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The One, Big, Beautiful Bill Act: The Future of Tax Policy?

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After much debate on Capitol Hill, President Trump signed into law the One, Big, Beautiful Bill Act (the "**Bill**") on July 4, 2025, delivering a sweeping legislative tax and spending package. The House of Representatives voted to approve its version of the Bill on May 22, 2025 (the "**House Bill**"), and the Senate voted to approve a modified version of the Bill on July 1, 2025 (the "**Senate Bill**"). The House then approved the Senate Bill on July 3, 2025, despite its initial hesitancy to accept the Senate's changes.

The Bill amends the Internal Revenue Code of 1986, as amended (the "**Code**"), including certain U.S. international tax provisions, permanently extending of provisions from the Tax Cuts and Jobs Act of 2017 (the "**TCJA**"), provisions relating to state and local tax ("**SALT**") deductions, individual tax provisions, and energy transition tax credit provisions. Specifically, the Bill corrects certain mistakes in the TCJA, simplifies certain complex U.S. international tax calculations, makes permanent tax deductions for U.S. corporations originally set to expire under the TCJA, and curtails most energy transition tax credits currently available under the Code.

U.S. International Tax Provisions

- *Subpart F Income Calculation Corrections*. Under Subpart F of the Code, a U.S. Shareholder is subject to current U.S. taxation on specific types of passive income earned by a CFC. A "**U.S. Shareholder**" is a U.S. person that owns, directly or indirectly, at least 10% of the combined voting power or value of all classes of stock in a foreign corporation. A "**CFC**" is a foreign corporation at least 50% of the stock of which is owned, directly or indirectly, by U.S. Shareholders (determined by vote or value). Since the enactment of the TCJA, U.S. Shareholders have deferred or avoided taxation of Subpart F income in two ways:
  - U.S. Shareholders were required to include their pro rata shares of a CFC's income only if they held stock in the CFC on the last day of the CFC's taxable year (generally allowing them to avoid taxation with respect to such pro rata share if they sold all of their CFC stock before the end of the taxable year and the foreign corporation retained its CFC status); and
  - Section 898 allowed CFCs to elect a taxable year ending one month earlier than that of specified U.S. Shareholders (deferring one month of Subpart F taxation to the following taxable year).

- While Congress expressly granted these avoidance and deferral benefits, the Internal Revenue Service (the "IRS") struck down many planning structures attempting to utilize the taxable year election. The Bill repeals this election and now requires U.S. Shareholders to calculate Subpart F income only if they own stock of the CFC on any day during the CFC's taxable year. These changes take effect on January 1, 2026

Weil Observation: The resulting mismatch in the taxable years of CFCs and their U.S. Shareholders reflected inconsistences with the TCJA's Subpart F income calculation— inconsistencies the House Bill did not address. The TCJA complicated the Subpart F income calculation by expanding taxable income to include global intangible low tax income ("**GILTI**") and codifying the Section 898 election. Such changes created opportunities for tax planning but did not consistently result in benefits for taxpayers. The Bill, however, scales back planning opportunities and creates a predictable structure for calculating Subpart F income.

- *Downward Attribution under Section 958(b)*. The TCJA repealed former Section 958(b)(4), which barred downward attribution of stock owned by a foreign person to a U.S. person. Consider a foreign person (the "**Foreign Parent**") that owns 100% of the stock of both a foreign corporation and a U.S. corporation. Section 958(b)(4) prevented the Foreign Parent from becoming a U.S. Shareholder solely by virtue of its ownership of the stock of the U.S. corporation. Accordingly, in this example, the repeal of Section 958(b)(4) caused the Foreign Parent to be treated as a U.S. Shareholder with respect to the foreign subsidiary corporation because the U.S. subsidiary corporation was deemed to own the stock of the Foreign Parent.
  - The Bill, in response, reinstates former Section 958(b)(4) and proposes new Section 951B, creating defined terms to specifically deal with "de-control" transactions (illustrated below). The terms are "foreign-controlled U.S. shareholder" and a "foreign-controlled foreign corporation" (an **"F-CFC**"). A foreign-controlled U.S. shareholder is one that would be a U.S. Shareholder if not for Section 958(b)(4). An F-CFC is a foreign corporation owned by a foreign-controlled U.S. Shareholder.

