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Tax bill passes House and heads to Senate

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The House of Representatives passed the One Big Beautiful Bill Act, a much-anticipated suite of proposed tax law changes and revenue offsets, on May 22, 2025. This update describes key provisions and highlights important considerations for taxpayers.

The House of Representatives approved the One Big Beautiful Bill Act on May 22, 2025 (incorporating certain amendments). Many aspects of the House tax bill implement changes that President Trump previewed during his campaign, including extending or making permanent various tax provisions enacted as part of the 2017 Tax Cuts and Jobs Act (TCJA) that were set to expire at the end of this year. Should the House tax bill become law in its current form, the tax changes would have significant implications for U.S. and non-U.S. taxpayers alike, including individuals, corporations, funds, and investors in certain special industries.

Absent from the House tax bill are changes to capital gains rates, corporate tax rates and the stock buyback excise tax rate.

The House tax bill is part of a broader "reconciliation" bill, which has been sent to the Senate, and the Senate is expected to make substantial changes to the whole bill. Although taxpayers will want to consider the tax changes announced in the House tax bill in planning and in structuring and negotiating transactions, there remains significant uncertainty as to which changes will ultimately be enacted into law and whether new changes will emerge. In 2017, the Senate rewrote the House version of TCJA, and the version that was ultimately enacted was significantly different from the original House version.

Key tax proposals relating to business deductions and expenses

- **Relaxation of limits on business interest deduction**
  - Business interest deductions are generally limited to 30% of a taxpayer's "adjusted taxable income."
  - Under current law adjusted taxable income is calculated in a manner similar to EBIT.
  - The House tax bill would increase this limit for taxable years beginning after December 31, 2024, and before January 1, 2030, by calculating adjusted taxable income in a manner more similar to EBITDA.
- **Restoration of bonus depreciation**
  - Under current law, "bonus depreciation" is being phased out for property placed in service after December 31, 2026 (December 31, 2027 for certain longer production period property).
  - The House tax bill would restore bonus depreciation by permitting taxpayers to immediately deduct 100% of the cost of qualified property placed in service on or after January 20, 2025, and before January 1, 2030 (January 1, 2031 for certain longer production period property).
- **Modification of corporate effective tax rate on Global Intangible Low-Taxed Income (GILTI)**

  - The effective federal income tax rate on a corporation's GILTI is currently 10.5% (the regular corporate income tax rate of 21%, with a 50% deduction).
  - The effective rate is scheduled to increase to 13.125% (21% corporate tax rate, with a reduced 37.5% deduction) after December 31, 2025.
  - The House tax bill would permanently set the effective rate at 10.668% (21% corporate tax rate, with a 49.2% deduction).

- **Modification of corporate effective tax rate on Foreign-Derived Intangible Income (FDII)**
  - The effective federal income tax rate on a corporation's FDII is currently 13.125% (the regular corporate income tax rate of 21%, with a 37.5% deduction).
  - The effective rate is scheduled to increase to 16.406% (21% corporate tax rate, with a reduced 21.875% deduction) after December 31, 2025.
  - The House tax bill would permanently set the effective rate at 13.335% (21% corporate tax rate, with a 36.5% deduction).

- **Modification of Base Erosion and Anti-Abuse Tax (BEAT) rate**
  - The BEAT rate is currently 10% and is scheduled to increase to 12.5% after December 31, 2025.
  - The House tax bill would permanently increase the rate to 10.1%.

- **Suspension of amortization for research and experimental expenses**
  - Under current law, domestic research and experimental expenses are amortized over 5 years.
  - For domestic research and experimental expenses incurred in taxable years beginning after December 31, 2024, and before January 1, 2030, the House tax bill would permit taxpayers to either (i) deduct these expenses currently or (ii) capitalize and recover these expenses over a period of no less than 60 months.

- **Flooring corporate charitable contribution deductions**
  - Under current law, corporate taxpayers' deductions for charitable contributions are subject to a 10% ceiling.
  - The House tax bill would also subject these deductions to a 1% floor. Any disallowed deductions either below the 1% floor or above the 10% ceiling would be subject to carryforward rules.

Key tax proposals relating to partnerships

- **Amendments to the provision governing partnership disguised sales of property and disguised payments for services**
  - Under existing law, the provision is seemingly effective only to the extent regulations are actually issued.
  - The House tax bill would revise the provision so that it is expressly effective except as provided in regulations.
  - It is not immediately clear what types of partnership arrangements the changes are intended to capture.

- **Elimination of Pass-Through Entity Tax (PTET) deductions**
  - Under current law, although an individual's ability to deduct state and local taxes is subject to the SALT deduction cap (discussed below), individuals who own businesses may continue to receive the economic benefit of a deduction for state and local taxes imposed on income earned through partnerships and S corporations under various states' PTET regimes.
  - Under a typical PTET regime, a partnership (or S corporation) pays state and local income taxes on its flow-through income. The deductions for these taxes flow through to the partners (or S corporation shareholders), who also receive a credit for their share of these taxes.
  - The House tax bill would deny partners (and S corporation shareholders) in certain partnerships (or S corporations) the benefit of these deductions for state and local income, real property, personal property, and general sales taxes.

- This provision would apply to partnerships (and S corporations) that are not entitled to the qualified business income deduction under section 199A (discussed below).

– **Retention of qualified business income deduction under TCJA**

  - Noncorporate taxpayers who hold interests in certain partnerships and other pass-through entities (including real estate investment trusts (REITs)) are allowed a 20% deduction for domestic business profits under current law (the section 199A deduction). This deduction is set to expire after December 31, 2025.
  - The House tax bill would increase this deduction to 23% and make it permanent.
  - The House tax bill would also extend the section 199A deduction to dividends paid by Business Development Corporations (BDCs).

