
CHAMBERS GLOBAL PRACTICE GUIDES

International Tax 2026

Definitive global law guides offering
comparative analysis from top-ranked lawyers

**USA: Law and Practice
& Trends and Developments**
Devon M. Bodoh, Joseph M. Pari
and Blake D. Bitter
Weil, Gotshal & Manges LLP





Law and Practice

Contributed by:

Devon M. Bodoh, Joseph M. Pari and Blake D. Bitter
Weil, Gotshal & Manges LLP

Contents

1. Sources and Principles p.4

- 1.1 Domestic Sources of International Tax Law p.4
- 1.2 Hierarchy of Sources p.4
- 1.3 OECD Model/United Nations Influence on Treaty Practice p.4
- 1.4 Multilateral Instrument p.5

2. Territoriality, Residence and Permanent Establishment p.5

- 2.1 General Principle of Territorial Taxation p.5
- 2.2 Tax Residence of Individuals p.5
- 2.3 Taxation of Resident Individuals p.5
- 2.4 Taxation of Non-Resident Individuals p.6
- 2.5 Tax Residence of Legal Entities p.6
- 2.6 Definition of Permanent Establishment p.6

3. Taxation of Cross-Border Income p.7

- 3.1 Income From Immovable Property p.7
- 3.2 Business Profits p.7
- 3.3 Passive Income p.8
- 3.4 Capital Gains p.8
- 3.5 Employment Income p.8
- 3.6 Other Income p.9

4. OECD/G20 Global Tax Reform p.9

- 4.1 Pillar One – Amount B p.9
- 4.2 Pillar One – Amount A p.9
- 4.3 Pillar Two p.9
- 4.4 Specific Features or Deviations of Pillar Two p.10
- 4.5 Digital Services Tax p.10

5. Anti-Avoidance and Anti-Evasion Measures p.10

- 5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes p.10
- 5.2 Anti-Avoidance Mechanisms p.11
- 5.3 Blacklists and Non-Cooperative Jurisdictions p.11
- 5.4 Reporting Obligations and Disclosure Regimes p.11
- 5.5 Role of Tax Authorities and Enforcement Measures p.11

6. Penalties and Sanctions p.12

- 6.1 Tax Penalties p.12
- 6.2 Criminal Penalties p.12
- 6.3 Interaction Between Tax and Criminal Procedures p.12

7. Administrative Co-Operation p.13

- 7.1 Legal Framework for Administrative Co-Operation p.13
- 7.2 Exchange of Information Clauses in Tax Agreements p.13
- 7.3 Other Forms of International Tax Collaboration p.13

8. Mutual Agreement Procedures and Arbitration p.13

- 8.1 Availability and Legal Basis p.13
- 8.2 Application Deadlines p.13
- 8.3 Mandatory Binding Arbitration p.13

9. Dispute Prevention p.13

- 9.1 Advance Pricing Agreements p.13
- 9.2 Other Mechanisms p.14

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.

Authors



Devon M. Bodoh is a partner in Weil Gotshal & Manges LLP's tax department and is based in Miami and Washington, DC. Devon is the head of the firm's international and cross-border tax practice, a member

of the tax department's leadership team and managing partner of the Miami office. He advises clients on cross-border mergers, acquisitions, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, the use of net operating losses, foreign tax credits, and other tax attributes and consolidated return matters. Devon is recognised as a leading lawyer by Chambers USA.



Joseph M. Pari is co-chair of Weil, Gotshal & Manges LLP's tax department and is based in New York and Washington, DC. He has extensive experience in advising on federal income taxation of domestic

and cross-border mergers, acquisitions, spin-offs, other divestiture types, restructurings, bankruptcy and non-bankruptcy workouts, acquisition financing and the use of pass-through entities in acquisitive and divisive transactions, with an emphasis on corporate tax planning, the utilisation of net operating losses, and other tax attributes and consolidated return matters. Joseph has been recognised as a leading lawyer by Chambers USA and Chambers Global.



Blake D. Bitter is counsel in Weil, Gotshal & Manges LLP's tax department and is based in Washington, DC. He advises clients on tax aspects on a variety of US and cross-border transactions, including

corporate acquisitions and mergers, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, and consolidated return matters.

Weil, Gotshal & Manges LLP

2001 M Street NW
Suite 600
Washington, DC 20036
USA

Tel: +1 202 682 7000
Web: www.weil.com



1. Sources and Principles

1.1 Domestic Sources of International Tax Law

The US constitution governs all sources of US law and the US Constitution, acts of congress (ie, US federal legislation) and treaties (negotiated by the executive branch and approved by the US senate) are the “supreme Law of the Land”. Accordingly, the principal sources of US international tax law are the Internal Revenue Code of 1986, as amended (the “Code”) and income tax treaties. The US Treasury Department (the “Treasury”) and the Internal Revenue Service (the “IRS”), which is a government agency within the Treasury, also implement and interpret the Code and income tax treaties by issuing regulations (“Treasury Regulations”) and other administrative guidance (eg, revenue rulings, notices, technical memorandums). The Treasury Regulations have broad application while other administrative guidance may only reflect the current position of the IRS with respect to the interpretation or application of the Code or Treasury Regulations.

In addition to the legislative and administrative sources of US tax law, case law from US federal courts is also a source of tax law as such courts interpret and apply the US Constitution, the Code and treaties. As the courts apply the US Constitution and interpret and apply other sources of US tax law, the courts and case law may override and invalidate legislation, Treasury Regulations, or other administrative guidance.

