm's [prior alert](#) and is intended to summarize the main tax law changes that may impact: (i) U.S. businesses and/or U.S. individuals doing business outside of the U.S.; and (ii) certain non-U.S. investment into the United States.

1. Global Intangible Low-Taxed Income ("GILTI") Becomes Net CFC Tested Income ("NeCTIe")

GILTI was created to prevent U.S. companies from shifting profits to low-tax countries where they had no significant business assets. Originally introduced in the 2017 tax reform as part of the Tax Cuts and Jobs Act ("TCJA"), GILTI requires U.S. shareholders of a controlled foreign corporation ("CFC") to pay U.S. federal income tax on otherwise active foreign earnings, even if those profits are not brought back to the United States. Under TCJA, GILTI applies after excluding a modest (10%) return on tangible assets held abroad. The tax to be paid under GILTI is determined by applying a partial deduction (50%) and limited foreign tax credit (80%), if applicable. Under TCJA, there would be no residual U.S. federal income tax as long as the CFC paid a tax of 13.125% in the foreign country.

Under the OBBBA, GILTI is renamed to NeCTIe. In doing so, the law made the following changes:

- it eliminated the modest (10%) return on tangible (depreciable) assets;
- it reduced the deduction (now 40%);
- it increased the foreign tax credit that can be used (now 90%) for foreign income taxes paid, or accrued, with respect to NeCTIe inclusions;
- some exemptions are eliminated; and

- the necessary foreign tax rate to have no U.S. residual federal income tax due under NeCTIe is 14%.

2. Foreign-Derived Intangible Income ("FDII") Becomes Foreign-Derived Deduction Eligible Income ("FDDEI")

FDII is a U.S. federal income tax incentive designed to encourage domestic companies to sell goods and services to foreign customers from within the U.S., rather than shifting operations overseas. It allows U.S. corporations to claim a reduced tax rate on income from exports that is attributed to intangible assets like patents, software, or brand value. The idea is to reward companies for keeping valuable assets and operations in the U.S.

Under the OBBBA, FDII is renamed FDDEI. The main changes are:

- the applicable deduction is reduced from 37.5% to 33.34%, raising the effective U.S. federal income tax rate from 13.125% to about 14%;
- in calculating FDDEI, deduction eligible income now excludes income or gains from sales or other dispositions occurring after June 16, 2025, including intangible property and any other property that is subject to depreciation or amortization; and
- expense deductions (like R&D and interest) are limited, making the benefit smaller and harder to claim.

3. Other Changes Applicable To CFCs

Downward Attribution

The repeal of the limitation on downward attribution of ownership (e.g., treating an entity owned by its parent entity as owned by another entity also owned by the parent entity) in 2017 as part of TCJA, which is used for determining if an entity is a CFC, caused quite a stir. Congress was looking to curb certain perceived abuses by making this change and causing the classification of more foreign corporations as CFCs. However, the repeal did much more than curb the perceived abuses and had broad ranging and unintended implications.

The OBBBA, in addressing the problems caused by the repeal of downward attribution, did two things:

- reinstated the limitation on downward attribution, which generally prohibits the attribution of ownership of stock of a foreign corporation to U.S. taxpayers from certain related parties who are non-U.S. taxpayers (generally speaking, preventing CFC status in situations where no U.S. person actually owns shares of the foreign company); and
- created a new provision that is targeted at the perceived abuse. This new provision creates two new important terms: Foreign Controlled Foreign Corporation and Foreign Controlled U.S. Shareholder. In certain circumstances, this new provision applies as if the limitation applicable to downward attribution were repealed. However, its limited scope more adequately addresses Congressional concerns (which is to address certain situations where foreign subsidiaries are intentionally de-controlled).

Note: The OBBBA makes it clear that no inferences should be drawn from the reinstatement of the limitation applicable to downward attribution. In other words, taxpayers should not argue that the “fix” means it was wrong in the first place!

Income Inclusion

The CFC rules also have a provision that addresses the amount of income that a U.S. taxpayer has to include on the U.S. taxpayer’s U.S. federal income tax return in light of how many shares of a CFC are owned and other various issues. One major change under the OBBBA is that a taxpayer must include the taxpayer’s pro rata share of a CFC’s “tainted” income based on how long that shareholder held the shares during the year, even if the taxpayer did not hold the shares on the final day of the CFC’s tax year.

Special Tax Years

The OBBBA has repealed the special 1-month deferral in determining the tax year of a specified foreign corporation (which includes CFCs), requiring such corporations to align their taxable year with that of their majority U.S.

shareholder. This change shall apply to taxable years of specified foreign corporations beginning after November 30, 2025.

