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Corporate Tax 2026

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Introduction

Devon M. Bodoh
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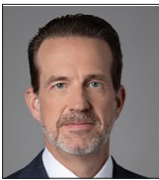
INTRODUCTION

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Weil, Gotshal & Manges LLP was founded in 1931 and has provided legal services to the largest public companies, private equity firms and financial institutions for more than 90 years. Widely recognised by those covering the legal profession, Weil's lawyers regularly advise clients globally on their most complex litigation, corporate, restructuring, and tax and benefits matters. Weil has been a pioneer in establishing a geographic footprint that has allowed the firm to partner with clients wherever they do busi-

ness. Weil's global tax department offers comprehensive knowledge of how the complex and continually evolving nature of tax law plays a crucial role in some of the most significant and high-profile domestic and cross-border transactions, restructurings and other commercial matters. The firm not only understands the nature of its clients' transactions, but also understands their businesses, and is a critical part of the team that works to accomplish each client's business goals.

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Corporate Taxation: Navigating Tax Uncertainty in a Changing Global Landscape

Over the past year, the global tax landscape has been full of volatile and dramatic shifts. These shifts include the abrupt withdrawal of the USA from all agreements with the OECD regarding Pillar One and Pillar Two, the threat of retaliatory taxes (whether by tariffs, tax rates and other changes), the agreement between the USA and the remaining Group of Seven countries for a side-by-side exception for US multinational groups from some of the more significant portions of Pillar Two and, most recently, the OECD's issuance of a side-by-side package (the OECD Side-by-Side Package) that adopts such a side-by-side exception (the Side-by-Side Safe Harbor) for US multinational groups. While arguably the issuance of the OECD Side-by-Side Package provides some increased stability – at least in the short term with respect to the prospect of US retaliatory taxes – its implementation, effect, and longevity are all continued areas of uncertainty and concern.

Despite this uncertainty, there is also a remarkable amount of stability in certain tax systems. For example, despite all the changes that have occurred, and that still will occur, the basic principles and rules of corporate taxation in many jurisdictions have largely remained unchanged. This is due in large part to the fact that the underlying challenges, concerns, and motivations of jurisdictions in dealing with taxation remain broadly the same (even if the specific approaches taken by jurisdictions differ). A few themes regarding this turbulent time in global tax are discussed below.

Resurgence of tax sovereignty

A key theme in President Donald Trump's executive order withdrawing the USA from the global tax deal with the OECD was tax sovereignty – not wanting to have US tax rules being dictated by extraterritorial bodies or governments, particularly if the USA saw those rules as being discriminatory or unfair from a US perspective. This perspective involves looking not only at whether such rules are written generically, but also whether they are substantively designed to target primarily US enterprises (and their local subsidiaries). Tax sovereignty was always going to be an issue with the USA in any global tax deal, especially with the US separation of governmental powers and roles between US negotiators (in the executive branch) of a tax deal and the legislators (ie, Congress) and the difficulties of passing most legislation through Congress. However, Donald Trump's election certainly foreclosed the already slim chance of tax legislation in the USA being brought into line with Pillar Two, intensified this tax sovereignty theme and focused the USA on protecting its multinational enterprises from the increasing implementation of Pillar Two.

Tax sovereignty is not isolated to the USA with respect to Pillar Two but is also evident in other jurisdictions' reaction to the Side-by-Side Package from the OECD and related US requests (eg, a push-down of the global minimum tax that the USA imposes on non-US subsidiaries, thus potentially reducing the local domestic minimum tax that can be collected by that subsidiary's tax jurisdiction). This is a natural reaction to the Side-by-Side Package and part of the risk that the Side-by-Side Package erodes the overall implementation of Pillar Two and other coordinated

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global tax structures. It is also natural that this may cause a potential resurgence of tax competitiveness as US multinational groups may actually have, or are perceived as having, an advantage over non-US multinational groups now that US multinational groups may have an exemption from the administrative and economic burden of Pillar Two.

Continued threat of retaliatory taxes

However, the issuance of the Side-by-Side Package does not end the potential for US retaliatory taxes in connection with the enactment of Pillar Two and digital services taxes. As with other OECD packages, the Side-by-Side Package requires implementation by individual jurisdictions (in particular jurisdictions that already have adopted such taxes). That takes time and there is no guarantee that most or all of the relevant jurisdictions will agree to adopt the Side-by-Side Safe Harbor. If there are deviations from the Side-by-Side Safe Harbor that are not favourable to the USA in such jurisdiction-by-jurisdiction implementation, that could further impact whether the USA contemplates enacting US retaliatory taxes. Additionally, the OECD Side-by-Side Package is not ideal in all respects from a US perspective, including that there is a stocktake in 2029 that may further impact the longevity of the Side-by-Side Safe Harbor. Thus, pending the outcome of future US elections and the stocktake, there remains significant uncertainty regarding the long-term viability of the OECD Side-by-Side Package.

Accordingly, it is still possible that the Side-by-Side Safe Harbor is not fully implemented or is only temporarily implemented, thus raising the specter of US implementation of retaliatory taxes that could further destabilise the global tax system.

Consistent and persistent problems of tax administration and enforcement

Even though not compliant with all the specific requirements of Pillar Two, the US system has significant features targeting base erosion, profit shifting, hybrid arrangements, information gathering and sharing and other features meant to limit tax avoidance and tax evasion. These challenges permeate the entire global tax system and are present in most jurisdictions. These common, and persistent, challenges drove the very existence of base erosion and profit shifting initia-

tives, including the development of Pillar Two. As we see with the current state of the global tax system, the difficulty is how to address these persistent issues in a coherent and even-handed manner that also takes into account economic, political, geopolitical and other factors.

One significant issue remaining in most tax systems is complexity. For example, Pillar Two is notoriously complex. As a result, the Side-by-Side Package's inclusion of a Simplified ETR safe harbour (to simplify the operation of the global anti-base erosion model rules and ideally relieve multinational enterprises and taxing authorities from more complex computations) made some strides in simplifying some of Pillar Two's application, but the system nevertheless remains highly complex. This complexity is particularly difficult as countries grapple with funding for enforcement while still developing new tools (including artificial intelligence (AI)) and expertise to enforce these new rules. While some jurisdictions have already implemented portions of Pillar Two provisions for a couple of years, many are newly enacted and taxpayers in all of these jurisdictions generally are still figuring out the ramifications (positive and negative) of Pillar Two implementation.

This challenge of complexity and tax administration is shared by the USA, which has generally reduced its funding for the Internal Revenue Service (IRS) and has greatly reduced its workforce over the past year. Some of these reductions may be mitigated by the increasing use of AI resources in tax administration and enforcement – for example, the IRS has greatly expanded its use of AI resources in audits and fraud detection. However, it remains to be seen just how effective AI will be in such a role and any such new technology and methods may have additional unforeseen challenges.

Stability (or lack thereof) in individual jurisdictions

The USA recently enacted a new sweeping tax and spending legislation in the form of the One Big Beautiful Bill Act, and while it introduced a number of welcome changes and clarifications, the vast majority of the tax-relevant changes were extending provisions from prior legislation that were going to expire, walking back certain tax incentives for energy production and

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some tax provisions related to individuals. Accordingly, a significant portion of US corporate tax structure remained largely the same and the basic principles underlying US corporate taxation are essentially unchanged. Consequently, while there certainly are developments and changes that constantly occur, the US corporate tax system has remained fairly stable pending the application of Pillar Two to US multinational groups.

As readers go through this guide, they may find a similar situation in a number of jurisdictions. In other words, while there may be a significant and real feeling of chaos and uncertainty, there are pockets of stability that can provide guidance and relative comfort when evaluating investment in an unfamiliar jurisdiction.

This guide is divided by jurisdiction before being broken down further into the following sections that detail key features of each jurisdiction's tax system:

- corporate structures, residence and tax treatment;
- corporate tax regime;
- taxation of corporations and non-corporate businesses;
- taxation of inbound investments;
- taxation of non-local corporations;
- taxation of foreign income of local corporations;
- anti-avoidance provisions;
- audit cycles; and
- the application of BEPS.

These sections provide important background and insights into the implications of, and important considerations for the form of, investment into an unfamiliar jurisdiction. Furthermore, as users of this guide proceed on a jurisdiction-by-jurisdiction basis, they can discern key points of consistency and divergence between different jurisdictions, thus allowing for a clear comparison when contemplating where to operate or invest.

Conclusion

What is clear on the global tax stage is that taxpayers and tax practitioners will continue to grapple with significant uncertainty about the global tax system and how non-tax factors (like global and US politics) will shape how jurisdictions approach a globally coordinated tax system. Nevertheless, this guide provides necessary information and tools to deal with such uncertainty and act with confidence when investing in and operating a cross-border enterprise.

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USA: Law and Practice & Trends and Developments

Devon M Bodoh, Joseph M. Pari and Blake D. Bitter
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Law and Practice

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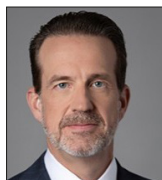
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1. Corporate Structures, Residence and Tax Treatment

1.1 Corporate Forms and Their Tax Treatment

The most commonly used business types in the United States of America (USA) include:

- sole proprietorships;
- partnerships;
- limited liability companies (LLCs); and
- corporations.

Unlike other jurisdictions, the type of business entity selected does not alone determine its US federal tax classification.

