

Relevant International Updates

2025 Year-End Estate Planning Advisory

November 19, 2025

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As with the Tax Cuts and Jobs Act (TCJA) in 2017, the 2025 calendar year ushered in a new set of tax legislation – the One Big Beautiful Bill Act (OBBA) – as well as several changes the current administration made to the implementation of existing laws. The changes made in the OBBBA were not as seismic as those of the TCJA in respect of international tax planning, but they were nonetheless meaningful.

Changes Pursuant to the OBBBA

The changes in the OBBBA mainly revolved around rules related to controlled foreign corporations (CFCs). There were also changes made in respect of the Base Erosion and Anti-Abuse Tax (BEAT) and a new excise tax on outbound remittances. Last, there was also a change to the law on the lifetime US federal estate tax exemption that, if a non-US client's facts and circumstances fit the profile, then that non-US client may have an even higher US federal estate tax exemption utilizing an estate or gift tax treaty between the United States and that client's country of domicile. Below is a punchy, digestible explanation of those changes.

- **Downward Attribution.** The OBBBA made changes to other provisions relating to CFCs, notably restoring a taxpayer-favorable rule that was repealed by the TCJA (section 958(b)(4)), and adding a new proposed section 951. Section 958(b)(4) limits "downward attribution" of stock for purposes of determining CFC status. The repeal of that rule by the TCJA significantly increased the number of foreign corporations treated as CFCs, particularly within foreign-parented groups. By restoring the rule limiting downward attribution, the OBBBA will materially reduce the number of foreign corporations treated as CFCs. Section 951B was added to address the types of ownership structures that initially prompted the repeal of section 958(b)(4) and has

the effect of, in a more narrowly tailored manner than the TCJA, of subjecting foreign subsidiaries within certain foreign-parented groups to the subpart F regime.

- **Changes to Global Intangible Low-Taxed Income (GILTI).** The OBBBA made several changes to the provisions governing the regimes formerly known as GILTI and Foreign-Derived Intangible Income (FDII) for taxable years beginning after December 31, 2025. The OBBBA renames GILTI as "net CFC tested income" (NCTI) and FDII as "foreign-derived deduction eligible income" (FDDEI). The OBBBA reduces the deduction for NCTI (to 40% from 50%) and FDDEI (to 33.34% from 37.5%) and increases (to 90% from 80%) the portion of foreign income taxes that a domestic corporation is deemed to have paid with respect to NCTI. The OBBBA also disallows 10% of the deemed paid foreign tax credits (FTCs) for distributions of previously taxed NCTI. These changes increase the effective tax rate for both NCTI and FDDEI to 14% from the current 13.125%.
- **Pro Rata Share Rules.** The OBBBA also modified the *pro rata* share rules under subpart F. Under prior law, a US shareholder includes its *pro rata* share of a CFC's subpart F income and NCTI only to the extent the shareholder holds stock of the foreign corporation on the last day of the year on which the foreign corporation was a CFC. Under the OBBBA, a US shareholder may have subpart F income or NCTI inclusions if the shareholder owns stock of a CFC on any day of the taxable year even if that shareholder does not hold stock in the CFC on the last day of the year. The OBBBA provides that a US shareholder's *pro rata* share of a CFC's subpart F and NCTI is the portion of such income that is attributable to (a) the stock of such corporation owned by the shareholder and (b) any period of the CFC year during which the shareholder owned the stock, the shareholder was a US shareholder of such corporation and such corporation was a CFC.
- **Changes to Base Erosion and Anti-Abuse Tax (BEAT) Rate and Tax Credit Changes.** Under pre-2026 law, the BEAT rate for 2025 was 10%, and the BEAT rate had been scheduled to increase to 12.5% beginning in 2026. The OBBBA instead permanently sets the BEAT rate at 10.5% beginning in 2026. Prior law also would have narrowed the type of tax credits that are BEAT-favored beginning in 2026, but the OBBBA eliminated this, permanently retaining the pre-2025 BEAT calculation credit rules.
- **Excise Tax on Outbound Remittances.** There is a new 1% excise tax on certain outbound remittances. The new law is enacted by section 4475. The excise tax applies to certain "remittance transfers," which broadly includes an electronic transfer of funds by a sender located in the United States to a person located in a foreign country. Importantly, it does not apply to certain amounts, including amounts withdrawn from an account maintained by US banks and brokers. The excise tax itself is borne by the sender of the funds, but a new withholding obligation on the "remittance transfer provider" (RTP), who has due diligence obligations in

connection with identifying whether a transaction is subject to section 4475. The tax is payable quarterly, and in the absence of the tax being paid, the RTP has secondary liability.

- **Enhanced Estate Tax Exemption.** Starting in 2026, the lifetime US estate tax was increased to \$15M permanently, to be adjusted for inflation. This allows US citizens, and individuals otherwise domiciled in the United States, to undertake more estate planning. For non-US persons (e.g., individuals who are neither citizens nor residents of the United States for US federal estate tax purposes) domiciled in countries that have an estate tax treaty with the United States, they may have – depending on the terms of the treaty – an enhanced exemption amount that exceeds the normal (minimal) \$60,000. Of course, in those circumstances, a treaty-based position needs to be claimed when filing a Form 706-NA.

Changes to Corporate Transparency Act (CTA)

As discussed above, although domestic reporting companies are currently exempt from the CTA's beneficial ownership information filing obligations, FinCEN did not exempt foreign reporting companies.

- What this means – for now – is that non-US persons with indirect interests in domestic reporting companies do not need to fear that their personal information will be disclosed to a private database. However, two things may still unfold.
 - First, while it may not be challenged, it is arguably unconstitutional for the executive branch to override a Congressional mandate. That is, the law implementing the CTA requires domestic reporting companies to report, so FinCEN – a branch of the executive arm of the government – does not have the constitutional authority to override a law on the books.
 - Second, once there is a change in the administration, it is unclear whether that new administration will reinstate the reporting requirement for domestic reporting companies.

Key Things to Know

- The changes to downward attribution were welcomed, as well as the changes to BEAT and the lifetime US estate tax exemption.
- On the other hand, the changes to GILTI and the new excise tax on remittances abroad were less positive for taxpayers in the sense that they both effectively cause more tax (although the margin of difference is small).
- Last, the administration's approach to the CTA was welcomed by all domestic reporting companies. However, the law implementing the CTA remains. Whether a new administration will resume the implementation of the CTA, and whether there will be further challenges to the CTA's constitutionality, will be determined at a later date.

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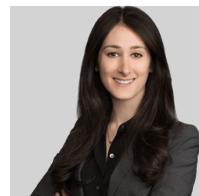
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