The US currently has 58 income tax treaties covering 66 jurisdictions. Three income tax treaties are current-

ly awaiting US senate approval; specifically treaties with Hungary (replacing a terminated treaty), Poland (replacing a treaty in force) and Vietnam (entering into a treaty for the first time).

1.2 Hierarchy of Sources

The US Supreme Court has held that when US federal law or a treaty conflict with the US Constitution, the US Constitution prevails. US federal legislation (ie, the Code) and income tax treaties are on equal footing under the US Constitution and, accordingly, a later-in-time rule generally applies. Nevertheless, US courts first attempt to interpret the law to give effect to both the US federal law and a treaty. Although widely believed not to be required, some courts appear to require a clear and manifest legislative intent to override a treaty with US federal law.

1.3 OECD Model/United Nations Influence on Treaty Practice

US treaties do not generally follow the OECD Model Convention or the UN Model Double Taxation Convention. The US uses its own model treaty, the current iteration of which was issued in 2016 (the “2016 Model Treaty”). However, the 2016 Model Treaty was originally developed from the OECD Model Convention and generally parallels its purpose and structure. Similar to the OECD Model Convention, the 2016 Model Treaty’s underlying policy is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

Despite the similarities between the 2016 Model Treaty and the OECD Model Convention, there are important differences. For example, a person other

than an individual that is a resident of both contracting states is treated as not being a resident of either contracting state for the purposes of claiming treaty benefits under the 2016 Model Treaty, but, under the OECD Model Convention, the competent authorities of the contracting states should endeavour to determine such person's residence by mutual agreement. Additionally, the 2016 Model Treaty (and most in-force US treaties) includes a limitation on benefits article to tackle treaty abuse, as opposed to the principal purpose test.

1.4 Multilateral Instrument

The US is not a signatory to the Multilateral Instrument (MLI).

2. Territoriality, Residence and Permanent Establishment

2.1 General Principle of Territorial Taxation

The US does not have a territorial tax regime and generally taxes its tax residents on their global income. However, for tax years beginning on or after 1 January 2018, the US has shifted its international taxation to a "hybrid" system that exempts some foreign-source income (eg, foreign-source dividends received by certain US corporations), but that currently taxes, at reduced rates, a much broader scope of previously deferred foreign profits while curtailing certain types of base erosion payments (through anti-hybrid rules, limitation on interest deductibility, rules that re-characterise certain debt as equity, and a specific base erosion minimum tax for certain deductible payments to foreign affiliates).

2.2 Tax Residence of Individuals

The US treats both its citizens and resident alien individuals as tax residents of the USA. Resident alien individuals are generally:

- lawful permanent residents (ie, US green card holders) as long as they hold that status; and
- individuals that are present in the USA for 31 days in the current year and 183 days during the current year and the two preceding years (taking into account a third of the days present in the first year prior to the current year and a sixth of the days

present in the second year prior to the current year).

2.3 Taxation of Resident Individuals

The US generally taxes individuals who are US tax residents on their worldwide income and such individuals are generally subject to income tax on such income on a net basis (ie, gross income minus certain deductions). The maximum income tax rate for individuals (including individuals invested in pass-through entities) that are US tax residents is 37%. Furthermore, certain US states and local governments levy income taxes on the same (or similar) income earned by such individuals. The rate of such additional taxes (if any) varies by state and the applicable local governments. Additionally, some US states and local governments may also levy an entity-level tax on a business entity notwithstanding its classification as a pass-through entity for US federal tax purposes.

Capital Gains

Gains from the disposition of capital assets held for more than one year (ie, long-term capital gains) are subject to preferential capital gains tax rates (generally 15% to 20% depending on income thresholds) and losses from the disposition of capital assets may offset capital gains and, if exceeding the amount of such gains, ordinary income up to USD3,000 per year. Any unused capital losses can generally be carried forward indefinitely. Gains from the sale of certain capital assets may also be subject to a 3.8% net investment income tax for residents whose annual income exceeds certain thresholds (generally USD200,000–250,000).

Dividends

Distributions by a corporation to individual shareholders are generally taxed as "dividends", to the extent that they are paid out of the corporation's current or accumulated earnings and profits ("E&P"). Dividends received from domestic and certain qualifying foreign corporations received by individual shareholders (referred to as "qualified dividends") may be taxed at a preferential tax rate (generally equivalent to long-term capital gains rates) 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 (which is generally taxed as capital gain).

2.4 Taxation of Non-Resident Individuals Dividends, Interest, Rents, Royalties, Etc

Non-US tax residents are generally taxed in the US on US-source dividends, interest, rents, royalties and other "fixed or determinable annual or periodic gains, profits and income" (collectively referred to as "FDAP"), that is, generally investment income associated with passive assets, as long as such income is not effectively connected with the conduct of a US trade or business or attributable to a permanent establishment. FDAP is subject to a 30% gross basis withholding tax if paid to a non-US tax resident, unless reduced by an applicable income tax treaty.

Capital Gains

Generally, capital gains from sales of stocks, bonds or other personal property by non-US residents are exempt from US taxation and withholding (because the residence of the seller generally determines whether such gain is foreign-sourced or US-sourced). Note that if a US office of the non-US tax resident plays a significant role in the acquisition or sale of such personal property, such activity can, in certain instances, cause what would be foreign-source income to be US-source income that may be subject to US income tax.