Weil Observation: The TCJA repeal targeted "de-control" transactions to prevent related parties from avoiding Subpart F income taxation. A de-control transaction generally involves a foreign parent corporation ("**FP**") that owns stock of both a U.S. corporation ("**USCo**") and another foreign corporation (**"FC**"). USCo is also a part-owner and U.S. Shareholder of FC, causing FC to be classified as a CFC. To effectuate the de-control transaction, FP causes FC to lose its CFC status by acquiring a greater than 50% ownership of the FC stock (*i.e.*, diluting USCO's ownership percentage). Hence, the Bill reinstates Section 958(b) to prevent unrelated U.S. Shareholders—who are unable to participate in de-control transactions—from facing unnecessary taxation. Additionally, the Bill codifies new rules to better target de-control transactions.

- *Permanent Extension of CFC Look-Through Rule*. Under prior law, Section 954(c)(6) excluded certain payments—such as dividends, interest, rents, and royalties—from a U.S. Shareholder's Subpart F income, provided that such payments were (i) exchanged between related CFCs and (ii) paid out of earnings that were (x) neither Subpart F income nor (y) income effectively connected with a U.S. trade or business ("**ECI**"). The TCJA scheduled this benefit to expire on December 31, 2025. The Bill makes the CFC "look-through rule" permanent for all taxpayers moving forward, a welcome relief to taxpayers that will no longer grapple with the uncertainty around this provision.
- *GILTI to NCTI*. The TCJA imposed a tax on GILTI accrued by foreign subsidiaries of U.S. corporations in excess of 10% of the corporation's tangible overseas capital investment (less depreciation). Under prior law, taxpayers were allowed a 10% deduction with respect to qualified business asset

investments (“**QBAI**”) as exempt income before being subject to GILTI. QBAI estimates the value of a corporation’s tangible or fixed assets; QBAI was deductible from GILTI to limit taxation to intangible or non-asset based income (*e.g.*, interest or dividend payments). Under prior law, U.S. corporations could deduct 50% of their GILTI, creating a 10.5% effective rate. In 2025, the GILTI deduction declined to 37.5%, resulting in the effective tax rate on GILTI increasing to 13.125%. Moreover, the TCJA created an indirect foreign tax credit (“**FTC**”) for 80% of the foreign taxes paid by U.S. Shareholders that was allocable to GILTI. Before enjoying such indirect FTCs, however, taxpayers had to allocate certain expenses to reduce their GILTI (potentially leaving the FTC unavailable).

- The Bill permanently sets the GILTI (now referred to as “net CFC tested income” (“**NCTI**”)) deduction to 40%.[1] The Bill also provides a 90% indirect FTC on allocable NCTI and limits the expenses that a taxpayer must allocate to the NCTI bucket. We note, however, that the Bill prevents QBAI from reducing NCTI. Like the changes to Subpart F (described above), the NCTI changes are set to take effect on January 1, 2026.

Weil Observation: The Bill removes the misnomer “intangible” from the applicable definition of the prior regime and makes permanent several taxpayer favorable provisions otherwise set to expire. Further, the Bill permits taxpayers to utilize more efficiently their FTC limitations because taxpayers may allocate taxes paid on interest expenses to other categories of income and may credit more of their foreign taxes paid with respect to NCTI.

- *FDII to FDDEI*. The TCJA provided a deduction to U.S. corporations with respect to their foreign-derived intangible income (“**FDII**”). The deduction equaled 37.5% of a U.S. corporation’s FDII for taxable years beginning after December 31, 2017 (resulting in a 13.125% effective tax rate on eligible income), and 21.875% for taxable years beginning after December 31, 2025 (resulting in a 16.406% effective tax rate). The Bill permanently sets the FDII (now referred to as foreign-derived deduction eligible income (“**FDDEI**”)) deduction to 33.34%, and, as is the case with NCTI, removes all references to QBAI. All such rules are scheduled to apply to taxable years beginning January 1, 2026.

Weil Observation: As stated above, the Bill eliminates QBAI and sets permanent deduction rates for both NCTI and FDDEI. Likewise, the Bill prevents the allocation of several categories of expenses (including interest and research and development (“**R&D**”) expenses) for both regimes. While potentially causing an increase to the nominal tax rates, the Bill allows taxpayers to take more predictable and accessible approaches to NCTI and FDDEI calculations moving forward.