Under the “check-the-box” regulations, domestic entities may be classified as corporations, partnerships or entities disregarded as separate from their owners (referred to as a “disregarded entity”). A business entity with two or more owners is classified either as a corporation or a partnership; and a business entity with only one owner is either classified as a corporation or as a disregarded entity. An entity is classified as a “per se corporation” if it is organised under a US federal statute or a US state statute that describes the entity as incorporated or as a corporation, body corporate or body politic. If an entity does not meet any of these requirements, it is an “eligible entity” and its classification is elective. Default classification rules determine initial classification, which can be changed by filing the appropriate forms with the Internal Revenue Service (IRS); by default, a domestic eligible entity is a partnership if it has two or more owners or is a disregarded entity if it has a single owner.

In addition, certain entities (such as corporations and LLCs) can qualify for, and elect to be taxed under, certain specialised tax regimes, such as those governing S corporations, regulated investment companies (RICs) or real estate investment trusts (REITs), provided various requirements are satisfied.

Generally, the LLC is the most commonly used entity type. LLCs are hybrid entities created under state law that are neither partnerships nor corporations. From a state law perspective, they offer their members protection from personal liability for the debts of the LLC’s business, much like the liability protection that a corporation offers to its shareholders. From a federal tax standpoint, the IRS treats the LLC as an eligible entity under the “check-the-box” rules, meaning the LLC has flexibility to be classified as either a partnership, an association taxable as a corporation (including as an S corporation, RIC or REIT) or a disregarded entity depending on its business and ownership characteristics.

1.2 Use and Taxation of Transparent Business Structures

Partnerships and LLCs (that have elected to be taxed as partnerships) are the most commonly used “pass-through” entities in the USA across industries (including private equity and hedge funds). Unlike corporations (other than S corporations, RICs or REITs, discussed further below), partnerships are not viewed as “taxpaying” entities. Instead, the partners are, generally speaking, liable for the federal income tax on the income (or loss) derived by the partnership. While the determination of income (or loss) for the year is determined at the entity level (treating it as the com-

putational entity), the income or loss is allocated to the partners pursuant to their respective distributive shares. Accordingly, partnerships provide owners significant flexibility (within parameters including that the allocations have “significant economic effect”) in how items of income and loss are allocated among themselves for tax purposes.

Another method of eliminating “entity-level” tax is for an entity to qualify for, and elect to be taxed as, an S corporation, RIC or REIT. While these regimes vary, they share a common theme – corporate income of a qualifying entity is taxed only to the shareholders, and not to the corporation itself (similar to a partnership). Due to strict ownership requirements, S corporations are available only to US “individual” investors and generally involve closely held businesses. RICs and REITs, by contrast, can be significantly larger and attract different investor bases based on the types of assets owned by each such entity. For example, REITs are companies that own or finance income-producing real estate across a range of property sectors, while RICs are companies that derive their income primarily from passive investment sources (ie, dividends) and generally include mutual funds, closed-end investment companies and exchange-traded funds.

1.3 Tests for Determining Tax Residence

There are four classes of “person” for US income tax purposes:

- individuals;
- corporations;
- partnerships; and
- trusts and estates.

Under US tax rules, as under most countries’ tax systems, such persons are further classified as “resident” or “non-resident” based on a variety of tests.

For individuals, the US system treats both US citizens and resident alien individuals as income tax residents. “Resident” aliens are defined using two tests, as follows.

- First, lawful permanent residents (ie, US green card holders) are residents so long as they hold that status.

- Second, other individuals are considered residents if they are in the USA under a day-count test.

Under the day-count test, a person is considered a resident if the total number of days such person is present in the USA in the current year, plus one third of the days present in the prior year, plus one sixth of the days present in the second prior year, equals or exceeds 183 days.

For corporations, the USA generally uses the “place of incorporation” rule for determining tax residence, under which a corporation is a “domestic corporation” if it is created or organised under the law of the USA, any US state or the District of Columbia. Note that a special set of rules, referred to as the “anti-inversion rules”, may in limited circumstances cause a non-US corporation to be treated as a US tax resident.

Generally, partnerships are determined as domestic or foreign in the same manner as corporations – ie, based on the jurisdiction of formation. However, as partnerships are not subject to income tax (see **1.2 Transparent Entities**), their status as resident or non-resident is largely irrelevant for purposes of determining their taxation (although the jurisdiction of the entity could impact on the tax treatment of the partners – eg, under a relevant income tax treaty). Trusts are classified as “domestic” or “foreign” according to whether they have a US trustee and are subject to US legal jurisdiction, and then are subject to tax as “US persons” or non-resident aliens according to such status. Although estates do not have a formal classification, they tend to be categorised along principles similar to those used for trusts.

1.4 Applicable Corporate and Individual Tax Rates

The maximum US corporate income tax rate is currently 21%. In addition, US states and local governments may levy corporate income taxes on the same (or similar) tax base, but such taxes are generally deductible from the federal income tax base for corporations (subject to certain limitations). Therefore, a corporation operating in the US could face a combined tax rate in excess of 21%. On average, corporations have paid a combined US federal, state and local corporate income tax rate of approximately 26%.

The USA also applies a corporate minimum tax (effective from 1 January 2023) that generally imposes a 15% minimum tax on the financial statement income for US corporations (including consolidated groups; see **4.4 Transfer Pricing Issues for Inbound Investors**) with financial statement income of more than USD1 billion for three taxable years (or USD100 million in the case of a US corporation that is part of a non-US multinational group that has combined financial statement income of more than USD1 billion).

In contrast to corporations, the maximum income tax rate for individuals (including individuals invested in certain pass-through entities) is 37%. Furthermore, US states and local governments may levy additional taxes on the same (or similar) income incurred by such individuals, the rate of which fluctuates significantly between the various states and municipalities. Additionally, some US states and local governments may also levy an entity-level tax on the business entity notwithstanding its US federal tax classification.

2. Corporate Tax Regime

2.1 Taxable Profits

The US federal income tax is imposed on “taxable income”, which is calculated as “gross income” reduced by deductions allowed under the Internal Revenue Code (Code). Gross income is defined as “income from whatever source derived”; thus, the USA employs a global definition of income based on the accretion concept, where any accession to wealth (other than mere appreciation of asset value with nothing more) constitutes income unless the Code expressly excludes it.

Every taxpayer must figure taxable income for an annual accounting period called a “tax year”. The calendar year is the most common tax year; however, other tax years can be selected (ie, fiscal year). Taxpayers must use a consistent accounting method, which is a set of rules for determining when to report income and expenses. The most commonly used accounting methods are:

- the cash method (generally used by individuals and other small businesses); and

- the accrual method.

Under the cash method, a taxpayer reports income in the tax year such income is received and deducts expenses in the tax year such expense is paid.

Under the accrual method, the taxpayer reports income in the tax year it is earned (regardless of when payment is received) and deducts expenses in the tax year incurred (regardless of when payment is made).

2.2 Technology Investments

The Code includes a wide variety of credits that can help reduce, or fully satisfy, the income tax obligations (as well as payroll tax obligations) of taxpayers across a variety of industries, and that can even simply result in a net payment from the government to the taxpayer. These credits have many rules regarding who can claim them and the timing of when, in what order and how much of the credit(s) can be used (or carried forward or backward).

Notably, the R&D tax credit provides an incentive to invest in R&D (ie, performing activities related to the development, design or improvement of products, processes, formulas, technology or software) by allowing companies to claim credits for spending on certain qualified research expenditures (QREs). The R&D tax credit has four separate components:

- the regular credit (equal to 20% of QREs above a base amount);
- the alternative simplified credit (equal to 14% of QREs above half the average of QREs over the prior three years);
- the energy research credit (equal to 20% of QREs); and
- the basic research credit (equal to 20% of QREs above a base amount).

In any year, taxpayers can take the energy research credit and the basic research credit, along with either the regular credit or the alternative simplified credit.

In addition to credits, the One Big Beautiful Bill Act (that was recently passed by Congress and signed by President Trump) allows taxpayers once again to immediately deduct certain types of R&D expenses.

Additionally, the USA also has a regime (as modified by the One Big Beautiful Bill Act) that offers domestic corporations a deduction for “foreign-derived deduction eligible income” (FDDEI), which is generally income generated involving intangible assets. However, rather than being a patent box, the deduction for FDDEI is designed to neutralise the effect that CFC Tested Income (see **6.5 Controlled Foreign Corporation-Type Rules**) has to incentivise US corporations to allocate intangible income to controlled foreign corporations (CFCs).

2.3 Special Incentives

In addition to the R&D tax credit (see **2.2 Technology Investments**), there are several other credits that can provide tax benefits in the form of a dollar-for-dollar reduction to tax liability. For example, there are a variety of general business credits that can be claimed by a broad range of businesses ranging from hiring certain classes of employees (eg, the work opportunity and empowerment zone employment credits) to credits for certain types of energy production. Moreover, in any year, a taxpayer can choose whether to take – as a foreign tax credit (FTC) or as a deduction of foreign income – war profits and excess profit taxes paid or accrued during the tax year to any foreign country or US possession. An FTC reduces US income tax liability dollar for dollar, while a deduction reduces the US income tax liability at the marginal rate of the taxpayer.

There are generally limited incentives related to inbound investment at the federal level, such as the portfolio interest exemption (PIE), bank deposit exceptions and trading safe harbours. Very generally, the PIE enables non-residents and foreign corporations to invest in certain obligations in the USA without being subject to US income (or withholding) tax on the interest income (see **4.1 Application of Withholding Taxes**). The bank deposit exception allows non-US investors to deposit funds in US banking institutions without being subject to US tax on the interest earned, provided that the investment meets the statutory definition of a “deposit” and the funds are held by persons carrying on a banking business, or certain other supervised institutions.