Sale of US Real Property

The sale or exchange of a US real property interest ("USRPI") by a non-resident individual is generally subject to tax under the Foreign Investment in Real Property Tax Act ("FIRPTA"). FIRPTA is enforced by a withholding regime that generally requires buyers to withhold 15% of the fair market value of the applicable USRPI from the purchase price. A USRPI includes an interest in the 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. 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 taxation and withholding. Publicly traded corporations are subject to certain exceptions from both the substantive tax and withholding requirements of FIRPTA.

2.5 Tax Residence of Legal Entities

The US generally determines tax residence of legal entities using a place-of-incorporation style rule. Under this rule, a legal entity that is created or organised in the US under the law of the US, any US state or the District of Columbia is generally treated as a US entity (ie, corporation, partnership, etc, as applicable).

2.6 Definition of Permanent Establishment

Under the Code, a non-US person (including an individual or entity) is generally subject to US federal income taxation to the extent that such person carries on a "trade or business" in the US. While the Code does not define what constitutes a US trade or business, the courts have generally found a US trade or business exists when a non-US person engages in activity in the US in pursuit of profit that is considerable, continuous, regular and substantial. Accordingly, the US trade or business definition can be interpreted rather broadly. However, certain activities are more specifically excluded from this definition under the Code, Treasury Regulations and case law. For example, trading in securities or commodities on a taxpayer's own behalf or through a broker is not generally considered a US trade or business. Additionally, an individual performing personal services on behalf of a non-US employer is generally not regarded as a US trade or business unless such services occur for more than 90 days during a year and the compensation for such services is more than USD3,000.

The definition of a permanent establishment under such treaties generally follows that in the OECD Model Convention (with some deviations where the US sticks to a more traditional version definition – eg, the US does not extend permanent establishment status to commissionaire relationships or to persons who merely negotiate, as opposed to conclude, contracts in the US). Under US income tax treaties, a permanent establishment generally includes a fixed place of business in the United States through which a foreign person carries on a business. However, a foreign person

is not generally treated as having a permanent establishment if its activities in the US are limited to certain activities that are generally preparatory or auxiliary in nature. A foreign person may have a US permanent establishment in respect of activities undertaken on its behalf by a dependent agent who has and habitually exercises an authority in the US to conclude binding contracts. A foreign person does not have a permanent establishment in the US merely because it carries on business in the US through a broker, general commission agent, or any other independent agent, provided that such person is acting in the ordinary course of their business as an independent agent.

3. Taxation of Cross-Border Income

3.1 Income From Immovable Property

See 2.4 Taxation of Non-Resident Individuals. Non-US tax residents, whether individuals or entities, are subject to tax under FIRPTA (ie, on a net basis on their gain) on the disposition of a USRPI (generally, most types of immovable property in the US). As described above, this FIRPTA taxation is enforced by a withholding regime that generally requires buyers to withhold 15% of the fair market value of the USRPI.

3.2 Business Profits

US federal income tax is imposed on “taxable income”, which is calculated as “gross income” reduced by deductions allowed under the Code. The US employs a global definition of income based on the accretion concept, ie, gross income is defined as “income from whatever source derived”. Thus, any accession to wealth (other than mere appreciation of asset value) constitutes gross income unless the Code expressly excludes it.

Cash and Accrual Methods of Accounting

Every taxpayer must calculate its taxable income on an annual basis, called a “tax year”. The calendar year is the most common tax year, but other tax years can be selected (ie, fiscal year) in certain circumstances. Taxpayers must use a consistent tax accounting method, which is a set of rules for determining when to report income and expenses. These accounting methods are generally:

- the cash method (usually used by individuals and small businesses); and
- the accrual method.

Under the cash method, a taxpayer reports income in the tax year such income is actually received and deducts expenses in the tax year such expense is actually 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 incurred in the tax year (regardless of when payment is made).

Classification of an Entity for Tax Purposes

The classification of an entity under the “check-the-box regulations” is also essential in the taxation of business profits because such classification governs whether and how such entity is taxed for US federal income tax purposes. US and foreign business entities may be classified as corporations, partnerships or entities disregarded as separate from their owners. 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 is disregarded as an entity separate from its owner.

Per se corporations

An entity is classified as a “per se corporation” if it is (i) 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; or (ii) a foreign entity in a form enumerated in the regulations or if it falls within certain other categories. If an entity does not meet any of these requirements, it is an “eligible entity” with respect to which, its classification is elective. Default classification rules determine initial classification, which can be changed by filing the appropriate forms with the IRS. By default, a “domestic eligible entity” is a partnership if it has two or more owners or is disregarded as an entity separate from its owner if it has a single owner; and a “foreign eligible entity” is a partnership if it has two or more owners and at least one has unlimited liability, an association (which is a per se corporation) if all owners have limited liability, or is disregarded as an entity separate from its owner if it has a single owner with limited liability.

Corporations

A corporation is generally subject to US federal income tax at a maximum 21% rate. In addition, US states and local governments may levy corporate income taxes on the same (or a similar) tax base, but such taxes are generally deductible from the federal income tax base (subject to certain limitations). Therefore, a corporation operating in the US could face a combined tax rate in excess of 21% and, on average, corporations pay a combined US federal, state and local corporate income tax rate of approximately 26%. The USA also applies a corporate minimum tax that generally imposes a 15% minimum tax on the financial statement income for US corporations (including consolidated groups of corporations, see **4.3 Pillar Two**) 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).

Partnerships and disregarded entities

For business profits that are earned by partnerships and disregarded entities, such business profits pass through to the entity's owners and are taxed at the applicable tax rate of such owner (for individual tax rates, see **2.3 Taxation of Resident Individuals**).