- *BEAT*. The base erosion anti-abuse tax (“**BEAT**”) was enacted by the TCJA to deter profit-shifting by large U.S. corporations that reduce their U.S. tax liabilities by making deductible payments (*e.g.*, interest and royalty payments) to related foreign entities. The prior BEAT rules imposed an additional tax to the extent a taxpayer’s modified taxable income (“**MTI**”) exceeded 10% of its regular tax liability (as reduced by certain tax credits). After 2025, the 10% was set to increase to 12.5% (*i.e.*, large corporations were more likely to be subject to the BEAT after 2025). The Bill permanently sets the BEAT calculation to 10.5%.

Weil Observation: The Bill’s permanent 10.5% rate for the BEAT calculation is a modest uptick to the prior 10% rate, but is still a net-positive for taxpayers that benefit from avoiding the TCJA’s scheduled increase to 12.5% in 2026.

[1] Moving forward, to be referred exclusively as “NCTI.”

- *Proposed (and Withdrawn) Section 899*. The initial versions of the Bill proposed controversial Section 899 (the "**Revenge Tax**"), an additional tax on entities and individuals that are tax residents of a "discriminatory foreign country." A discriminatory foreign country was defined as a jurisdiction that imposes "unfair foreign taxes," such as the undertaxed profits rules ("**UTPRs**"), digital service taxes ("**DSTs**"), or diverted profits taxes ("**DPTs**"), aimed at countries following the global tax framework proposed by the Organisation for Economic Co-operation and Development (the "**OECD**"). The Revenge Tax would have increased U.S. tax rates on residents of discriminatory foreign countries incrementally in each taxable year until reaching a cap of 15 or 20 percentage points.[2] Likewise, the Revenge Tax would have denied certain tax benefits available under bilateral income tax treaties by increasing reduced treaty rates by 5 percentage points each year until reaching the cap. The Bill as enacted does not contain the Revenge Tax, as requested by the Treasury Secretary, Scott Bessent, after a tentative agreement was reached between the United States and G7 partners that would prevent U.S.-parented companies from incurring unfair foreign taxes.

Weil Observation: The Revenge Tax was intended to be a retaliatory measure against countries enacting the OECD's global tax regime, which would have disproportionately impacted U.S. multinational corporations by subjecting them to higher taxes in low or no-tax jurisdictions. Although the Revenge Tax would not have affected U.S. taxpayers directly, the impact to foreign investors may have resulted in increased borrowing costs for U.S. businesses and reduced foreign investment into the United States.

- *Remittance Tax*. A remittance transfer is the electronic transfer of funds, by a sender located in the United States, to a designated recipient in a foreign country. The Bill creates a 1% tax on certain remittance transfers by foreign residents with new Section 4475. The remittance tax shall be paid by a sender on all transfers made after December 31, 2025.

Weil Observation: The remittance tax is intended to assist with President Trump's crackdown on illegal immigration by imposing a tax based on the sender's citizenship status, thereby affecting immigrants to the United States who wish to send money to their home countries. The House Bill's initial application of the remittance tax drew criticism from the international business community, which would have been burdened with additional compliance measures, and economists, who opined that the tax would stifle anti-money laundering regulations and shift money transfers out of the United States. In its final form, the Bill applies narrowly to foreign citizens who fund electronic transfers with cash, or cash-like instruments, that are sent through a remittance transfer provider. In effect, foreign investors with business assets and investments in the United States will likely avoid the tax on remittance transfers since their payments are typically issued by excluded financial institutions.

Corporate Business Provisions

- *Business Interest Limitation*. The TCJA codified Section 163(j) to limit the deduction for net business interest expenses in excess of 30% of a taxpayer's "adjusted taxable income" (the "**Business Interest Limitation**"). For taxable years before 2022, adjusted taxable income was generally defined as a taxpayer's earnings before interest, tax, depreciation, amortization, and depletion expenses ("**EBITDA**"). Since then, adjusted taxable income has been defined as earnings before interest and taxes ("**EBIT**"). The Bill reverts to a definition of adjusted taxable income as a taxpayer's EBITDA but

[2] Such tax rate increases would have applied to the specified statutory rates of tax, meaning that for ECI that is earned by a resident of a discriminatory foreign country, the tax rate was capped at 41% for corporations (*i.e.*, 20 percentage points above the 21% corporate rate) and 57% for individuals (*i.e.*, 20 percentage points above the maximum individual statutory rate of 37%).

now excludes certain amounts from the Business Interest Limitation (including Subpart F income, NCTI, and any gross-ups for deemed paid FTCs).