Indirect Foreign Tax Credits

As noted above, the foreign tax credit allowed for purposes of applying NeCTIe was increased to 90% (up from 80%). The OBBBA also made it clear that the remaining 10% of those taxes cannot be claimed later on a distribution of the income that was previously taxed (this provision being effective for foreign income taxes paid or accrued with respect to such previously taxed amounts after June 28, 2025).

Look Through Rule

The look through rule applicable in determining the nature (e.g., passive or active) of income for CFC purposes, which generally helps CFCs avoid having “tainted income” when operating a multijurisdictional business through a holding company, was made permanent. This provision was previously set to expire.

4. Changes to Interest Deduction Limitation

The deduction for net business interest expense is limited to 30% of adjusted taxable income (“ATI”). When the TCJA was originally enacted, ATI was calculated in a manner similar to earnings before interest, taxes, depreciation, and amortization (“EBITDA”); however, for years beginning after December 31, 2021, ATI was calculated after taking into account depreciation and amortization deductions (“EBIT”). The OBBBA restores the original ATI calculation, effective for tax years beginning after December 31, 2024. The OBBBA also modifies ATI to be computed without regard to CFC inclusions (and related deductions). Finally, the OBBBA also modified the interest deduction limitation rules to coordinate with interest capitalization rules.

5. Other Highlights

Other items the OBBBA addressed include:

- allowing 50% of income from U.S.-made inventory sold abroad via foreign places of business to count as foreign-source for foreign tax credit purposes;
- creating specific rules relating to the allocation of deductions to NeCTIe for purposes of calculating the foreign tax credit limitation; and
- making changes to the Base Erosion and Anti-Abuse Tax ("BEAT") applicable to large multi-national companies, including raising the applicable tax rate from 10% to 10.5%.

Note: the OBBBA does not include the so-called "revenge tax" as proposed, which would have imposed retaliatory U.S. federal income and withholding taxes on certain governments, individuals, and entities associated with or owned by residents of foreign countries that have implemented "unfair foreign taxes," such as digital services tax.

6. Effective Dates

Except as otherwise specified in this alert, the changes to the above provisions in the OBBBA are generally effective for taxable years beginning after December 31, 2025.

7. Preliminary Observations

- NeCTIe and FDDEI have a higher effective U.S. federal income tax rate than former GILTI and FDII (14% versus 13.125%). Nevertheless, this rate is still lower than the base U.S. corporate tax rate of 21%.
- Having the limitation to downward attribution back in the law is a welcome change, as this undoes numerous unanticipated tax and reporting issues that its repeal caused. For example, planning with respect to non-U.S. investors who wish to take advantage of the portfolio interest exemption is no longer complicated by the application of downward attribution. In particular, this change is relevant to non-U.S. investors who wish to simplify their qualification for the portfolio interest exemption when leveraging investments into U.S. businesses and / or U.S. real estate structures.

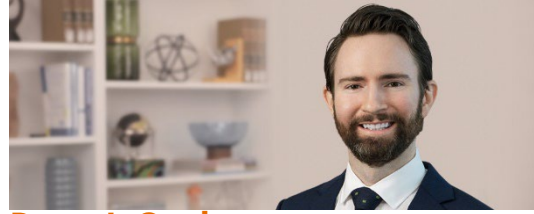
- Because of the effective date relevant to the limitation applicable to downward attribution, planners will still need to be concerned about downward attribution for the 2025 tax year.
- The repeal of limitation applicable to downward attribution does not entirely go away! Consider the following:
 - sales of entities that were CFCs within 5 years of the sale may still have an adverse consequence;
 - will the loss of CFC status adversely impact the repatriation of previously taxed income? If not, how will this be tracked?; and
 - it will be necessary to remember the years this provision was repealed and apply it appropriately in compliance situations.
- The modified CFC pro rata share rule now applies to each U.S. person shareholder of a CFC for the period of time that such U.S. person shareholder held the CFC shares (directly or indirectly). It no longer applies to just the U.S. person who owns the shares on the last day of the taxable year (e.g., usually December 31 when it is a CFC that is individually owned).
- The change back to the more favorable EBITDA-based interest deduction limitation should provide many taxpayers a greater ability to deduct their business interest expense by increasing ATI. On the other hand, the change in the ATI calculation relating to CFC inclusions could reduce ATI, which in turn could lower the deductible amount of interest expense.
- Taxpayers should be sure to coordinate with their CPA on the relevant U.S. tax changes described herein, as there are transitional rules that may need to be followed.

We would be glad to discuss the OBBBA and the related issues raised above if you are in need of assistance with these issues.



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