Branches

To the extent a non-US resident operates a business in the US through a US branch (eg, through a disregarded LLC), they will be subject to a 30% branch profits tax (subject to reduction by treaty) on the "dividend equivalent amount", which generally consists of effectively connected earnings and profits for a taxable year, calculated as earnings and profits attributable to effectively connected income without diminution by any distributions made during such taxable year, and adjusted by any increase or decrease in the home office's US assets, net of US liabilities. The branch profits tax is designed to achieve parity between the taxation of US branches and US subsidiaries of foreign entities. The branch profits tax also applies to interest paid by a US branch to a non-US recipient that is not engaged in a US trade or business and to "branch excess interest" (determined by a formula provided in the Treasury Regulations).

3.3 Passive Income

See **2.3 Taxation of Resident Individuals** for taxation of the receipt of dividends by US-resident individuals (or pass-through entities owned by US resident individuals). For dividends received by US corporations, certain deductions (eg, partial or full dividend received deductions depending on ownership) may be available. Interest and royalties are generally taxed as ordinary income for US tax residents. See **2.4 Taxation of Non-Resident Individuals** for taxation of FDAP (whether received by non-US resident individuals or entities). As described above, US withholding on FDAP may be reduced, or in some cases eliminated, by an applicable income tax treaty.

3.4 Capital Gains

See **2.3 Taxation of Resident Individuals** and **2.4 Taxation of Non-Resident Individuals** for a discussion of the taxation of capital gains.

3.5 Employment Income

Employment income is generally taxed as ordinary income, although certain unvested equity interests received as compensation may be taxed at receipt (when they may have little or no value), causing future appreciation to be taxed at capital gains rates upon disposition of such equity interest.

Employers and employees are subject to federal payroll taxes from certain compensation paid to employees for services performed in the US. In addition, certain states may also impose state level income and unemployment taxes. For example, in 2025, employees and employers were each subject to a social security tax of 6.2% on the first USD176,100 of wages paid to an employee and a Medicare tax of 1.45% on the wages paid to an employee. Additionally, an employee must, via withholding by their employer, pay an additional Medicare tax of 0.9% on their wages in excess of USD200,000.

Generally, if a non-US resident performs services on behalf of a non-US employer while in the US and is (i) present in the US for 90 days or less in a taxable year; and (ii) the compensation for such services is less than USD3,000, then the US does not tax such income. See **2.6 Definition of Permanent Establishment**. To the extent a non-US resident does not qualify for this

exemption, such non-US resident may be treated as having income that is effectively connected with the US and subject to US tax generally at individual income tax rates applicable to US residents. To the extent such non-US person is not treated as having effectively connected income in the US but receives a salary for activities in the US, such income may be subject to 30% (subject to reduction under an applicable income tax treaty).

Remote working is not specifically addressed and the general rules regarding physical presence and activities carried on in the US generally apply. Remote work may therefore cause a non-US resident employee and/or non-US resident employer to have a taxable presence in the US. See **2.6 Definition of Permanent Establishment**.

3.6 Other Income

There are generally no other types of income that are subject to special taxation rules in the USA.

4. OECD/G20 Global Tax Reform

4.1 Pillar One – Amount B

Amount B is not presently implemented in the USA. In December 2025, the US Treasury and IRS issued a notice (Notice 2025-4) announcing their intent to issue proposed regulations that would provide a new simplified and streamlined approach (SSA) for pricing certain controlled transactions (generally those described in Amount B of Pillar One) involving marketing and distribution activities. The Treasury and the IRS intended the proposed future regulation would implement the substance of Amount B in its entirety through the SSA. The notice provided that the future proposed regulations would generally apply the SSA at a taxpayer's election. Such election would be made on a transaction-by-transaction basis in each taxable year in which the taxpayer desired the SSA to apply. Generally, the future regulations would create an additional safe harbour (subject to certain exceptions) for the US transfer pricing rules based on the SSA. Taxpayers could rely on the notice (before the proposed regulations were published) for taxable years beginning on or after 1 January 2025.

However, on 20 January 2025, President Donald Trump issued an executive order (the "BEPS Executive Order") stating that the global tax deal with the OECD (the "Global Tax Deal") would have no force or effect in the US and that the Treasury would notify the OECD that any commitments made by the Biden administration with respect to the Global Tax Deal would have no force or effect in the absence of an act by congress. Accordingly, it is unclear to what extent such regulations may be forthcoming.

4.2 Pillar One – Amount A

The US has not taken action to implement Amount A of Pillar One, and based on President Trump's BEPS Executive Order (see **4.1 Pillar One – Amount B**), it is unlikely that any further actions on Pillar One will occur at present.

4.3 Pillar Two

The global minimum tax under Pillar Two has generally not been implemented in the USA. However, the USA has implemented a number of provisions based on the base erosion and profit shifting (BEPS) initiatives that are intended to address the same concerns as Pillar One and Pillar Two. For example, the US enacted the Tax Cuts and Jobs Act (TCJA) at the end of 2017, which generally attempts to neutralise the 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 controlled foreign corporation); and
- outbound deductible interest or royalty payments that produce a deduction/no inclusion outcome owing to hybridity by disallowing such deduction.

The TCJA further expanded a limitation on the deductibility of interest expense (which, very generally, is limited to 30% of EBITDA) and enacted a base erosion and anti-abuse tax (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.

Furthermore, the US has enacted country-by-country reporting consistent with the BEPS recommendations and has the limitation on benefits article in most of its income tax treaties.