There also are statutory securities- and commodities-trading safe harbours that provide exceptions from

being treated as engaged in a US trade or business for non-US persons trading in stocks, securities or commodities through a resident broker or other agent. Additionally, interest income received on certain qualified private activity bonds is generally exempt from US federal income tax, which enables a business to issue the bonds at a lower interest rate.

The aforementioned incentives are not intended to represent an exhaustive list of all the benefits that are available; however, they do illustrate some of the core incentives utilised by businesses in a range of industry sectors.

2.4 Loss Relief

Under the US tax system, a taxpayer with deductions exceeding gross income can have a net operating loss (NOL) that may be carried to and deducted in another year. The amount of an NOL is equal to the taxpayer’s gross income minus deductions, computed with certain modifications. The modifications that must be made depend on whether the taxpayer is a corporate or non-corporate taxpayer. In addition, special rules apply when determining the NOLs of a group of corporations filing a US consolidated return, which require NOLs to be computed on a consolidated basis (see **2.6 Consolidated Tax Grouping**).

For NOLs arising in tax years that begin after 2020, there is no longer a carry-back period, except a two-year carry-back for certain NOLs attributable to farming losses and NOLs incurred by non-life insurance companies. The carry-forward period is unlimited for NOLs arising in post-2017 tax years; however, a 20-year carry-forward period applies to the NOLs of non-life insurance companies and pre-2018 NOLs.

In addition, post-2017 NOLs may only offset 80% of taxable income; however, this 80% limitation does not apply to non-life insurance companies. Apart from the 80% limitation, certain anti-loss trafficking rules may limit a company’s NOL utilisation where there has been a sufficient change of ownership.

Individual taxpayers may offset capital gains with capital losses and, if such losses exceed the gains, ordinary income up to USD3,000 per year. Individuals may carry unused capital losses forward indefinitely.

In contrast, corporate taxpayers may only offset capital gains with capital losses and may carry unused capital losses back three years and forward five years.

2.5 Deduction of Interest

In 2017, the USA passed legislation that limits the deductibility of business interest expense. Under these rules, a taxpayer's interest expense for any year is limited to the sum of:

- business interest income; plus
- 30% of adjusted taxable income (which is generally equal to EBITDA under the One Big Beautiful Bill Act); plus
- floor plan financing.

Any interest disallowed can be carried forward indefinitely and deducted in subsequent years. While certain taxpayers are exempt from this limitation (eg, certain small taxpayers and real property businesses), it applies regardless of whether related-party debt is involved, regardless of whether the debt is incurred by a sole proprietor, a corporation or a pass-through entity and regardless of whether the taxpayer is thinly capitalised.

Other rules also exist that have the potential to limit or deny interest deductions (eg, interest on certain applicable high-yield debt instruments).

In addition to the foregoing rules, the USA has also introduced two "anti-hybrid" rules which, if applicable, generally deny US tax deductions in certain situations involving entities and payments of interest, royalties or dividends, if such entities or payments are treated differently under US and foreign tax laws and if such different treatment results in double taxation. Furthermore, rules provided in tax regulations can recharacterise debt between related parties as a "stock or equity" instrument if such indebtedness is issued in certain related-party transactions (see **5.7 Restraints on Related-Party Borrowing**). These rules are specifically designed to target earnings-stripping transactions.

2.6 Consolidated Tax Grouping

The Code and tax regulations (and several US states) allow a group of US corporations to file a consolidated

federal income tax return, which effectively allows the profits of one group member to be offset by the losses of another group member.

The consolidated return rules, which are mostly in the tax regulations, are very detailed and complex. Very generally, certain US entities classified as corporations for US federal income tax purposes may elect to join in filing a consolidated return if they are members of an "affiliated group". An affiliated group is generally one or more chains of corporations connected through stock ownership with a common parent corporation, which must satisfy certain detailed stock-ownership rules with respect to the subsidiary corporations (generally requiring at least 80% ownership measured by voting power and value, but disregarding certain debt-like preferred stock). Sales, dividends and other intercompany transactions between group members are generally deferred until a transaction occurs with a non-member (or when a member leaves the group). Groups of corporations filing consolidated returns are subject to various special rules, such as:

- rules on intercompany transactions;
- loss disallowance rules;
- loss-sharing rules;
- several liability among members of the group with respect to federal income taxes; and
- basis adjustments with respect to subsidiary member stock.

Regarding losses, a consolidated group is required to determine its NOL on a consolidated basis. For this purpose, the separate income and loss of each member is determined without taking into account any separate NOL deduction. Separate member income and losses are then aggregated and taken into account in determining the group's NOL for that year – meaning that the positive net income of some members is netted against the NOLs of other members to determine whether, on a net basis, the group has an NOL. In addition to certain general anti-loss trafficking rules (see **2.4 Loss Relief**), certain loss disallowances apply only to consolidated groups.

2.7 Capital Gains

For corporate taxpayers, gains from the disposition of capital assets are subject to regularly applicable tax

rates, and losses from the disposition of capital assets may only offset capital gains (see **2.4 Loss Relief**).

The Code includes various non-recognition provisions under which a built-in gain may be deferred (or in the case of a tax-free subsidiary spin-off, eliminated) rather than recognised and included in taxable income in the specified transaction. For example, such provisions include:

- like-kind exchanges of real property;
- involuntary conversion; and
- certain corporate reorganisations such as mergers, stock sales or liquidations.

In addition, the One Big Beautiful Bill Act made permanent a provision where taxpayers may defer or partially eliminate certain capital gains by investing in a “qualified opportunity fund” located in any of the “qualified opportunity zones” enumerated by the IRS.

2.8 Other Taxes on Transactions

Various other transaction taxes may apply at the state and local levels. For example, most US states impose an ad valorem real property transfer tax. In addition, beginning on 1 January 2023, stock repurchases or redemptions of more than USD1 million by a US corporation (and in certain cases, a non-US corporation) that has stock traded on an established securities market will be subject to a 1% US federal excise tax.

2.9 Other Notable Taxes

Various other taxes may apply in addition to the taxes discussed elsewhere in this chapter, such as:

- the federal excise tax imposed on insurance and reinsurance premiums paid to non-US persons;
- the federal excise tax on certain stock repurchases or redemptions (see **2.8 Other Taxes on Transactions**);
- social security; and
- Medicare tax and unemployment tax imposed on employers.

In addition, US states and local governments impose various other direct taxes (ie, franchises tax) and indirect taxes (ie, excise taxes, mortgage recording tax-

es, telecommunications taxes or insurance premium taxes) that may vary greatly between such US states.

3. Corporations and Non-Corporate Businesses

3.1 Form of Closely Held Local Businesses

As noted in **1.1 Corporate Forms and Their Tax Treatment**, the LLC (a hybrid-type entity) is the most commonly used entity type in the USA. This is because it not only affords liability protection for its members (similar to the protection that a corporation offers its shareholders) but also permits significant flexibility from a tax-planning perspective. Specifically, an LLC, as an eligible entity, can generally elect to be classified for federal tax purposes as a corporation, a partnership or a disregarded entity depending on its ownership. That said, by default LLCs are generally taxed like sole proprietorships or partnerships, meaning the owners are considered self-employed and generally are required to pay self-employment tax on all business profits.

Another popular form is the S corporation. As noted in **1.2 Use and Taxation of Transparent Business Structures**, S corporations are generally exempt from a federal income tax (meaning that any income is taxed only at the individual level) and, notably, provide certain self-employment tax benefits to their owners that are generally not available to other types of entities. Along with the tax advantages, S corporations enjoy the same protection from liability offered by corporation status. There are, however, a number of stipulations for operating as an S corporation that may disqualify or disincentivise a business seeking S corporation status. Perhaps the most important are the strict limits around shareholders, which are restricted largely to US individuals. Furthermore, unlike other types of pass-through entities (ie, partnerships), S corporations do not have flexibility when it comes to the allocation of income.

3.2 Individual and Corporate Rates

Corporations in the USA are subject to what is referred to as the classic regime of corporate taxation. Specifically, corporations (other than certain types of corporations qualifying under special tax regimes –

see **1.1 Corporate Forms and Their Tax Treatment** and **1.2 Use and Taxation of Transparent Business Structures**) are for the most part regarded as entirely separate legal entities and, as such, are subject to tax on their income; and shareholders are considered to receive income fully subject to tax when they receive distributions from corporations that are out of corporate earnings and profits (E&P). Thus, in the USA, corporate income is taxed twice, once at the entity level and again at the shareholder level when earnings are distributed; as a result, such system generally prevents individuals from earning income at solely corporate rates.

As discussed in **1.1 Corporate Forms and Their Tax Treatment** and **1.2 Use and Taxation of Transparent Business Structures**, certain types of corporate entities (ie, S corporations, REITs and RICs) provide a mechanism of avoiding corporate-level tax where various requirements are satisfied.

3.3 Restrictions on Retention of Earnings by Closely Held Corporations

The retention of profits may trigger additional tax liability, such as the accumulated earnings tax (AET) (ie, a 20% penalty tax) imposed on corporations formed or availed for the purpose of avoiding the income tax with respect to their shareholders, or the personal holding company (PHC) tax (ie, a 20% tax on undistributed PHC income) imposed on corporations that mainly derive passive-category income and the majority of which is owned by five or fewer individuals.

Notably, the PHC tax contrasts with the AET in several respects. First, if the requirements of the PHC tax are met, it applies automatically – there is no “intent” element that the government must establish. Second, if the PHC tax applies, the corporation must self-assess the tax by making certain filings with its annual tax return – failure to do so may subject it to additional penalties (ie, the AET is imposed by the IRS upon audit).