– **Changes to excess business loss calculation**

  - The House tax bill would increase a taxpayer's "excess business losses" by increasing the aggregate deductions attributable to trades or businesses by certain allowable net operating loss carryovers or carrybacks.

Key tax proposals relating to individuals

– **Permanent increase in estate and gift tax exemption**

  - The estate and gift tax exemption for 2025 is $13.99 million per individual (i.e., inflation adjusted from $10 million).
  - This exemption is set to expire after December 31, 2025, and to revert to an inflation-adjusted $5 million per individual that was in effect before 2018. For reference, the inflation-adjusted exemption would have been $7 million in 2025.
  - The House tax bill would permanently increase the estate and gift tax exemption to $15 million per individual, with further inflation adjustment after 2025.

– **Retention of individual income tax rates under TCJA**

  - The top marginal individual income tax rate is currently 37%.
  - This rate is set to expire after December 31, 2025, and to revert to the top marginal rate of 39.6% that was in effect before 2018.
  - The House tax bill would make the 37% top marginal rate permanent.

– **Extension of State and Local Tax (SALT) deduction cap**

  - State and local taxes are currently deductible against an individual's federal income tax liability, but this deduction is capped at $10,000.
  - The cap is set to expire after December 31, 2025.
  - The House tax bill would increase the cap to $40,400 and make it permanent. This cap would be reduced by 30% of the excess of the taxpayer's modified adjusted gross income over $505,000, but not below $10,000.

– **New limitation on itemized deductions**

  - Before 2018, the so-called "Pease limitation" capped or phased out some itemized deductions for individuals whose income met certain thresholds.
  - The Pease limitation was eliminated starting in 2018, but is set to return after December 31, 2025.
  - The House tax bill would permanently eliminate the Pease limitation, and would replace it with a limitation that would result in a small reduction in the value of itemized deductions for individuals in the top 37% marginal bracket.

New tax proposals relating to "unfair foreign taxes"

– **The House tax bill would add new section 899**

- The new section 899 would create a novel tax regime targeting residents of “discriminatory foreign countries” that impose “unfair foreign taxes” on U.S. persons.
- Various tax rates would be increased, including:
  - Withholding tax rates on U.S.-source interest, dividends and other “FDAP” income, and
  - Tax rates imposed on U.S. “effectively connected income” (ECI) (including branch profits tax rates but, in the case of individuals, limited to certain real property gains and losses).
- “Unfair foreign taxes” generally include the so-called UTPR under OECD Pillar Two, digital services taxes, diverted profits taxes, and other taxes “with a public or stated purpose indicating the tax will be economically borne, directly or indirectly, disproportionately by United States persons.”
  - To date, more than 140 countries have agreed to Pillar Two, including the UK and many EU countries, although only a portion of those countries have enacted taxes that constitute unfair foreign taxes.
- The new tax would apply to any individual (other than a citizen or resident of the United States) who is a tax resident of a discriminatory foreign country, any corporation that is a resident of, or more than 50% owned (by vote or value) by, residents of a discriminatory foreign country, and certain partnerships, branches, trusts and other entities identified by the Secretary.
- The potential impact of section 899 on treaty exemptions is unclear.
- Issuers and lenders alike should consider the potential impact of section 899 on the allocation of taxes in their loan agreements, derivative contracts and certain foreign currency note offerings.
- Foreign-parented groups and funds that rely on treaty exemptions would need to consider whether to structure U.S. investments that could give rise to tax under section 899 through (1) a non-US entity that does not act through a non-U.S. branch, (2) a non-U.S. entity that acts through a U.S. branch or (3) a U.S. subsidiary.
- Non-U.S. banks (both acting through U.S. branches and not acting through U.S. branches) would need to assess whether and how to participate in the U.S. loan and derivative markets, and investment fund sponsors will need to evaluate the potential impact to treaty fund structures.
- We discuss these considerations in greater detail in a separate client alert that can be accessed here.

Key tax proposals relating to renewable energy tax credits

– **The House tax bill would significantly roll back renewable energy incentives**

- The House tax bill would repeal Inflation Reduction Act clean electricity tax credits, accelerate the phase-out of section 45X advanced manufacturing production credits, accelerate production date required for section 45V clean hydrogen credits, restrict the ability to claim renewable energy tax credits for “prohibited foreign entities” and repeal transferability of various renewable energy credits.
- We discuss these changes in greater detail in a separate client alert that can be accessed here.

Key tax proposals relating to specialized industries

– **Tiered excise tax on investment income of private colleges and universities**

- Private colleges and universities’ investment income is currently subject to an excise tax of 1.4%.
- The House tax bill would create a tiered system with four rate brackets ranging from 1.4% to 21% based on the size of the institution’s endowment (determined on a per-student basis).

– **Tiered excise tax on net investment income of private foundations**

- Private foundations’ net investment income is currently subject to an excise tax of 1.39%.

- The House tax bill would create a tiered system with four rate brackets ranging from 1.39% to 10% based on the size of the private foundation.

– **Limitation on amortization of certain sports franchises**

- The House tax bill would halve the amortization deductions allowable for professional sports franchises and related intangibles acquired after the legislation is enacted.

– **Taxable REIT subsidiary test**

- The House tax bill would change the maximum amount of assets that taxable REIT subsidiaries may represent for purposes of the REIT asset test to be 25% of the REIT's assets. This would reverse a change made in the Consolidated Appropriations Act of 2016 that lowered this limitation to 20% of a REIT's assets.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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