It should be noted that US 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) 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). The US also enacted (in the TCJA and further modified by the One Big Beautiful Bill Act) a minimum tax on the income of a US person's controlled foreign corporations (now called "net tested income", which is taxed immediately but at a reduced rate). However, the net tested income does not generally qualify under Pillar Two because it is not calculated on a jurisdiction-by-jurisdiction basis.

4.4 Specific Features or Deviations of Pillar Two

As described in 4.1 Pillar One – Amount B, the BEPS Executive Order effectively pulled the US out of the Global Tax Deal. Following the BEPS Executive order, 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, 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 to exempt US companies from certain aspects of Pillar Two. In response, 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.

4.5 Digital Services Tax

The US does not impose a federal tax specific to digital services, and income from digital services is subject to tax under the general income tax rules. The US generally views the imposition of taxes specifically targeted at digital services by non-US jurisdictions as unfairly targeting US businesses and has threatened retaliatory tariffs against certain countries' imposed unilateral digital services taxes. Additionally, although not ultimately enacted, Section 899 would have identified digital services taxes as extraterritorial and discriminatory, thus imposing additional taxes on jurisdictions that have a digital services tax.

However, several US states and localities impose taxes that are specific to digital services.

5. Anti-Avoidance and Anti-Evasion Measures

5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes

Tax avoidance in the US is generally defined differently from tax evasion and tax fraud. More specifically, tax avoidance is generally an action taken to lessen tax liability that is generally legal (ie, allowed under the Code or Treasury Regulations). Tax evasion, however, is the failure to pay or a deliberate underpayment of taxes (which may include taking actions that are not allowed by the Code or Treasury Regulations), including wilful attempts:

- to evade or defeat any tax imposed by the Code;
- failure to file tax returns and pay any tax;
- failure to collect and remit taxes required to be collected by a person under the Code;
- making fraudulent tax returns or statements;
- issuing fraudulent withholding exemption certificates; and
- concealing property or destroying or falsifying records in connection with an agreement or compromise with the IRS.

The Code does include a general anti-avoidance rule that may disallow benefits under the Code if a transaction lacks "economic substance". Economic

substance generally requires a transaction to change a taxpayer's economic position in a meaningful way (other than the effect of federal income tax), where there are non-federal income tax purposes for engaging in the transaction. Individual Code provisions, Treasury Regulations, and case law also provide for other anti-abuse doctrines such as "substance-over-form", "step transaction", "business purpose" and "sham transaction" doctrines. All of 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.

Additionally, the IRS maintains and publishes a list of transactions that the IRS considers to be abusive ("listed transactions") and has identified a number of transactions that are subject to additional scrutiny ("reportable transactions"). Many of the arrangements identified as listed transactions include a cross-border aspect. Taxpayers that participate in listed transactions or reportable transactions (and material advisers of such taxpayers), must disclose such transactions to the IRS.

5.2 Anti-Avoidance Mechanisms

The US tax system primarily relies on voluntary compliance by taxpayers to file and pay their taxes. To the extent a US resident does not voluntarily comply, monetary and criminal penalties may apply (see **6.1 Tax Penalties** and **6.2 Criminal Penalties**). Tax filings (referred to as "information returns") are also required by taxpayers, employers, business entities and business partners for a variety of transactions. The IRS is the primary agency tasked with enforcing the Code, and it collects and reviews, and may audit, these information returns and other tax returns. To aid the IRS in identifying tax fraud and evasion, there are mandatory reporting requirements for listed transactions and reportable transactions (see **5.1 Definition and Identification of Tax Fraud, Evasion, Tax Avoidance and Abusive Schemes** and **5.4 Reporting Obligations and Disclosure Regimes**). Additionally, the IRS also utilises a whistle-blower programme, whereby a person may report information about suspected tax fraud, evasion or tax law violation to the IRS. Such person may receive a whistle-blower award of 15–30% of the amount the IRS collects as a result

of the information provided. The IRS also has a voluntary disclosure programme where taxpayers may contact and co-operate with the IRS to resolve tax matters (including unreported income, as long as it is not derived from illegal activities); such voluntary disclosure and payment of tax owed (generally, plus interest and penalties) may allow a taxpayer to avoid criminal penalties.

5.3 Blacklists and Non-Cooperative Jurisdictions

The US does not generally maintain a list of non-cooperative or high-risk jurisdictions for tax purposes. The Treasury, through its Office of Foreign Assets Control, does administer economic and trade sanctions based on US foreign policy and national security, but these are not generally based on the tax policy of the relevant jurisdictions. Companies or residents of certain jurisdictions (eg, China) may be limited in their ability to own entities that receive certain tax credits in the US (eg, certain clean energy tax credits).

However, to the extent Section 899 (or similar provision) is enacted, such a list may be kept (see **4.4 Specific Features or Deviations of Pillar Two**).

5.4 Reporting Obligations and Disclosure Regimes

The IRS maintains and publishes a list of transactions that it considers to be abusive (ie, listed transactions) and has identified a number of transactions that are subject to additional scrutiny (ie, reportable transactions). Taxpayers that participate in a listed transaction or a reportable transaction must disclose such transactions to the IRS. Additionally, material advisers (eg, generally persons providing assistance or advice with respect to these transactions), must also report such transactions to the IRS. Failure to make these disclosures may result in penalties (eg, up to USD100,000 for individuals and USD200,000 for non-individuals, for failure to disclose listed transactions).