3.4 Taxation of Individuals on Shares in Closely Held Corporations

For US individuals, gains from the disposition of capital assets (ie, shares) held for more than one year (ie, long-term capital gains) are subject to preferential

capital gains tax rates – losses from the disposition of capital assets may offset capital gains and, if they exceed such gains, ordinary income up to USD3,000 per year. Any unused capital losses can be carried forward indefinitely. Gain from the sale of shares may also be subject to a 3.8% net investment income tax for certain taxpayers whose income exceeds certain thresholds (generally USD200,000-250,000).

Distributions by a corporation to individual shareholders are taxed as “dividends” only to the extent that they are paid out of the corporation’s current or accumulated E&P. Dividends received from domestic and certain qualifying foreign corporations received by individual shareholders (Qualified Dividends) may be taxed at a preferential tax rate or, if not Qualified Dividends, then at regular individual tax rates. If the corporation has no E&P (or if the distribution exceeds the corporation’s E&P), the individual shareholder will be allowed to treat the distribution (or the excess, in the latter case) as a return of capital, to the extent of the shareholder’s basis in the stock. Any distribution in excess of basis will be treated as gain from the sale of stock.

US-sourced dividend income generally constitutes fixed or determinable annual or periodic gains, profits and income (collectively referred to as FDAP) (see **4.1 Application of Withholding Taxes**) and is subject to a 30% withholding tax if paid to a non-US tax resident, unless reduced by an applicable treaty. Gains from the sale of stock by a non-US tax resident are generally treated as giving rise to foreign-sourced income and, as such, are not subject to US tax.

3.5 Taxation of Individuals on Shares in Public Corporations

Individuals (both US residents and non-US residents) are generally subject to the same rules discussed in **3.4 Taxation of Individuals on Shares in Closely Held Corporations** with respect to dividends from, and gain on, shares in publicly traded corporations.

4. Taxation of Inbound Investments

4.1 Application of Withholding Taxes

Non-US tax residents are generally taxed in the USA on FDAP income (ie, interest, dividends and royalties), to the extent that such items of income are not effectively connected with the conducting of a US trade or business or attributable to a permanent establishment. Such FDAP income is subject to a 30% gross basis tax that is enforced by withholding at the source, unless such tax is reduced by exemption or an applicable income tax treaty.

Notably, the PIE generally exempts, from the otherwise applicable withholding tax previously discussed, interest paid on registered obligations held by non-US persons who own less than 10% of the voting power of the payer. The PIE is subject to various requirements and exceptions – for example, it is not available to:

- banks receiving interest on ordinary-course loans; and
- certain CFCs.

Special withholding rules also apply in the cases of:

- dispositions of US real property interests; and
- partnerships (with foreign partners) having effectively connected income.

Dispositions of US real property interests are generally subject to the FIRPTA withholding rules, which generally require the transferee to withhold 15% on the total amount realised by the foreign person on such disposition (see **5.3 Capital Gains of Non-Residents**). Partnerships (foreign or domestic) having income effectively connected with a US trade or business (or income treated as effectively connected) generally must pay a withholding tax on the effectively connected taxable income that is allocable to its foreign partners. The tax rate for such withholding varies depending on whether the foreign partner is a corporation or an individual. Currently, the withholding tax rate for effectively connected income allocable to non-corporate foreign partners is 37%, and is 21% for corporate foreign partners.

4.2 Key Treaty Jurisdictions for Inbound Investment

The USA currently has 58 income tax treaties in force covering 66 jurisdictions. While most US income tax treaties provide reduced rates for dividends (with reduced rates generally ranging from 10% to 25%) and for interest (with reduced rates generally ranging from 0% to 17.5%), foreign investors generally must satisfy certain ownership, income and other requirements before such beneficial rates can be obtained. Of note, on 19 December 2023, the US Department of the Treasury announced the entry into force of the tax treaty between the USA and Chile. The USA-Chile treaty is only the second comprehensive bilateral tax treaty that the USA has with a South American country (the other country being Venezuela). In addition, the USA-Hungary income tax treaty was terminated, effective on 8 January 2023. However, in accordance with Article 26 (Termination) of the convention, the treaty ceased to have effect with respect to tax withheld at source on amounts paid or credited on or after 1 January 2024. For other taxes, the treaty ceased to have effect with respect to taxable periods beginning on or after 1 January 2024.

Furthermore, because most US income tax treaties include a “limitation on benefits” article as well as other anti-treaty shopping provisions (see **4.3 Tax Authority Scrutiny of “Treaty Shopping” Practices**), foreign investors are somewhat limited as to which treaty country can be used to facilitate such investment (ie, as some amount of substance in such jurisdiction is generally required).

4.3 Tax Authority Scrutiny of “Treaty Shopping” Practices

Most US income tax treaties in force include a “limitation on benefits” article and, in addition, those treaties may contain other anti-treaty shopping provisions. The 2016 US Model Income Tax Convention includes:

- the “limitation on benefits” article, which prevents residents of third-country jurisdictions from obtaining benefits under a treaty;
- a “triangular branch” provision, which limits treaty benefits for income attributable to a third-country permanent establishment if little or no tax is paid in the permanent establishment’s jurisdiction;

- the “special tax regime” concept, which denies treaty benefits for items of income subject to a preferential tax regime; and
- a limitation that denies treaty benefits for certain payments made by expatriated entities.

The most significant, effective income tax treaty that does not include either a “limitation on benefits” article or a triangular branch provision is the treaty with Poland. However, a new treaty that includes both such provisions is currently awaiting US Senate approval to replace this treaty.

In addition to the “limitation on benefits” provisions, certain US income tax treaties also contain “anti-hybrid” provisions (such as in the “residency” article) that address a taxpayer’s entitlement to treaty benefits for amounts derived through or paid by a hybrid entity – that is, an entity characterised as fiscally transparent in one jurisdiction and fiscally opaque in another. For example, an item of income may not be treated as “derived by” a treaty resident if it is derived by the resident through an entity that is not resident in the same country as its owner(s) (the entity could be resident either in the source country or in a third country) and that is not treated as fiscally transparent in the owner’s country of residence.

4.4 Transfer Pricing Issues for Inbound Investors

Specifically, the Code authorises the IRS to adjust items of income, deductions, credits or allowances of commonly controlled taxpayers to prevent tax evasion. The applicable standard in examining inter-company transactions is that of a “taxpayer dealing at arm’s length with an uncontrolled taxpayer” (ie, the arm’s length standard), which generally is met if the results of the transaction are consistent with the results that would have been realised if uncontrolled taxpayers had engaged in a comparable transaction under comparable circumstances. The US tax regulations include detailed rules regarding how such standards may be met.

If the IRS exercises its adjustment authority, the taxpayer bears the burden of proof to show that the arm’s length standard was met; and, depending on the circumstances, taxpayers may be subjected to

adverse penalties for non-compliance. Consequently, it is recommended that taxpayers routinely maintain robust, contemporaneous documentation to support their transfer pricing practices given that valuation misstatement penalties and reporting penalties may apply.

The USA’s aggressive transfer pricing regime has caused controversy with some of its trading partners, not all of whom have agreed with the USA’s interpretation of this arm’s length standard. The tax regulations, together with a greater level of enforcement activity, have resulted in an increasing number of transfer pricing issues being considered through the competent authority process under the mutual agreement article of tax treaties concluded between the USA and most of its major trading partners.

4.5 Challenges to Related-Party Limited Risk Distribution Arrangements

A typical limited risk distributor (LRD) agreement may provide for the LRD to earn a predictable, fixed margin and for all residual profit or loss to inure to the principal. While the LRD agreement may provide for the principal to bear most of the LRD’s costs and risks in the ordinary course of business, tax authorities might challenge whether the agreement should be respected based on such agreement’s compliance with the transfer pricing rules and regulations, especially in circumstances (eg, the impacts of COVID-19) where significant deviations from the arm’s length standard arise (see 4.4 Transfer Pricing Issues for Inbound Investors).

4.6 Local Transfer Pricing Rules and OECD Standards

Local transfer pricing rules and/or enforcement are generally consistent with OECD standards. That said, the OECD standards are generally less restrictive concerning market penetration strategies than the US regulations, which require a very extensive factual showing and documentation. Additionally, unlike the more restrictive US rules, OECD standards generally do not include specific rules for establishing (or benchmarking) an appropriate arm’s length range.

Moreover, the primary focus of the US regulations is on whether a taxpayer has reflected arm’s length results

on its US income tax return, rather than focusing on the method and procedures used to set such prices. The OECD standards, by contrast, focus significantly less on results and more on whether the transfer prices were established using an arm's length manner; this therefore places considerable emphasis on factors known by the taxpayer at the time the transfer prices were established.

Finally, while the OECD standards acknowledge that penalties may play a legitimate role in improving tax compliance in the transfer pricing areas, they do not provide for any such penalty regime. In contrast, the US system employs a detailed penalty regime that includes both transaction penalties and net adjustment penalties (that escalate depending on the severity of the transfer pricing deviations and/or tax return results).

4.7 Transfer Pricing Disputes and Mutual Agreement Procedures

The USA participates in the OECD International Compliance Assurance Programme (ICAP). Accordingly, the procedures the USA takes to handle any international transfer pricing disputes are generally consistent with those set forth in the ICAP. In addition, enhanced engagement programmes, such as advance pricing agreements (APAs), mutual agreement procedures (MAPs) and other avenues, are available mechanisms in the USA for preventing and/or resolving transfer pricing disputes.