Weil Observation: Starting in 2022, U.S. borrowers with significant depreciation and amortization deductions found themselves with lower Business Interest Limitations because these deductions were not permitted to be added back to the yearly adjusted taxable income calculation. The Bill, by permitting taxpayers to add back these deductions to adjusted taxable income, generally will permit these U.S. borrowers to have a higher Business Interest Limitation and therefore deduct a great portion of their interest expense going forward. Notably, with this change, U.S. borrowers generally will not be penalized for claiming 100% bonus depreciation on tangible property as permitted under the Bill (discussed below). On the other hand, U.S. multinational corporations will need to assess how the exclusions for foreign-affiliated income may affect their Business Interest Limitation.

- *Bonus Depreciation*. The Bill restores and makes permanent a 100% immediate bonus-depreciation deduction under Section 168(k). The Bill also provides a 100% immediate expensing for certain qualified production property ("**QPP**") that begins construction between January 19, 2025, and January 1, 2029. QPP means any U.S.-based facility engaged in manufacturing, production, or refining of certain qualified products, including any tangible personal property that is not food or beverage-related ("**Qualified Property**").

Weil Observation: The permanent restoration of the bonus depreciation deduction will permit taxpayers to further reduce the after-tax cost of building or buying tangible property. The magnitude of this opportunity has declined since the bonus depreciation deduction began to phase down starting in 2022 (currently taxpayers can immediately expense 40% of their depreciation deduction). U.S. manufacturers should consider how and whether the QPP additions may benefit them going forward.

- *R&D Expensing*. The TCJA eliminated the option to immediately expense certain research and development ("**R&D**") expenditures under Section 174, instead requiring taxpayers to capitalize and amortize such expenditures over a period of 5 years (domestic R&D) to 15 years (foreign R&D). The Bill creates a new R&D benefit under new Section 174A pursuant to which domestic R&D expenditures paid or incurred in taxable years beginning after December 31, 2024 would generally be (i) immediately 100% deductible or (ii) deductible over a period of not less than 60 months starting from the first month the taxpayer benefits from such R&D expenditures.

Weil Observation: The flexibility to toggle between immediate and long-term recovery of R&D expenses gives tech, life-sciences, and advanced-manufacturing groups a valuable planning tool. Start-ups and growth-stage companies may opt for amortization to smooth effective tax rates over time (assuming the start-ups have very little taxable income in their early years), while more established companies may prefer the immediate deduction to offset taxable income from other sources.

Individual Tax Provisions

- *The SALT Deduction Cap*. The TCJA imposed an annual state and local tax ("**SALT**") deduction cap of $10,000 for individual taxpayers. However, certain taxpayers who were owners of pass-through entities were permitted to elect to have their pass-through entities pay their state and local income taxes with respect to that entities' income at the entity level ("**PTET**"). To illustrate, consider a taxpayer who incurs SALT liabilities with respect to income earned by a partnership in which the individual owns an interest. In general, the individual would be subject to the $10,000 deduction cap if such individual were to pay SALT liabilities on its share of income. However, the partnership could pay any SALT on the individual's behalf. The individual would thereby secure an unlimited deduction for SALT paid by the partnership. In addition, the Bill increases the annual deduction cap to $40,000 subject to:

- (i) depreciation adjustments for inflation (starting with $40,400 in 2026 and 1% annual increases thereafter);
- (ii) a phase down of the annual deduction cap for taxpayers with a modified adjusted gross income of over $500,000 (with a deduction cap floor of $10,000); and
- (iii) a five-year effective grace period (after which the cap would revert to the TCJA $10,000 amount).

Weil Observation: The House Bill proposed a permanent $40,000 SALT cap, but also a restriction on the PTET workaround for certain taxpayers. Moving forward, however, the Bill retains the ability of taxpayers to use PTET along with a temporary increase to the SALT deduction cap.