5.5 Role of Tax Authorities and Enforcement Measures

The IRS generally has broad powers to gather information and records related to the taxpayer through information returns, tax returns, subpoenas (of taxpayers and of third parties, including banks) that may

be enforced by court order, and, if a warrant is signed by a judge, to execute searches within the scope of such warrant. Such searches may be conducted in co-ordination with other agencies of the US government.

The IRS generally must begin an audit or examination of a taxpayer within three to six years of the due date of the tax return for the tax year being audited (unless a taxpayer filed a late tax return or failed to file tax returns, including information returns, for such tax year). The IRS and Treasury also incentivise whistleblowers and the public to collect information that may lead to the investigation of tax fraud (see **5.2 Anti-Avoidance Mechanisms**). Additionally, IRS agents have access to a forensic laboratory and resources, to review and examine evidence that has been gathered.

6. Penalties and Sanctions

6.1 Tax Penalties

Under the Code, the IRS has the power to apply penalties for a variety of tax-related issues including:

- failure to file a tax return (including some information returns);
- failure to pay taxes or failure to timely pay taxes;
- accuracy-related issues (ie, where a taxpayer does not declare all their income, or claims deductions or credits that such taxpayer is not entitled to);
- underpayment of estimated taxes;
- failure to deposit certain taxes; and
- erroneous claims for refunds of an excessive amount.

The specific amount of the penalty (or penalty range) is generally specified in the Code. The penalty may be a set amount on a per-occurrence basis (eg, with respect to failure to file certain information returns) or a percentage of the amount of the unpaid or underreported taxes. Additionally, while not a penalty, if there is a failure to withhold on a payment subject to US withholding, a US withholding agent (generally a US resident payor) may be pursued by the IRS to pay the amount that should have been withheld, notwithstanding the ultimate tax liability being the liability of the payee.

The IRS generally charges interest on penalties as well as unpaid taxes. The IRS is the principal authority that enforces the payment of tax and may seize property, garnish wages and take other action to collect taxes, interest and penalties.

6.2 Criminal Penalties

In addition to the civil or monetary penalties that may be applied, the Code provides for criminal penalties, including criminal fines and/or imprisonment, for tax evasion and fraud. These include:

- wilful attempts to evade or defeat any tax imposed by the Code;
- failure to file tax returns and pay any tax;
- failure to collect and remit taxes required to be collected by a person under the Code;
- making fraudulent tax returns or statements;
- issuing fraudulent withholding exemption certificates; and
- concealing property or destroying or falsifying records in connection with an agreement or compromise with the IRS.

For example, if a person is convicted of wilfully attempting to evade or defeat any tax imposed by the Code, such person is guilty of a felony and is fined up to USD100,000 (USD500,000 in the case of a corporation) and/or may be imprisoned for up to five years.

6.3 Interaction Between Tax and Criminal Procedures

Criminal investigations can be initiated from information obtained from an IRS agent (eg, an auditor), revenue collection officer or whistle-blower, or if an investigative analysis detects possible fraud. Special agents at the IRS review the relevant information in a preliminary investigation and if a supervisor agrees, a criminal investigation is commenced. Once opened, the IRS special agents work with IRS criminal tax attorneys during the investigation. Following the analysis of information gathered, if a criminal prosecution is supported, a prosecution recommendation is sent from the IRS to the tax division of the US Department of Justice (in the case of tax investigations). If the Department of Justice accepts the investigation for prosecution, an IRS special agent will assist prosecutors in preparation for trial. However, once referred

to the Department of Justice for prosecution, the prosecutors manage any further investigation and the trial. The trial generally follows the typical judicial procedures (eg, jury versus bench trial, rules of evidence, etc) that apply to any federal criminal prosecution in the US.

7. Administrative Co-Operation

7.1 Legal Framework for Administrative Co-Operation

The US generally uses bilateral treaties, eg, income tax treaties and tax information exchange agreements, as the basis for administrative co-operation for tax matters.

7.2 Exchange of Information Clauses in Tax Agreements

The US does exchange information under its income tax treaties and tax information exchange agreements. Whether such information is exchanged automatically, spontaneously or upon request depends on the specific terms of an applicable treaty or agreement and may vary based on the specific type of information being exchanged.

7.3 Other Forms of International Tax Collaboration

The USA participates in the OECD's International Compliance Assurance Programme (ICAP). Accordingly, the procedures the US takes to handle any international transfer pricing disputes are generally consistent with those set forth in ICAP.

8. Mutual Agreement Procedures and Arbitration

8.1 Availability and Legal Basis

Mutual agreement procedure (MAP) arbitration is available under most US tax treaties. A taxpayer should consult the MAP article under the applicable US income tax treaty to determine whether it is an arbitration treaty and the extent to which mandatory arbitration applies under such treaty. US income tax treaties generally contain a provision which would oblige the US to make corresponding adjustments or

grant access to the MAP with respect to economic double taxation that may otherwise result from a primary transfer pricing adjustment.

While US income tax treaties do not generally require the competent authorities to reach an agreement eliminating double taxation, such treaties do require that the competent authority makes a good faith effort to reach such an agreement. Accordingly, while there is no guarantee that competent authority assistance will result in the elimination of double taxation, a significant majority of cases conclude with such an agreement.

8.2 Application Deadlines

Relevant deadlines for submitting a MAP request depend on the relevant income tax treaty under which a MAP request is filed. Some treaties provide a specific timeframe, while others do not (in which case, domestic filing timelines may govern). Accordingly, taxpayers should consult the relevant tax treaty and should generally submit such a request as soon as possible once the taxpayer becomes aware that MAP assistance is required.