With respect to APAs, the USA was the first country to issue a formal, comprehensive set of procedures relating to the issue of binding APAs dealing with the application of the arm's length standard to intercompany transfer prices. The effect of an APA is to guarantee that the IRS will regard the results of the transfer pricing method as satisfying the arm's length standard if the taxpayer complies with the terms and conditions of the APA. In addition, when a taxpayer and the IRS enter into an APA, the US competent authority will, upon a request by the taxpayer, attempt to negotiate a bilateral APA with the competent authority of the treaty country that would be affected by the transfer pricing methodology. The IRS has encouraged taxpayers to seek such bilateral APAs through the US competent authority.

Furthermore, MAP arbitration is also available under most US tax treaties. Taxpayers should consult the MAP article under the applicable US tax treaty to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies under such treaty. Generally, US tax treaties contain a provision which would oblige the USA to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (ie, paragraph 2 of Article 9 of the OECD Model Tax Convention, or the UN Model Double Taxation Convention, is included in the USA's tax treaties under the Advance Pricing and Mutual Agreement Program).

While the provisions contained in these US tax treaties do not require the competent authorities to reach an agreement eliminating double taxation, such treaties do require that the competent authority make a good faith effort to reach such an agreement. Thus, there is no guarantee that competent authority assistance will result in the elimination of double taxation in every case; however, the vast majority of cases are concluded with an agreement that avoids double taxation.

5. Taxation of Non-Local Corporations

5.1 Compensating Adjustments

Generally, compensating adjustments are allowed/made. A taxpayer may file a competent authority request with respect to a US federal court's final determination of its tax liability, but only for the purpose of seeking correlative relief from a foreign competent authority. Such final determinations include litigation settlements with the Office of Chief Counsel or the Department of Justice. If it accepts such a request, the US competent authority will seek correlative relief from the foreign competent authority only for the amount of such final determination and will not authorise competent authority repatriation.

5.2 Local Branches and Local Subsidiaries

Generally, local branches are not taxed differently. The imposition of corporate income tax on effectively connected income (ECI) is the equivalent of the tax that would be imposed if a US trade or business were incorporated as a US subsidiary of a foreign corpora-

tion, rather than an unincorporated operation. A US subsidiary of a foreign corporation would normally pay a 30% tax on dividends distributed to the foreign corporation (without an applicable tax treaty).

To achieve a similar tax result, the foreign corporation is made liable for a 30% tax computed on its dividend equivalent amount (DEA). This is referred to as a “branch profits tax” (BPT), although it is imposed on most income that is effectively connected to a trade or business, even if formally there is no established branch. Thus, the BPT substitutes for the taxation of the foreign corporation’s shareholders while ensuring that US income is taxed twice, in accordance with the US two-tier system for taxing corporate profits (see **3.2 Individual and Corporate Rates**).

5.3 Capital Gains of Non-Residents

Generally, capital gains from sales of stocks or bonds (ie, personal property) by non-US residents are exempt from US taxation and withholding (ie, as the residence of the seller generally determines whether such gain is foreign- or US-source). This rule, however, is supplanted to the extent that the stock constitutes a “US real property interest” (USRPI), which includes an interest in stock of a “US real property holding corporation” (USRPHC). A USRPHC is generally a US corporation that holds US real property whose fair market value is at least 50% of the fair market value of all its real property and assets used in its trade or business. This regime is colloquially referred to as FIRPTA as it was enacted by the Foreign Investment in Real Property Tax Act.

If applicable, such tax is enforced by a withholding regime that generally requires buyers to withhold 15% of the fair market value of the disposed USRPI. Sellers of corporate stock may generally provide a certification by the corporation upon sale that the corporation is not a USRPHC and may thus avoid FIRPTA tax and withholding (although the IRS is not bound by the certification). Publicly traded corporations are subject to certain exceptions from both the substantive tax and withholding requirements.

5.4 Tax Implications of Change of Control

There are, in general, no specific indirect transfer rules, nor any specific indirect change-of-control provisions that should be subject to local taxation.

5.5 Formula-Based Income Attribution

To the extent goods or services are provided to related parties, transfer pricing principles apply (see **4.4 Transfer Pricing Issues for Inbound Investors**). Specifically, taxpayers are required to apply the arm’s length standard in establishing compensation amounts for the provision of intercompany goods and/or services. Accordingly, if one member of a group of related entities provides goods or services for the benefit of (or on behalf of) another group member without charge or at a non-arm’s length charge, the IRS can make appropriate reallocations to reflect an arm’s length charge for those goods or services. If the services benefit more than one group member, the IRS bases the allocation on the relative benefit intended for each group member when the services are performed.

These rules generally stipulate that taxpayers must apply one of six specified transfer pricing methods in evaluating the appropriateness of their intercompany services transactions. The six specified transfer pricing methods include three transactional approaches (ie, CUSPM, GSMM and CSPM), two profit-based approaches (ie, CPM and PSM) and a cost-based safe harbour (ie, SCM).

5.6 Deductibility of Intra-Group Management and Administrative Charges

Management fees between controlled taxpayers are subject to US transfer pricing principles (see **4.4 Transfer Pricing Issues for Inbound Investors** and **5.5 Formula-Based Income Attribution**). As discussed previously, entities should be charging an arm’s length fee for the services they provide; and, if this standard is not met, the situation can become exacerbated for tax purposes if the foreign subsidiaries are profitable in their home country while the US business is reflecting losses (meaning that the expenses in the USA are really supporting the foreign operations).

In such circumstances, the IRS has the power to reallocate income and deductions between such parties in order to reflect what it believes to be the true econom-

ic nature of the cross-border activity; and, depending on the adjustments, a penalty can be imposed on an underpayment of taxes that results from improper management and administrative expenses incurred.

5.7 Restraints on Related-Party Borrowing

The Code and tax regulations contain rules that broadly impact on the tax treatment of certain related-party debt issued by US corporate borrowers to certain related parties (including non-local affiliates) (Debt Recast Rules). Generally, the intention of these rules is to prevent erosion of the US tax base through placement of debt owed by a US corporation to a foreign affiliate; and, if applicable, they have the effect of recharacterising certain related-party debt as equity to eliminate US tax deductions on interest payments.

The Debt Recast Rules generally apply to debt issued in connection with certain enumerated transactions (Specified Transactions). Specified Transactions include:

- distributions within an expanded group;
- asset acquisitions from within the expanded group; and
- stock acquisitions within the expanded group.

In addition, the Debt Recast Rules also contain certain presumptions (such as related to the per se funding rule) that further expand the scope and applicability of the Debt Recast Rules. While the Debt Recast Rules are exceedingly complex, it should be noted that they contain many material exceptions that can mitigate or prevent the applicability of such rules in a broad range of cases.

6. Taxation of Foreign Income of Local Corporations

6.1 Foreign Income Exemptions

The USA taxes its citizens and residents (including domestic corporations) on their worldwide income directly earned from whatever source derived, which is generally taxed at a 21% rate (see 1.4 **Applicable Corporate and Individual Tax Rates**). As described in later sections (see 6.3 **Dividends From Foreign Subsidiaries**), a special set of rules applies to income

earned through a foreign subsidiary. That said, the USA generally permits an FTC (or deduction) against US income tax for taxes that are properly paid to other countries on income sourced to such other countries (see 2.3 **Special Incentives**).

In addition, US taxpayers are generally permitted to utilise foreign losses to offset US-source income subject to certain recapture rules (see 6.2 **Non-Deductible Local Expenses**). The USA's "worldwide" system of taxation is in stark contrast to many foreign jurisdictions that impose a territorial tax regime, which generally excludes (or exempts) the profits earned by non-local companies.

6.2 Non-Deductible Local Expenses

The USA generally taxes US persons on their worldwide income, including their foreign taxable income. If a taxpayer's losses (including deductions and expenses) from foreign sources exceed its foreign-source income, the excess, which is referred to as an overall foreign loss, can be used to reduce US-source income and, as such, the effective rate of tax on such income. In a subsequent year, however, the full allowance of an FTC may result in a double-tax benefit. To eliminate this benefit, foreign losses (claimed in a prior year) are recaptured by treating a portion of the foreign-source income in the later year as US-source income.

6.3 Dividends From Foreign Subsidiaries

When a CFC makes a distribution to its US shareholder, the nature and character of that distribution must be determined. Specifically, whether the CFC has any E&P must be determined, as must the character of the E&P. If E&P exists, a distribution is generally sourced from the CFC in the following order:

- previously taxed E&P (PTEP) (ie, the E&P of a CFC attributable to income that has already been included in the gross income of a US shareholder);
- not previously taxed E&P (non-PTEP) (ie, the E&P of a CFC that has not been included in a US shareholder's gross income);
- return of capital; and
- capital gain.

Generally, PTEP distributions are excluded from a shareholder's gross income. However, a US share-

holder must reduce its basis in its CFC stock by the amount of such PTEP distribution and, if a PTEP distribution exceeds stock basis, the excess results in capital gain. In contrast, non-PTEP distributions are included in a shareholder's gross income.

Notably, however, certain corporate shareholders may be eligible for a full dividends-received deduction (DRD) provided certain requirements are satisfied. The DRD, however, is not permitted for dividends received from tax-exempt organisations, certain entities subject to specialised tax regimes, or for certain hybrid dividends (or if certain holding period requirements are not satisfied). A "return of capital" distribution is not a taxable event to the recipient US shareholder.