- *Expiring TCJA Provisions for Individuals Become Permanent*. Many provisions in the TCJA were set to expire at the end of 2025 or were outright repealed by the Inflation Reduction Act of 2022 (the "**IRA**"). The Bill permanently extends several provisions of the TCJA, including the individual tax rates enacted in 2017 and the increased standard deduction amount. Beginning in 2025, the standard deduction will increase to $15,750 for single filers, $23,625 for heads of household, and $31,500 for married individuals filing jointly, with inflation adjustments available in subsequent taxable years.
- *No Tax on Tips and Overtime*. Prior to the enactment of the Bill, tips and overtime wages earned were taxable as ordinary income. The House Bill included an above-the-line deduction for qualified tip income reported on an employee's IRS Form W-2 through proposed Section 224. The Bill as enacted adopts a modified version of Section 224, which provides a $25,000 limit to the deduction. That deduction begins to phase out when the taxpayer's modified gross income exceeds $150,000 in a taxable year. Furthermore, the deduction would only apply during the taxable years from 2025 to 2028. The Bill adds identical provisions with respect to taxes on overtime income in Section 225.

Weil Observation: Although the Bill exempts qualified tip income from federal income tax, such amounts are nevertheless generally subject to payroll taxes.

Energy Transition Provisions

- *No Changes to Pre-2025 PTC or ITC.* The production tax credit under Section 45 ("**PTC**") equals a specified credit rate multiplied by the number of kilowatt hours produced by an eligible project and sold to unrelated parties during the first 10 years of the project's operation (plus any bonus adders). The investment tax credit under Section 48 ("**ITC**") equals a percentage (generally 30% plus any bonus adders) of capital investment in an eligible project.[3] Each credit is available for renewable generation (*e.g.*, solar and wind) and certain other enumerated project types that begin construction as determined for federal income tax purposes[4] ("**Begin Construction**") before 2025. Unlike the CEPC and CEIC (as defined below), projects eligible for the PTC or ITC will not be subject to early

[3] All of the energy transition tax credit rates stated in this article assume that the applicable project is either exempt from, or in compliance with, certain prevailing wage and apprenticeship requirements under the Code.

[4] The Begin Construction standard is articulated in a series of IRS notices, including Notice 2013-29 and Notice 2018-29. Generally speaking, a taxpayer will be deemed to Begin Construction of a project by paying or incurring 5% of the total costs of the project (under a bright-line rule) or by completing physical work of a significant nature on the project (under a facts-and-circumstances test). The Bill codifies this standard for purposes of the Foreign Entity Provisions.

termination, phase-down, or curtailment under the Bill, and will not be subject to the Foreign Entity Provisions (described below).

- *Significant and Adverse Changes to Technology-Neutral Electricity Credits*. The clean electricity production credit under Section 45Y (the "**CEPC**") and the clean electricity investment credit under Section 48E (the "**CEIC**") are the successor credits to the PTC and ITC, respectively. These credits are available at the same credit rates as the PTC and ITC. However, these credits are available for any generation project, regardless of the relevant technology, that has a greenhouse gas emissions rate at or below zero.[5] Under prior law, the CEPC and CEIC would begin to phase out for projects that Begin Construction in the later of (i) 2033 or (ii) the year after U.S. annual greenhouse gas emissions is first equal to 25% of the emissions produced in 2022 (expected to occur in the 2040s).
  - The Bill applies an early sunset provision to solar and wind projects that Begin Construction after July 4, 2026. Such a project will be eligible for the CEPC or CEIC only if it is placed in service as determined for federal income tax purposes ("**Placed in Service**") before the end of 2027. By contrast, a solar or wind project that Begins Construction on or before July 4, 2026, will not be subject to the early sunset provision.
  - The Bill provides a different phase-out rule for technologies other than solar and wind (*e.g.*, battery storage, hydropower, geothermal, nuclear). For these technologies, the existing CEPC/CEIC phase-down rule will apply but without the possibility of deferring the credit reduction until U.S. annual greenhouse gas emissions are reduced to 25% of 2022 emissions. In light of this change, the CEPC and CEIC for these technologies will be 100% for projects that Begin Construction in 2033, 75% for 2034, 50% for 2035, and 0% thereafter.
  - The CEPC and CEIC are subject to the Foreign Entity Provisions (described below).