8.3 Mandatory Binding Arbitration

While not generally available, the US is supportive of mandatory binding arbitration to strengthen MAP programmes. The 2016 Model Treaty and some active US income tax treaties (eg, with Belgium, Canada, France, Germany, Japan, Spain and Switzerland) include a provision for mandatory binding arbitration.

9. Dispute Prevention

9.1 Advance Pricing Agreements

The US established an advance pricing agreement programme in 1991 (currently referred to as the Advance Pricing and Mutual Agreement or the "APMA" programme). Unilateral, bilateral and multi-lateral advance pricing agreements may be obtained through the APMA programme. The APMA programme also allows taxpayers to enter into an agreement with the IRS regarding transfer pricing methodology. The APMA programme is designed to promote certainty between taxpayers and the IRS and to save resources by preventing potential disputes. In addition, when

a taxpayer and the IRS enter into an APMA, the US competent authority will, upon a request by the taxpayer, attempt to negotiate a bilateral advance pricing agreement 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 advance pricing agreements through the US competent authority.

9.2 Other Mechanisms

Large corporate taxpayers can participate in the Compliance Assurance Process, which offers real-time issue resolution between taxpayers and the IRS prior to filing a tax return. Other co-operative compliance programmes include: the Pre-Filing Agreements Programme (for resolving issues with the IRS prior to filing a tax return), the Industry Issue Resolution Programme (under which the IRS issues guidance resolving frequently disputed issues) and various other dispute resolution and settlement programmes exist. Additionally, taxpayers may seek taxpayer-specific guidance regarding transactions through a private letter ruling request programme at the IRS.

Trends and Developments

Contributed by:

Devon M. Bodoh, Joseph M. Pari and Blake D. Bitter
Weil, Gotshal & Manges LLP

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-

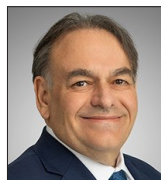
ness. Weil's global tax department offers comprehensive knowledge of how the complex and continually evolving nature of tax law plays a crucial role in some of the most significant and high-profile domestic and cross-border transactions, restructurings and other commercial matters. The firm not only 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.

Authors



Devon M. Bodoh is a partner in Weil Gotshal & Manges LLP's tax department and is based in Miami and Washington, DC. Devon is the head of the firm's international and cross-border tax practice, a member

of the tax department's leadership team and managing partner of the Miami office. He advises clients on cross-border mergers, acquisitions, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, the use of net operating losses, foreign tax credits, and other tax attributes and consolidated return matters. Devon is recognised as a leading lawyer by Chambers USA.



Joseph M. Pari is co-chair of Weil, Gotshal & Manges LLP's tax department and is based in New York and Washington, DC. He has extensive experience in advising on federal income taxation of domestic

and cross-border mergers, acquisitions, spin-offs, other divestiture types, restructurings, bankruptcy and non-bankruptcy workouts, acquisition financing and the use of pass-through entities in acquisitive and divisive transactions, with an emphasis on corporate tax planning, the utilisation of net operating losses, and other tax attributes and consolidated return matters. Joseph has been recognised as a leading lawyer by Chambers USA and Chambers Global.



Blake D. Bitter is counsel in Weil, Gotshal & Manges LLP's tax department and is based in Washington, DC. He advises clients on tax aspects on a variety of US and cross-border transactions, including

corporate acquisitions and mergers, spin-offs and other divisive strategies, restructurings, bankruptcy and non-bankruptcy workouts, and consolidated return matters.

Weil, Gotshal & Manges LLP

2001 M Street NW
Suite 600
Washington, DC 20036
USA

Tel: +1 202 682 7000
Web: www.weil.com



The two most significant recent developments in US international tax relate to the USA's withdrawal from the OECD's "Global Tax Deal" and the OECD's subsequent issuance of its "Side-by-Side Package"; and the passage of President Trump's The One, Big, Beautiful Bill Act ("OBBBA").

The Global Tax Deal and Side-by-Side Package *Withdrawal from the Global Tax Deal*

On 20 January 2025, as one of his first acts as president in his second term, President Donald Trump issued an executive order (the "BEPS Executive Order") stating that the OECD's planned Global Tax Deal with the US would (i) limit the ability of the US to enact tax policies that serve the interests of US businesses and workers; and (ii) cause, along with other discriminatory foreign tax practices, US companies to face retaliatory international tax regimes if the US did not comply with foreign tax policy objectives. Accordingly, the BEPS Executive Order stated that the Global Tax Deal had no further force or effect in the US and it directed the secretary of the treasury to notify the OECD that any commitments made by the Biden administration with respect to the Global Tax Deal would have no force or effect in the absence of an act by the US Congress. The BEPS Executive Order further directed the secretary of the treasury to investigate whether there were any countries with tax rules that were extraterritorial or that would disproportionately affect American companies, and to develop a list of options for protective measures or other actions that the United States should adopt in response to such tax rules.

The Revenge Tax – Proposed (and Withdrawn) *Section 899*

Early drafts of the OBBBA included a provision (referred to as "Section 899") that targeted certain foreign countries (and such countries' residents) for retaliatory US tax measures. Such countries were defined as countries that had "extraterritorial" or "discriminatory" taxes that applied to US persons or foreign corporations owned by US persons. Such "extraterritorial" or "discriminatory" taxes generally would have included Pillar Two's undertaxed profits rule, digital services taxes, or diverted profits taxes. If a foreign country imposed any such taxes on US persons or foreign corporations owned by US persons, then Section 899 would apply retaliatory measures on such countries and their residents, including a required increase in tax rates, removal of certain tax exemptions, and other measures. For example, iterations of Section 899 generally would have:

- increased tax rates incrementally by 5 percentage points in each taxable year until reaching a cap of 15 or 20 percentage points;
- removed the exemption from US tax that typically applies to foreign governments (including sovereign wealth funds and pension plans); and
- modified and expanded the application of the base erosion and anti-abuse tax (BEAT) to certain non-publicly traded US corporations that are majority-owned by residents of a country with an "extraterritorial" or "discriminatory" tax.

