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TAX ALERT – JULY 2025

The "One Big Beautiful Bill" is Signed into Law – Section 899 Not Included in Final Law

Introduction

On July 4, 2025, President Donald J. Trump signed the Reconciliation Bill, commonly known as the "One Big Beautiful Bill" (the **"Act"**) into law. The Act is one of the most significant pieces of tax legislation since the Tax Cuts and Jobs Act (**"TCJA"**) was enacted in 2017. The Act makes permanent many of the provisions of the TCJA.

Below we highlight some key corporate tax provisions (both domestic and international) in the Act, and we analyze the decision to not introduce a new Internal Revenue Code (**"Code"**) Section 899 from the final law.

Summary of Key Corporate Tax Provisions

Research or Experimental ("R&E") Costs. The Act allows taxpayers to immediately deduct all domestic R&E expenditures incurred in tax years beginning on or after January 1, 2025. Under prior law, these expenditures for domestic R&E were required to be capitalized and amortized over five years.

In addition, taxpayers that previously capitalized domestic R&E incurred in taxable years beginning after December 31, 2021, and before January 1, 2025, can elect to accelerate the remaining deduction over a 1- or a 2-year period. Small taxpayers (generally, those with average annual gross receipts of $31 million or less over the prior three years), will be allowed to retroactively expense all domestic R&E costs incurred in taxable years beginning on or after January 1, 2022. There is no change in the treatment of R&E costs incurred outside the US, which still must be capitalized.

Interest Expense Limitation. The TCJA enacted a limitation on the amount of deductible net business interest expense to 30% of adjusted taxable income (**"ATI"**). The TCJA calculated ATI similar to earnings before interest, taxes, depreciation, and amortization (or **"EBITDA"**).

However, for tax years starting in 2022 the limitation was changed to 30% of earnings before interest and taxes (**"EBIT"**), a smaller, less favorable amount. The Act restored the calculation of ATI to 30% of EBITDA for tax years beginning on or after January 1, 2025. The Act excludes from the ATI calculation Subpart F income, GILTI inclusions, and Section 78 gross-up amounts, which is less taxpayer favorable.

Fixed Assets Depreciation. The Act makes permanent the 100% first-year "bonus depreciation" for most tangible personal property with a recovery period of 20 years or less and other qualified property and provides for a 100% depreciation allowance for certain commercial qualified production property. This applies to property acquired and placed in service after January 19, 2025.

Changes to GILTI & FDII Tax Regimes. Global Intangible Low-Taxed Income or GILTI is a category of income introduced by the TCJA to address profit shifting by US multinational companies to low-tax foreign jurisdictions. The Act makes several adjustments effective after December 31, 2025. In particular, the Act eliminates the GILTI deduction for a deemed 10-percent return on qualifying business assets; changes the name "GILTI" to "net CFC tested income" or "NCTI"; and raises the effective tax rate to 14% (up from 13.125%). The Act likewise raises the effective tax rate under the TCJA's parallel FDII regime (restyled as "foreign-derived deduction eligible income" or FDDEI). The FDII regime was designed to incentivize US corporations to keep their intangible property and related profits in the US, by providing a lower tax rate on profits from exports and foreign services.

Other CFC-Related Provisions. The Act restores the taxpayer-favorable rule against so-called "downward attribution" repealed by the TCJA, and adds a new provision that permits so-called downward attribution under a new category of foreign controlled CFCs. The repeal had triggered burdensome US tax compliance obligations for foreign-controlled enterprises with US subsidiaries. This rule would apply to tax years of foreign corporations beginning after December 31, 2025.

The Act also modifies the rules that determine which US shareholder includes a CFC's subpart F income and NCTI upon a mid-year transfer of the CFC's shares and makes permanent the oft-reenacted "CFC look-through" rule of Code Section 954(c)(6).