Weil Observation: The early sunset provision will significantly disrupt the development of solar and wind project pipelines. The provision will start (or has already started) a mad dash for clean energy sponsors and developers to Begin Construction on as many projects as possible during the next 12 months. For those projects that do not successfully Begin Construction before or on July 4, 2026, the path to credit eligibility will be narrow. After all, other than perhaps residential rooftop solar, small solar distributed generation, and small wind, developers will struggle to complete projects in 18 months or less (*i.e.*, by the end of 2027). As for other technologies, battery storage appears to have the brightest future under the Bill. Battery storage projects that Begin Construction before the end of 2033 will have the benefit of the CEIC at full rates, even in the case of batteries that are co-located with solar or wind projects.

- *Surgical Amendments to the Advanced Manufacturing Production Credit*. The advanced manufacturing production credit under Section 45X (the "**AMPC**") generally provides a tax credit for the production and sale to unrelated buyers of renewable energy project components and critical minerals. The Bill terminates the AMPC for wind project components sold after 2027. The Bill also imposes a phase down for critical minerals (AMPC reduced to 75% for critical minerals produced in 2031, 50% in 2032, 25% in 2032, 0% thereafter), but, at the same time, creates a new AMPC for

[5] The CEPC and CEIC are available only for eligible projects Placed in Service during or after 2025. Accordingly, it is possible for eligible projects to qualify for both the PTC and CEPC or for both the ITC and CEIC (for instance, an eligible solar project that Begins Construction in 2023 and is Placed in Service in 2025). In this situation, project owners generally choose to claim the PTC or ITC given the more-developed guidance for these credits and the absence of an emissions requirement. Following enactment of the Bill, we expect owners to continue to make this choice, particularly for solar and wind projects in light of the early sunset provision under the CEPC and CEIC.

metallurgic coal (used for the production of steel) produced through the end of 2029. Finally, the AMPC is subject to the Foreign Entity Provisions (described below).

- *The Clean Hydrogen Production Credit is Subject to Early Termination*. The clean hydrogen production credit under Section 45V (the "**Hydrogen PTC**") is awarded for the production of clean hydrogen during the first 10 years of the project's operation, with the amount of credit based on the carbon intensity of the hydrogen production process. Under prior law, the Hydrogen PTC was available for any eligible project that Began Construction before 2033. The Bill accelerates the sunset date; the Hydrogen PTC will be available only for eligible projects that Begin Construction before 2028.

Weil Observation: Earlier versions of the Bill would have terminated the Hydrogen PTC for projects that did not Begin Construction before the end of 2025. The Bill gives hydrogen project developers some breathing room, providing pre-construction and other early-stage projects with 2.5 years to Begin Construction and remain eligible for the Hydrogen PTC.

- *The Section 45Q Credit for Carbon Capture and Sequestration Gets an Uplift*. Under prior law, the carbon capture and sequestration (the "**CCS Credit**") generally was available at a rate of $85 per metric ton of carbon dioxide sequestered underground and $50 per metric ton of carbon dioxide used in enhanced oil recovery ("**EOR**") or for a commercial use, provided that the carbon capture equipment Began Construction before 2033.[6] The Bill increases the CCS Credit rate for carbon dioxide used in EOR or for a commercial use to $85 per metric ton ($180 per ton in the case of direct air capture)—to align with the credit rate for sequestered carbon dioxide—for carbon capture equipment Placed in Service after July 4, 2025. The Bill also applies the upward inflation adjustment to CCS Credit rates starting in 2027, a year earlier than under prior proposals.
- *Mixed Results for the Clean Fuel Production Credit*. The clean fuel production credit under Section 45Z (the "**CFPC**") is awarded for the production and sale to an unrelated buyer of transportation fuel. Under prior law, the CFPC was available for 2025, 2026, and 2027. The base credit was $1.75 per gallon of sustainable aviation fuel ("**SAF**") and $1.00 per gallon of vehicle fuel, in each case, multiplied by an emissions factor. The emissions factor is premised on a fuel's carbon intensity rate, which, under prior law, could be positive or negative. A positive carbon intensity rate generally would reduce the amount of the available credit while a negative rate generally would increase it.
  - On the one hand, the Bill extends the CFPC for transportation fuel produced and sold through the end of 2029 and liberalizes certain rules related to calculating a transportation fuel's emission factor,[7] which generally are expected to permit clean fuel producers to generate higher amounts of the CFPC.
  - On the other hand, the Bill made several changes to curtail the CFPC. For instance, the Bill reduces the base credit for SAF to $1.00 per gallon in order to align with the base credit for vehicle fuel. The Bill also prohibits a fuel's carbon intensity rate from going negative, which will tend to reduce the

[6] Higher rates are available for direct air capture (DAC): $180 per metric ton for sequestration and $130 per metric ton for EOR or utilization.