Section 899 was ultimately not included in the final OBBBA thanks to a deal between the G7 countries

and the USA that, because of the existing US tax provisions targeting base erosion and profit shifting and the need to provide greater stability and certainty in the international tax system moving forward, a side-by-side system would be implemented that would generally exclude US-parented multinational groups from key aspects of Pillar Two (eg, the undertaxed profits rule and the income inclusion rule).

OECD Side-by-Side Package

On 5 January 2026, the OECD announced the Side-by-Side Package following the USA's agreement with the G7 countries. While the Side-by-Side Package includes some additional items, such as a simplified effective tax rate safe harbour, an extension of the transitional country-by-country reporting safe harbour, and a substance-based tax incentive safe harbour, the package's "Side-by-Side Safe Harbor" is particularly impactful because it may effectively shield US-parented multinational groups from the application of the global minimum tax rules, specifically the income inclusion rule and the undertaxed profits rule.

Under the Side-by-Side Safe Harbor, a multinational group may elect to have zero top-up tax for income inclusion rule and undertaxed profits rule purposes for a fiscal year if the group's ultimate parent entity (UPE) is located in a jurisdiction with a qualified side-by-side regime ("Qualified SbS").

A jurisdiction will be treated as having a Qualified SbS if it operates both an eligible domestic tax system and an eligible worldwide tax system. To qualify, the jurisdiction must effectively achieve a minimum level of taxation at both the domestic and international levels (including controlled foreign corporation and branch rules), provide foreign tax credits for qualified domestic minimum top-up taxes (QDMTTs) on the same terms as other covered taxes, and satisfy specified enactment timing and review requirements.

Jurisdictions recognised by the inclusive framework as having a Qualified SbS are listed on the OECD central record. If a multinational group's UPE is located in such a jurisdiction and the group elects the Side-by-Side Safe Harbor, then this safe harbour applies to all of that multinational group's controlled domestic and foreign operations. Notably, the Side-by-Side Safe

Harbor does not switch off QDMTTs and does not deem top-up tax to be zero for purposes of computing domestic minimum taxes.

The Side-by-Side Safe Harbor applies to fiscal years beginning on or after 1 January 2026. While styled generically, the Side-by-Side Safe Harbor was clearly targeted as applying to the US (which is the only country listed on the OECD's central record as having a Qualified SbS). This action appears intended to preserve some co-operation regarding the Global Tax Deal, and prevent the Trump administration's potential implementation of Section 899 or a similar provision.

However, the issuance of the Side-by-Side Package does not block the potential for US retaliatory taxes in connection with the enactment of "extraterritorial" or "discriminatory" (eg, Pillar Two and digital services) taxes. As with other OECD packages, the Side-by-Side Package requires implementation by individual countries (in particular, countries that have already adopted "extraterritorial" or "discriminatory" taxes). This takes time (at the very least, to draft and enact legislation) and there is no guarantee that most or all of the relevant countries 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 US in such country-by-country implementation, that could further impact whether the US contemplates enacting Section 899 or a similar provision. Additionally, the Side-By-Side Package is not ideal in all respects from a US perspective, including that there is a stock-take in 2029 that may further impact the longevity of the Side-by-Side Safe Harbor. The US Congress also frequently considers tax changes, and the current US system could be modified in such a way that it no longer complies as a Qualified SbS.

Accordingly, it is still unclear how the US may react long-term to the Global Tax Deal and whether the US may still contemplate the implementation of retaliatory US taxes like Section 899.

OBBBA

On 3 July 2025, the US Congress passed the OBBBA and President Trump signed it into law on 4 July 2025. The OBBBA is sweeping tax and spending legislation that, from a US 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 reiterate that the tax structure in the USA is in flux and remains at the forefront of US political and economic consciousness. Various key international tax changes are highlighted below.

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 OBBBA 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 OBBBA 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-parented 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 unne-

cessary taxation (and administrative costs and risk) for CFCs unrelated to such CFCs' own US shareholders within a foreign-parented group.

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

The OBBBA 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), which is intended to prevent the transactions that the original repeal of Section 958 (b)(4) was attempting to address.

CFC look-through rule

In a welcome removal of uncertainty, the OBBBA makes a rule in Section 954 (c)(6) permanent that exempts payments of dividends, interest, rentals, 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 multinational groups from shifting profits to low or no-tax jurisdictions. While maintaining the principal framework of this regime, the OBBBA makes some significant changes. More specifically, the OBBBA:

- has renamed the regime to net CFC tested income (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 OBBBA:

- renamed this deduction foreign-derived deduction-eligible income (FDDEI) and reduced 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 the 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 is increased to 10.5%

The Base Erosion Anti-Abuse Tax (BEAT) is a provision from the TCJA that imposes an additional tax to the extent that 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 OBBBA has now set the BEAT rate permanently to 10.5% – a net positive for BEAT payers, who avoid the 12.5% scheduled increase.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Luke.Wilson@Chambers.com