Finally, if a distribution exceeds the amount of non-PTEP and the US shareholder's basis in its CFC stock, any excess generally gives rise to a capital gain.

6.4 Taxation of Intangibles Developed by Local Corporations

The use of intangible property (including transfers or licences of such intangible property) is subject to US transfer pricing principles and other provisions of the Code (see 4.4 **Transfer Pricing Issues for Inbound Investors** and 5.5 **Formula-Based Income Attribution**), which require that arm's length compensation and/or consideration be furnished. Regarding transfers or licences of intangible property, the income must be commensurate with the income attributable to the intangible. In this regard, the IRS has authority to mandate the method used to value transfers of intangible property (in the context of outbound transfers and intercompany pricing allocations) as well as to require that the valuation of such transfers be made on an aggregate basis (or on the basis of the realistic alternative principle if the IRS determines that such method constitutes the most reliable means of valuation of such transfers).

Certain special rules apply for outbound transfers of intangible property (eg, intellectual property) by a US person to a foreign corporation in certain specified transactions. Generally, under these rules, when a US person transfers intangible property to a foreign corporation in an otherwise tax-free exchange under US tax law, the US transferor is treated as having sold

the intangible property in exchange for annual royalty payments over the useful life of the intangible property (or a lump sum payment in the case of a disposition of the intangible property following the initial outbound transfer). The US transferor treats such annual inclusion and lump sum as ordinary income and royalties for purposes of determining source and the FTC limitation category.

6.5 Controlled Foreign Corporation-Type Rules

A foreign corporation is a CFC if US shareholders (ie, US resident persons that directly, indirectly or constructively own at least 10% of the vote or value of the foreign corporation) own stock that represents more than 50% of the vote or value in such corporation. The two major consequences of CFC classification are that its 10% US shareholders must include in income:

- their pro rata share of the CFC's "subpart F income" (generally passive-category income such as dividends, interest, royalties, capital gains or "foreign base company income"); and
- their net CFC tested income (CFC Tested Income), which is generally the excess of the shareholders' pro rata share of the CFC's gross income (reduced by certain items).

US corporations are generally taxed on CFC Tested Income at a preferential tax rate of 12.6% starting in 2026, and amounts taken into account in determining subpart F income are disregarded in calculating CFC Tested Income.

Effective 1 January 2026, if a foreign corporation is not treated as a CFC under the rules described above but would be a CFC using expanded attribution-of-ownership rules, then US resident persons that own, using those expanded attribution-of-ownership rules, more than 50% of the vote or value of such foreign corporation are generally taxed as if such foreign corporation were a CFC.

In addition, a foreign corporation with predominantly passive-category income or assets may be classified as a "passive foreign investment company" (PFIC), which may subject its owners to several onerous con-

sequences, but which may generally be ameliorated by certain elections.

The USA imposes worldwide taxation on US business entities, and a foreign branch is not considered an entity separate from its owner. As such, foreign branch income is deemed to be derived directly by its US corporate owner and is subject to corporate income tax on a net basis. Branch income is generally determined based on the income reflected in the foreign branch's separate books and records, and the US home office is allowed an FTC on taxes paid in the branch's jurisdiction (subject to certain limitations and "basketing" rules).

6.6 The Substance of Non-Local Affiliates

There are various US judicially developed doctrines that are designed to look beyond the form of a transaction and disallow otherwise applicable tax benefits if the transaction violates the spirit of the law (see 7.1 **Overarching Provisions**). Furthermore, the limitation on benefits and other anti-treaty shopping provisions contained in US tax treaties generally look at the "substance" of a non-local affiliate in such jurisdiction in determining whether the benefits afforded by such treaty may apply (see 4.3 **Tax Authority Scrutiny of "Treaty Shopping" Practices**).

6.7 The Sale of Shares in Non-Local Affiliates

A US corporation that is a US shareholder of a CFC will recognise a portion of any gain on the sale or exchange of stock in a CFC as a dividend, generally to the extent of the E&P in the CFC that are attributable to the stock sold or exchanged. In the case of the sale or exchange by a US corporation of stock in CFC held for one year or more, any amount received by the US corporation that is treated as a dividend may also qualify for exemption under the DRD rules (see 6.3 **Dividends From Foreign Subsidiaries**) to the extent that the sale does not result in an "extraordinary reduction" under the applicable rules. In the case of an extraordinary reduction, certain elections can be made (either solely by a buyer of the CFC stock or by both the buyer and the US shareholder of the CFC) to ensure qualification for the exemption under the DRD rules.

Furthermore, if a CFC sells or exchanges stock of a lower-tier CFC and any gain is treated as a dividend (similar to the rules noted above), the foreign-source portion of that dividend will be treated as subpart F income of the selling CFC for which a US shareholder may be permitted a DRD.

7. Anti-Avoidance Provisions

7.1 Overarching Provisions

There are various judicially developed doctrines that are comparable to a general anti-abuse rule, such as the "substance over form", "step transaction", "economic substance", "business purpose" and "sham transaction" doctrines. All these doctrines generally serve a similar purpose: to look beyond the form of a transaction and disallow otherwise applicable tax benefits if the transaction violates the spirit of the law. In addition, the economic substance doctrine was added to the Code and carries with it a 20% non-compliance penalty, which can be increased to 40% if the transaction is not properly disclosed.

Apart from the judicially developed doctrines described above, there are various statutory and regulatory provisions that provide anti-avoidance rules. Recently, the IRS released separate guidance imposing anti-avoidance-related party basis adjustment rules in the context of partnership acquisitions, and re-affirming the IRS' sentiments regarding the realisation of tax benefits upon the acquisition of control of a corporation, which, in each case, further highlight the IRS' attitudes regarding transactions where otherwise applicable tax benefits would have been realised.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

The Code requires that the IRS assess, refund, credit and collect taxes within specific time limits, known as the statute of limitations. When the statute of limitations expires, the IRS can no longer assess additional tax, allow a claim for refund by the taxpayer or take collection action. The determination of statute expiry differs for assessment, refund and collection.

The basic rule is that the IRS generally has three years after a return is filed to “assess” tax and begin any court proceeding, though numerous exceptions exist that provide more time for the IRS (ie, six years or longer). For example, the IRS has six years to audit a return if a taxpayer omitted more than USD5,000 in income attributable to specified foreign financial assets and, notably, no time limits apply in situations where a taxpayer either failed to file or fraudulently filed tax returns. The filing of a tax return is generally the event that triggers the running of the statute of limitations on assessments. Once a tax assessment is made, the IRS generally has ten years to collect an assessed liability (subject to certain extensions).

9. BEPS

9.1 Adoption of BEPS Recommendations

The OECD BEPS project has been continuously evolving to develop an agreement on a two-pillar approach to help address tax avoidance, and ensure coherence of international tax rules and a more transparent tax landscape. Pillar One, which applies to large multinationals, will reallocate certain amounts of taxable income to certain impacted jurisdictions, resulting in a change in effective tax rate and cash tax obligations, as well as impacting on transfer pricing arrangements. Pillar Two, in contrast, aims to ensure that income is taxed at an appropriate rate and has several mechanisms to ensure that tax is paid.

In 2017, the USA enacted legislation generally intended to be consistent with the recommendations in the two final reports under Action 2 of the BEPS project. This legislation, and the tax regulations issued thereunder, generally neutralise double non-taxation effects of:

- inbound dividends involving hybrid arrangements, by either denying a participation exemption or requiring domestic inclusion (depending on whether the hybrid dividend is received by a domestic corporation or a CFC); and
- outbound deductible interest or royalty payments that produce a deduction/no inclusion outcome owing to hybridity by disallowing such deduction.

In addition, the USA enacted the BEAT, which targets base erosion by imposing additional tax on certain large US corporations that make deductible payments to foreign related parties. Such additional tax is designed as a 10% minimum tax (scheduled to increase to 12.5% in 2025) imposed on modified taxable income.

The USA also enacted a limitation on the deductibility of interest expense (which, very generally, is limited to 30% of EBITDA) and country-by-country reporting consistent with the BEPS recommendations, and has the limitation on benefits article in most of its income tax treaties. Finally, it should be noted that the USA recently enacted a new 15% corporate minimum tax based on financial statement income (see **1.4 Applicable Corporate and Individual Tax Rates**).

The USA is still working on finalising tax regulations under the various tax provisions enacted in 2017, many of which are consistent with the BEPS recommendations. More recent legislative proposals (generally modifying the provisions introduced in 2017 and/or aligning with the minimum tax and undertaxed profits rules under Pillar Two of BEPS) have not been adopted. It is worth noting that, in the context of Pillar Two’s implementation guidance, following the USA’s agreement with the G7 countries to exempt US companies from key aspects of Pillar Two (eg, the undertaxed profits rules and the income inclusion rule), the OECD issued a “Side-by-Side Package”. This package includes a number of items, including a side-by-side regime that may effectively shield US-based multinational companies from the application of the global minimum tax rules (eg, the income inclusion rule and the undertaxed profits rule) beginning in 2026.

9.2 Government Policy and Objectives Approach

While the USA generally agrees that the issues addressed by BEPS (both as related to Pillars One and Two) should be remedied (which, as discussed in this chapter, the USA has taken great strides towards implementing – see **9.1 Adoption of BEPS Recommendations**), the implementation of Pillar Two in the USA remains stalled. Passage of law to align the US international tax regime with Pillar Two appears unlikely, especially given President Trump’s Executive Order

to notify the OECD that any commitments related to BEPS (among other things) have no force or effect, another Trump Executive Order which provides for potential retaliatory measures against countries and their citizens that impose “discriminatory” or “extra-territorial” taxes on US citizens or corporations, and the recent deal of the USA with the G7 to exempt US companies from certain aspects of Pillar Two.