[7] Specifically, emissions rates must exclude emissions attributed to indirect land use change, which will tend to lower emissions rates and increase CFPC amounts, and Treasury is required to provide distinct emissions rates for transportation fuels based on specific animal manure feedstocks.

CFPC claimed by producers,[8] and prohibits the use of feedstocks grown or produced outside of North America. Finally, the Bill subjects the CFPC to certain of the Foreign Entity Provisions.

Weil Observation: Congress was expected to enhance the CFPC given the traditional Republican support of U.S. agriculture, which is a significant producer of clean fuels—particularly fuels derived from corn, plant/vegetable seed oils, and farm waste (animal manure). In fact, the House Bill would have provided an even greater uplift to the CFPC by extending the credit to the end of 2031 (rather than 2029) and continuing to allow negative emissions rates.

- *No Transferability Repeal*. Taxpayers (other than certain tax-exempt entities) are permitted to transfer most types of energy transition tax credits to unrelated persons for cash under Section 6418. The Bill does not repeal, or provide an early sunset for, this right of transferability. However, the Bill disallows tax credit transfers to Specified Foreign Entities (as described below).

Weil Observation: Congress was widely expected to repeal or curtail transferability in the Bill. In fact, the House Bill would have repealed transferability for most credit-eligible projects, albeit with multi-year transition rules. The U.S. clean energy industry certainly cheered when transferability repeal was removed from the House Bill, particularly given the general perception that transferability has accelerated investment into U.S. clean energy projects since the IRA's enactment in 2022. On the other hand, the Foreign Entity Provisions are likely to have a chilling effect on transferability (as discussed below).

- *No Curtailment of the Bonus Adders.* The Bill did not eliminate, reduce, or curtail the domestic content adder, the energy community adder, or the low-income communities adder (available for solar and wind projects eligible for the ITC or CEIC). To the contrary, the Bill provides a new energy community adder for any advanced nuclear facility otherwise eligible for the CEPC that are located in a metropolitan statistical area which has (or, at any time after 2009, had) 0.17% or greater direct employment related to an advanced nuclear project or advanced nuclear development.
- *Knock-on Effect of Permanent TCJA Phase-outs*. As a result of making the TCJA phase-outs permanent (as described above), corporate taxpayers that routinely build or acquire depreciable property and/or are highly levered could have federal income tax liability below current projections for the foreseeable future. This trend could reduce demand for tax credit acquisitions under Section 6418 and even tax equity investment, particularly as a broader population of corporates has entered the tax equity market in recent years. Moreover, given that these tax cuts would be retroactive to January 2025, the Bill could cause many corporates to find themselves with less projected federal income tax liability, and therefore reduced tax credit appetite, for 2025.
- *Limitations on Chinese Ownership and Influence over the U.S. Clean Energy Market.*[9] The Bill imposes the following restrictions and limitations (collectively, the "**Foreign Entity Provisions**"):
  - *Project Owner Limitations*. The Bill prohibits a taxpayer that is a Prohibited Foreign Entity, Specified Foreign Entity, or Foreign-Influenced Entity from claiming certain tax credits (each determined on an annual basis).

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[8] Per the Bill, Treasury *may* provide negative emissions rate for animal manure feedstocks.

[9] The Foreign Entity Provisions would apply equally to Iran, North Korea, and Russia—although it is clear that Congress' primary intent was to limit China's participation in the U.S. clean energy and manufacturing sectors. Although not entirely free from doubt, we expect any reference to China in the Foreign Entity Provisions to apply equally to Hong Kong and Macau.