Base Erosion Anti-Abuse Tax (the "BEAT"). The BEAT was enacted by the TCJA and its main purpose is to prevent large multinational corporations operating in the US from reducing their US tax liability through certain deductible payments to related foreign affiliates. The BEAT liability is calculated by taking modified taxable income, multiplying it by the BEAT rate, and then subtracting the regular US corporate tax liability. The Act permanently sets the BEAT rate at 10.5% for taxable years beginning after December 31, 2025. The rate for the BEAT is 10% for 2025 and, under the TCJA, was slated to increase to 12.5% in 2026. As noted below, the special BEAT tax regime under Section 899 was not enacted into law.

Energy Tax Credits. The Act makes significant changes to energy tax credits, accelerating the sunsetting provisions for the production tax credit ("**PTC**") and the investment tax credit ("**ITC**"). For a solar or wind facility to be eligible for PTCs or ITCs, construction must begin before July 4, 2026, or the facility must be placed in service before January 1, 2028. For credits related to hydropower and nuclear energy, the PTC and ITC will phase out starting in 2034. The Act imposes new limitations on energy tax credits, when the taxpayer is or receives "material assistance" from a prohibited foreign entity.

Other Business Provisions. The Act also: (i) includes a greater income exclusion for Qualified Small Business Stock; (ii) makes permanent, and revises, the TCJA's opportunity zones; (iii) makes permanent the new markets tax credit, supporting investment in low-income communities; (iv) makes permanent the Qualified Business Income deduction under Section 199; (v) for payments made after December 31, 2025, increases from $600 to $2,000 the threshold for payers required to file Forms 1099-NEC and 1099-MISC.

Decision to Not Introduce New Code Section 899

The enacted version of the Act eliminated proposals that would have otherwise introduced retaliatory taxes to US inbound investors which were residents of certain countries under proposed Code Section 899.

Code Section 899, as passed in the House of Representatives, would have had a profound adverse impact on inbound investment in the US, including an annual tax rate increase of 5 percentage points over the statutory rates (or tax treaty rates applicable in lieu of such statutory rates), until such increase reached a maximum of 20 percentage points (the "**Additional Tax**").

The Additional Tax would have applied to foreign corporations, with respect to US effectively connected income ("**ECI**"), US fixed or determinable annual or periodic ("**FDAP**") income, (such as dividends, interest, royalties, and rents), and the branch profits tax. In addition, under certain circumstances, IRC Section 899 would have expanded the application of the Base Erosion Anti-Abuse Tax ("**BEAT**") to a foreign-owned nonpublic corporation

The Additional Tax would also have been added to the treaty rates so eventually, even treaty protected income could have been taxed as high as 50% (30% rate, plus 20%).

Specifically, the Additional Tax would have applied to US source income of certain residents of countries with "unfair" tax regimes that impose extraterritorial or discriminatory taxes and implicitly override existing US income tax treaties. Extraterritorial, discriminatory taxes would have included a digital services tax ("**DST**"), and the OECD's "Global Anti-Base Erosion Model Rules ("**Pillar Two**").

In order to avoid the adverse effects of Section 899, and acknowledging that the US has its own domestic version of corporate minimum tax rules, the G7 members (Canada, France, Germany, Italy, Japan, the United Kingdom, and the US) reached an understanding that, upon removal of Section 899 from the proposed bill, the G7 members would work on a side-by-side system under which US-parented groups would be exempt from certain controversial aspects of the OECD's Pillar Two: the Income Inclusion Rule (IIR) and the Undertaxed Profits Rule (UTPR).

These Pillar Two top-up tax systems, which provide for a global minimum tax of 15% for large multinationals, may conflict with a pre-existing bilateral tax treaty in place between an EU country, which has adopted Pillar Two, and a non-EU country, such as the US, that has not adopted Pillar Two. On January 20, 2025, President Trump signed an Executive Order stating that Pillar Two has no force or effect in the US.

The G7 announcement does not address DSTs implemented by many countries. In light of past Trump administration policies, the US Trade Representative may pursue trade investigations against foreign countries that impose DSTs on US companies so as to impose US tariffs or other sanctions if it is found that the DSTs constitute unfair trade practices.

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