Additionally, early drafts of the One Big Beautiful Bill Act included a provision (referred to as “Section 899”) that required an increase in tax rates, removal of certain tax exemptions, and other retaliatory measures on countries (and such countries’ residents) that have “extraterritorial” or “discriminatory” taxes. Section 899 was understood to target taxes such as Pillar Two’s undertaxed profits rule, digital services taxes (DSTs), and other similar taxes. This retaliatory provision was not included in the final One Big Beautiful Bill Act in response to the deal with the G7, but Section 899 or a similar provision could be enacted in future legislation depending on the implementation of the G7 deal and the OECD’s Side-by-Side Package.

The implementation of Pillar Two taxes and the Side-by-Side Package abroad could have a significant impact on US-based multinational companies.

9.3 International Tax

Owing to substantial activity by US multinationals and the overall strength of the US economy, international tax has a high public profile in the USA. This is evidenced by President Trump’s Executive Orders, which renege on commitments to the OECD and provide for the potential use of a Code provision, never used before, to support any retaliatory tax, which could include the doubling of certain tax rates, the proposal of Section 899, the recent deal of the USA with the G7 regarding Pillar Two, and the OECD’s Side-by-Side Package.

Additionally, given the stance of the current Trump administration regarding tariffs, it is possible that international tax will remain at the forefront of US political and economic consciousness, and the structuring of cross-border transactions could be of further import as both US and non-US companies navigate this new landscape.

9.4 Competitive Tax Policy Objectives

The US government’s main goal is to prevent other countries from taxing what it views as “its” tax base through the BEPS initiative (see **9.2 Government Policy and Objectives Approach**). In this respect, the USA is already balancing its competitive policy objectives against the pressures that BEPS will bring in its wake, so as to ensure that US interests, and more specifically its tax base, are appropriately safeguarded. Under the Trump administration and following the OECD’s Side-by-Side Package, it remains to be seen how likely the USA is to continue engaging with the international community to help address tax avoidance and ensure coherence of international tax rules (see 9.3 International Tax).

9.5 The Competitive Tax System

While the US tax system provides many benefits for companies operating in its borders (as discussed throughout this chapter), a major drawback to the US system is its overall complexity. Specifically, the current tax law was not enacted all at once but is a result of numerous provisions added or subtracted in multiple tax bills. Often, Congress designs legislation under self-imposed constraints, such as short-term revenue goals or effects on the distribution of tax burdens among income groups. For example, the hybridity of the US international system may be seen as more vulnerable, given its complexity. Such complexity in itself can be viewed as a deterrent to cross-border investment. Another element of this complexity is the myriad laws that separately apply at the state and local level, which may or may not conform to federal provisions.

9.6 Hybrid Instruments and BEPS Implementation

The 2017 tax reform introduced two “anti-hybrid” rules that generally deny US tax deductions in certain situations involving entities and payments of interest, royalties or dividends, if such entities or payments are treated differently under US and foreign tax laws and such different treatment results in double taxation (see **2.5 Deduction of Interest**). The amendments made to the Code were a direct response to Action 2 of the OECD BEPS Project designed to address hybrid and branch mismatch arrangements.

9.7 Interest Deductibility and Territorial Tax Regime

The USA does not have a territorial tax regime. That said, for tax years beginning on or after 1 January 2018, US international taxation has shifted to a more “hybrid” system that exempts some foreign-source income (foreign-source dividends and certain returns on foreign asset investments), but that currently taxes, at reduced rates, a much broader scope of previously deferred foreign profits (see **6.5 Controlled Foreign Corporation-Type Rules**) while also enacting new provisions (and regulations) designed to curtail certain types of base erosion payments. These include the following:

- the BEAT (see **9.1 Adoption of BEPS Recommendations**);
- anti-hybrid rules (see **2.5 Deduction of Interest**);
- limitations on interest deductibility (see again **2.5 Deduction of Interest**); and

the Debt Recast Rules (see **5.7 Restraints on Related-Party Borrowing**).

9.8 Controlled Foreign Corporation Reform

The USA does not have a territorial tax regime (see **9.7 Interest Deductibility and Territorial Tax Regime**) and already has a CFC regime in place (see **6.5 Controlled Foreign Corporation-Type Rules**).

9.9 Anti-Avoidance Rules

DTC limitation on benefit or anti-avoidance rules are not likely to have an impact. As discussed previously, most US income tax treaties already include a “limitation on benefits” article, and also contain various other anti-treaty shopping provisions (see **4.3 Tax Authority Scrutiny of “Treaty Shopping” Practices**).

9.10 Transfer Pricing and IP Taxation

The transfer pricing changes introduced by BEPS are generally consistent with the US transfer pricing rules and regulations; however, they do diverge in some respects (see **4.6 Local Transfer Pricing Rules and OECD Standards**). For intellectual property, it is worth noting that the BEPS proposals place significantly more emphasis on the “economic ownership” of intangible assets, which contrasts with the US position that focuses more on “legal ownership”.

9.11 Country-by-Country Reporting and Transparency Provisions

The authors are not currently in favour of such provisions. Although the USA issued tax regulations requiring country-by-country reporting by US multinational enterprises, the information the government obtains is strictly confidential and used solely for tax purposes.

9.12 Digital Economy Businesses

A number of countries have reached an agreement with the USA as to the treatment of their existing DSTs, pending the implementation of Pillar One. This is known as the Unilateral Measures Compromise. This compromise, which was agreed upon by the USA, Austria, France, Italy, Spain, the United Kingdom, Turkey and India, covers the interim period between January 2022 and the earlier of either the date Pillar One formally takes effect or 31 December 2023.

Notably, under the compromise, these countries can keep their existing DSTs in place until the implementation of Pillar One; however, corporations (primarily US multinational corporations) that are subject to DSTs may receive a tax credit against future tax liabilities. While the USA had agreed to terminate certain punitive trade actions against such countries in light of the compromise, sentiments under the Trump administration have changed drastically from the prior Biden administration. It is possible that DSTs, in light of President Trump’s Executive Orders and the proposal of Section 899, could be an “extraterritorial” or “discriminatory” tax subject to US retaliation; however, the interaction of such retaliatory tax in light of the complex web of US tax treaties remains uncertain (see **9.3 International Tax**).

9.13 Approach to Digital Services Taxation

The USA opposes unilateral action to tax digital presence (see also **9.12 Digital Economy Businesses**).

9.14 Offshore IP Provisions

Though such provisions have been introduced, much of the focus in the USA relates to “outbound” transfers of intellectual property, and as discussed previously, the use of intangible property (including transfers or licences of such intangible property) is subject to US transfer pricing principles and other provisions of the Code, which generally require the arm’s length stand-

ard to be satisfied (see **6.4 Taxation of Intangibles Developed by Local Corporations**). Accordingly, in the USA the consideration paid for an intangible asset (or use of an intangible asset) will be evaluated consistent with the statutory requirement that the consideration be commensurate with the income derived from exploitation of the intangible.

For US transfer pricing purposes, the owner of legally protected intangibles is the legal owner. However, in the case of non-legally protected intangibles, the owner is the party with “practical control” over the intangible (ie, the party that possesses legal ownership under intellectual property law or that holds rights constituting an intangible pursuant to contractual terms (such as a licence). When the legal ownership standard is inconsistent with “economic substance”, these rules may be dismissed, and the substance of the overall arrangement is given effect.

Trends and Developments

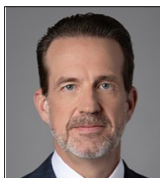
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On 3 July 2025, the US Congress passed the One Big Beautiful Bill Act (OBBA) and President Trump signed the OBBA into law on 4 July 2025. The OBBA is sweeping tax and spending legislation that, from a tax perspective, extends a number of expiring provisions from the 2017 Tax Cuts and Jobs Act (TCJA) and introduces or amends a number of individual tax provisions, international tax provisions, state and local tax deductions, and energy transition tax credits. These changes indicate that the tax structure in the USA is in flux and remains at the forefront of US political and economic consciousness. We highlight various key domestic and international tax changes below.

US International Tax Provisions

The US international tax provisions of the OBBA generally include removing certain CFC-related deferral provisions, fixing an attribution rule from the TCJA, adjusting the calculation of certain anti-deferral and anti-abuse rules from the TCJA, and making permanent a CFC look-through rule.

Modification of CFC pro rata share rules and removal of CFC one-month deferral election

Prior law allowed US shareholders of 10% or more of the stock of a controlled foreign corporation (CFC) to defer income under the Subpart F regime (ie, the anti-deferral regime applicable to passive income and easily movable income of a CFC) by only requiring such shareholders to include Subpart F income if they held stock in a CFC on the last day of the CFC's taxable year. Thus, midyear ownership changes generally resulted in tax deferral to a selling US shareholder. The OBBA requires a US shareholder to pick up its pro rata

share of Subpart F income if it owned CFC stock on any day of the CFC's tax year.

Prior law included an election that allowed deferral by granting a CFC the right to elect a taxable year ending one month earlier than that of its majority US shareholders (ie, US shareholders who own 50% or more of a CFC by vote or value). This allowed, particularly in the context of the TCJA's changes to the US approach to international tax, a significant potential deferral of tax on the income of such CFC. The OBBA removes this election.