- The broadest owner-level limitation applies to the CEPC, CEIC, AMPC, and CCS Credit. Starting in 2026, a taxpayer that is a Prohibited Foreign Entity is not permitted to claim these credits. A "**Prohibited Foreign Entity**" means a Specified Foreign Entity or Foreign-Influenced Entity (each defined below).
- Starting in 2026, a taxpayer that is a Specified Foreign Entity cannot claim the CFPC or the zero-emission nuclear power production credit under Section 45U (the "**NPPC**"). A "**Specified Foreign Entity**" includes (1) certain enumerated foreign entities of concern, (2) the Chinese government or any subdivision or instrumentality thereof, (3) a Chinese citizen or national, (4) an entity organized, or having its principal place of business in, China, or (5) an entity controlled by any of the foregoing.[10] This definition includes an exception for certain publicly-traded entities.
- Starting in 2028, a taxpayer that is a Foreign-Influenced Entity cannot claim the CFPC or the NPPC. A "**Foreign-Influenced Entity**" includes entities (1) of which a Specified Foreign Entity has the direct authority to appoint an executive-level officer or board member, (2) of which a single Specified Foreign Entity owns at least 25%, (3) of which more than one Specified Foreign Entity own at least 40%, or (4) of which at least 15% of the debt has been issued to one or more Specified Foreign Entities. As above, this definition includes an exception for certain publicly-traded entities.
- Starting in 2026, a taxpayer that is under Effective Control of a Specified Foreign Entity on account of a contract (including a licensing agreement for the use of intellectual property) is not permitted to claim the CEPC, CEIC, or AMPC.[11] The IRS is obligated to provide guidance regarding the meaning of Effective Control. Until then, "**Effective Control**" means the unrestricted right of a contractual counterparty, for example, to determine, in the case of the CEPC or CEIC, the amount or timing of activities related to power production or energy storage or who may purchase or use the electrical output of a power project; or, in the case of the AMPC, to determine the timing and quantity of component production at a manufacturing facility or who may purchase or use such components.

- *Material Assistance Limitations*.
  - A project will not be eligible for the CEPC or the CEIC if the project is deemed to include Material Assistance from a Prohibited Foreign Entity. This limitation applies to projects that Begin Construction after 2025. A project is deemed to include "**Material Assistance**" from a Prohibited Foreign Entity if the Material Assistance Cost Ratio of the project is less than the applicable Threshold Percentage. The "**Material Assistance Cost Ratio**" of a project generally equals the percentage of total costs of all manufactured products (and components)

[10] For this purpose, "control" means, in the case of (1) a corporation, greater than 50% ownership by vote or value, (2) a partnership, greater than 50% interest in capital or profits, and (3) any other entity, greater than 50% beneficial ownership. Section 318(a)(2) principles, which would permit attribution through intervening entities or tiers of entities, would apply for purposes of determining control.

[11] The prohibition on effective control would disallow the CEPC or CEIC on a project-by-project basis and the AMPC on a production unit-by-unit basis.

incorporated into a particular project that are produced by non-Prohibited Foreign Entities.[12] The Threshold Percentage for a project is a flat percentage that increases on a yearly basis.[13]

- A similar Material Assistance rule—to be effective in 2026—applies to the production of eligible components for purposes of the AMPC.

- *Prohibition on Tax Credit Transfers*. Starting in 2026, a taxpayer cannot transfer the CEPC, CEIC, AMPC, CCS Credit, CFPC, or NPPC pursuant to Section 6418 to any taxpayer that is a Specified Foreign Entity.

Weil Observation: The Foreign Entity Provisions are likely to cause significant disruption across the U.S. clean energy industry. These provisions will impact all of the energy transition tax credits that survive the Bill. The project owner limitations will cause clean energy sponsors (including private funds) and developers to reevaluate, and possibly recalibrate, their current and future investor composition. The Material Assistance limitations will cause sponsors and developers to reexamine their suppliers to ensure compliance with various Threshold Percentages and, given current reliance on Chinese supply chains, this limitation is likely to add uncertainty and incremental costs to future projects. Finally, these limitations are likely to have a chilling effect on investment into clean energy platforms, project-level investments (including tax equity), and tax credit transfers, as prospective investors and buyers grapple with how to perform due diligence or otherwise protect against the risk that the various Foreign Entity Provisions will curtail credit eligibility for target projects.

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[12] Examples of manufactured products within a solar project would include PV trackers and PV modules. A component would be any item or material that is directly incorporated into a manufactured product. For instance, in the case of a PV module, the components would include cells, the mounting frame, encapsulant, the backsheet, the junction box, and adhesives.

[13] For instance, for a solar or wind the Threshold Percentage would equal 40% of projects that Begin Construction in 2026, 45% in 2027, 50% in 2028, 55% in 2029, and 60% thereafter.

If you have questions concerning the contents of this alert, or would like more information about Weil's Tax practice, please speak to your regular contact at Weil, or to:

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