Downward attribution fix

The TCJA repealed a rule (former Section 958 (b)(4) of the Internal Revenue Code) preventing downward attribution of stock owned by a foreign person to a US person. The TCJA removed this rule in an attempt to limit certain transactions meant to de-control CFCs (ie, which would remove their status as CFCs). This attempt to preclude de-controlling transactions had significant unintended consequences. For example, if a foreign parent group of corporations also included a subsidiary that was a US corporation, then the removal of this rule caused such US corporation's brother/sister foreign corporations to be treated as CFCs. Such proliferation of CFC status causes unnecessary taxation (and administrative costs and risk) for CFCs unrelated to such CFCs' own US shareholders within a foreign parent group.

The OBBA restores former Section 958 (b)(4) so foreign groups now are less likely to have unintended US CFC status and Subpart F taxation.

The OBBA also adds a new Section 951B which captures and imposes the CFC rules on certain foreign-controlled US shareholders and certain related foreign corporations (referred to as foreign-controlled foreign corporations or F-CFCs) that is intended to prevent the transactions that the original repeal of Section 958 (b)(4) was attempting to address.

CFC Look-through Rule

In welcome removal of uncertainty, the OBBA makes permanent a rule (in Section 954 (c)(6)) that exempts payments of dividends, interest, rents, and royalties between CFCs from immediate taxation under the Subpart F regime.

Global Intangible Low-Tax Income (GILTI) changed to Net CFC Tested Income (NCTI)

Introduced in the TCJA, GILTI is a US tax regime that was designed to discourage US multinationals from shifting profits to low or no-tax jurisdictions. While maintaining the principal framework of this regime, the OBBA makes some significant changes. More specifically, the OBBA:

- renames the regime to NCTI and reduces it to a permanent 40% deduction (down from the prior 50% rate) thus yielding a 12.6% effective tax rate (before taking into account foreign tax credits (FTCs) and limitations on FTCs);
- increases allowable indirect FTCs to 90% (up from 80%);
- limits the expenses allocable to the NCTI calculation (eg, no longer apportioning interest expense and certain research and experimental costs) generally resulting in more FTCs being usable to reduce NCTI liability;
- removes an exclusion from the GILTI calculation for a deemed return on a CFC's tangible assets – resulting in an increase of taxable NCTI for taxpayers that own CFCs with material fixed assets; and
- applies to tax years beginning in 2026.

FDII changed to FDDEI

The foreign-derived intangible income (FDII) deduction was a TCJA tax incentive designed to encourage US multinationals to produce foreign income from the sale of goods or services tied to US intangibles. The OBBA:

- renames this deduction foreign-derived deduction-eligible income (FDDEI) and reduces the deduction from 37.5% to 33.34% (although the deduction was set to be reduced further under the TCJA for tax years beginning after 31 December 2025);
- eliminates a reduction of deduction-eligible income for a deemed return on tangible assets – resulting in an increase in the income eligible to be reduced by the deduction; and
- limits the expenses allocable to the FDDEI calculation (eg, no longer apportioning interest expense and certain research and experimental costs) – resulting in an increase in the amount of income eligible for reduction by the deduction.

Base Erosion Anti-Abuse Tax (BEAT) rate is increased to 10.5%

The BEAT is a provision from the TCJA that imposes an additional tax to the extent an applicable taxpayer's modified taxable income (MTI) exceeds 10% of its regular tax liability (reduced by certain tax credits). The 10% threshold by which a taxpayer's MTI is measured was set to increase to 12.5% beginning in 2026. The OBBA sets the BEAT rate permanently to 10.5% – a net positive for BEAT taxpayers who avoid the 12.5% scheduled increase.

The Revenge Tax – Proposed (and Withdrawn) Section 899

Early drafts of the OBBA included a provision (referred to as “Section 899”) that required an increase in tax rates, removal of certain tax exemptions, and other retaliatory measures on countries (and such countries' residents) that have “extraterritorial” or “discriminatory” taxes. Section 899 was understood to target taxes such as Pillar Two's undertaxed profits rule, digital services taxes (DSTs), or diverted profits taxes. Section 899 would have increased tax rates incrementally by five percentage points in each taxable year until reaching a cap of 15 or 20 percentage points.

This retaliatory provision was not included in the final OBBA in response to the deal with the G7 countries to exempt US companies from key aspects of Pillar Two (eg, the undertaxed profits rules and the income inclusion rule). Furthermore, the OECD recently issued a “Side-by-Side Package” following the USA's agreement with the G7 countries. This package includes

a number of items, including a side-by-side regime that may effectively shield US-based multinational companies from the application of the global minimum tax rules (eg, the income inclusion rule and the undertaxed profits rule) beginning in 2026. However, Section 899 or a similar provision could be enacted in future legislation depending on the implementation of the G7 deal and the Side-by-Side Package.

Other Tax Provisions Relevant to Businesses

Expansion of tax base for business interest limitation

The TCJA added a provision limiting the amount of net business interest expense that a taxpayer can deduct. The limitation on this deduction was set at 30% of a taxpayer's adjusted taxable income (ATI). Prior to 2022, ATI was defined as a company's earnings before interest, taxes, deductions, and amortisation expenses (EBITDA). After 2022, the definition was changed to only earnings before interest and taxes (EBIT).

The OBBA restores EBITDA as the definition of ATI, which provides taxpayers with a wider income base to determine the ceiling for the permitted interest expense deduction. Notably, the OBBA excludes certain foreign income amounts from the limitation (Subpart F income, NCTI, and any gross-ups for deemed paid FTCs).

Bonus depreciation and research and development (R&D) expense deductions are made permanent

The OBBA restores and makes permanent a 100% bonus depreciation deduction for qualifying property. Qualifying property generally includes tangible property that is used in a trade or business or for the production of income. This provides an incentive, through immediate tax savings, for taxpayers to invest in qualified property.

The OBBA makes permanent a provision that allows domestic R&D expenses paid or incurred in taxable years beginning after 31 December 2024, to be:

- immediately 100% deductible or
- deductible over a period of not less than 60 months starting from the first month the taxpayer benefits from such R&D expenses.

Notably, foreign R&D expenditures will continue to be amortised over 15 years.

Qualified business income deduction made permanent

Under the TCJA, certain taxpayers that operated businesses through a pass-through entity (ie, a fiscally transparent entity) were able to deduct up to 20% of qualifying business income (generally net income from certain domestic trades or businesses). This deduction was set to expire at the end of 2025, but the OBBA makes it permanent.

Energy Transition and Credit Provisions

The Inflation Reduction Act of 2022 (IRA) significantly expanded the energy transition tax credits available in the US by extending existing energy transition tax credits and creating various new credits and bonus credits. In a significant policy reversal, the OBBA curtails and, in some cases, eliminates many of these energy transition tax credits.

Early termination for solar and wind credits

Under prior law, solar and wind projects were eligible for energy transition tax credits with a long runway. Production tax credits (PTCs) and investment tax credits (ITCs) were available for all clean electricity project types (including solar and wind) that began construction during or after 2025 with phasedown (at the earliest) for projects that begin construction after 2033. Under the OBBA, the solar and wind project credits are subject to early termination. More specifically, such projects that begin after 4 July 2026 must now be placed in service by the end of 2027.

PTC and ITC largely unchanged for other project types

Other renewable electricity technologies (nuclear, hydropower, geothermal) continue to have a long runway. These project types continue to have the benefit of an extended phasedown that provides:

- 75% credit for projects that begin construction in 2034;
- 50% credit for projects that begin construction in 2035; and
- 0% credit for projects that begin construction after 31 December 2035.

Energy storage remains eligible to receive an ITC on this same phasedown schedule even if it is co-located with a solar or wind project.

Advanced manufacturing production credit

The IRA introduced an advanced manufacturing production credit available for the production and sale of solar components, wind components, battery components, and critical minerals that are produced in the USA. The OBBA makes several surgical amendments to the advanced manufacturing production credit including:

- terminating the credit for wind components after 2027 (previously did not begin scheduled phasedown until 2030);
- subjecting the credit for critical minerals to a new scheduled phasedown starting in 2031 (previously no scheduled phasedown); and
- introducing a new credit for metallurgic coal produced through the end of 2029.

Clean fuel production credit

The IRA introduced a new tax credit that is generally available for clean transportation fuel that is produced and sold to unrelated buyers. This credit was originally scheduled to expire at the end of 2027, but the OBBA extends it to the end of 2029.

Hydrogen PTC

Under prior law, the clean hydrogen PTC was available for facilities that begin construction before 2033. Early versions of the OBBA would have terminated this credit for projects that began construction after the end of 2025; however, the final version of the OBBA extended the termination date. Facilities that begin construction before 2028 will remain eligible for the credit, giving hydrogen developers an additional two years to start construction on early-stage projects.

No repeal of energy credit transferability

A taxpayer (other than certain tax-exempt entities) claiming an energy transition tax credit can generally transfer the credit for cash to an unrelated person. While an early version of the OBBA sought to terminate transferability (with multiyear transition rules), the final version of the OBBA does not limit, curtail, or terminate the right of transferability.

Foreign entity provisions

The OBBA introduces certain owner-level limitations on the availability of certain energy tax credits for projects with ownership from certain foreign countries (eg, China, North Korea, Russia, and Iran). For example, credits are disallowed for most energy transition tax credits if:

- a project owner has certain levels of Chinese ownership (generally 25% ownership by a single entity or 40% aggregate ownership by multiple entities); or
- a Chinese entity has effective control (via contractual relationship) of a clean electricity project, energy storage project, or manufacturing operation.

Additionally, credits are disallowed if a clean electricity project, energy storage project, or eligible component includes an impermissible level of Chinese materials.

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