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The Present and Future of GILTI, FDII, and BEAT

June 12, 2024

Ahead of the wave

2024 U.S. Cross-Border Tax Conference

Notices

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The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

With you today

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TCJA and Beyond: A Timeline of Changes Faced by US Taxpayers

January 2018 → March 2020 → January 2021 → October-December 2021 → January 2022 → January 2022 → August 2022 → July 2023 → December 2023 → January 2024

January 2018
- BEAT, GILTI, and FDII provisions become effective for U.S. taxpayers.
- Section 163(j) limitation on interest expense deduction is limited to 30% of EBITDA.

March 2020
- Congress enacts CARES Act, which allowed an increase in the limit on interest expense deduction to up to 50% of EBITDA for tax years 2019 and 2020.

January 2021
- CARES Act relief is extinguished; final section 163(j) regulations are released.

October-December 2021
- The OECD releases model Pillar Two rules (the "**GloBE Model Rules**") for implementation of a 15% global minimum tax.

January 2022 (tax years beginning after December 31, 2021)
- Section 174 requires taxpayers to capitalize and amortize specified R&E expenditures over a 5- or 15-year period, depending on where the R&E is performed.
- Section 163(j) limitation on interest expense deduction is limited to 30% of EBIT, rather than EBITDA.

January 2022
- Final FTC regulations are released, significantly limiting the creditability of foreign taxes paid.

August 2022
- The Corporate Alternative Minimum Tax ("**CAMT**") is signed into law. "Applicable corporations" are subject to a minimum tax for tax years starting after December 31, 2022.

July 2023
- The IRS provides taxpayers temporary relief from the final 2022 FTC regulations, which has been extended until further guidance is issued.

December 2023
- EU Member States enact Pillar Two legislation, applicable to in scope multinationals January 1, 2024.

January 2024
- Certain US taxpayers are subject to Pillar 2, and CAMT on top of the legacy provisions of the TCJA with more changes on the horizon.

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Sunsetting TCJA Tax Provisions

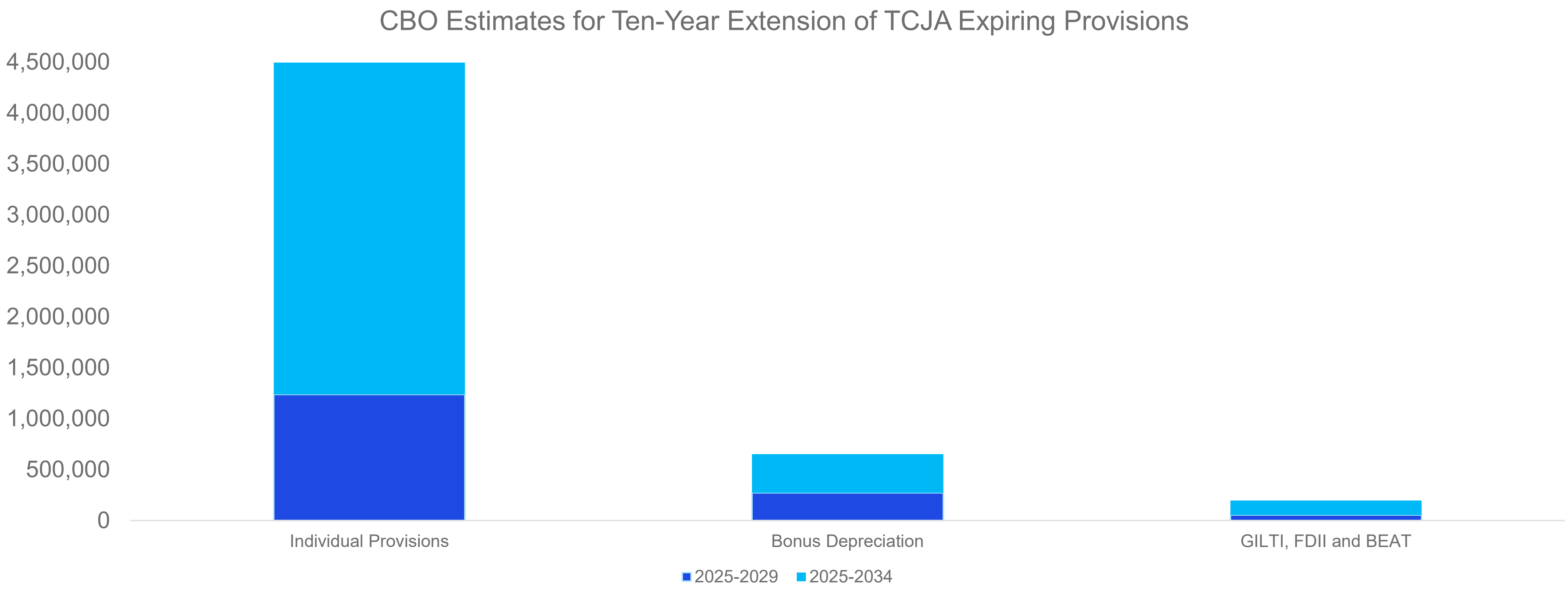
2021	2022	2025
• Section 163(j) limitation on interest expense deduction now based on 30% of EBIT. • Section 174 5- or 15- year amortization for R&D expensing.	• 100% bonus depreciation phase-out in 20% increments, annually.	• GILTI deduction reduced from 50% to 37.5% increasing the ETR on GILTI from 10.5% to 13.125%. • FDII deduction reduced from 37.5% to 21.875%, increasing the ETR on FDII from 13.125% to 16.406%. • BEAT rate increase from 10% to 12.5%. • Special rules for LIHTC, renewable energy and R&D credits expire in 2025.

If the TCJA provisions highlighted above expire in 2025, regular tax liability for U.S. taxpayers would increase.

Extenders may be considered in late in 2025 or even in 2026 (on a retroactive basis).

Extenders are not guaranteed: Recent experience with section 174 and 163(j), bonus depreciation.

Cost to Extend TCJA Expiring Provisions



The cost of extending TCJA expiring provisions is expected to be $4.7 trillion dollars, most of which relates to individual provisions. This net cost includes some revenue raising provisions (SALT, standard deduction).

Taxpayer Perspective

Taxpayers cannot view one tax regime in a vacuum – cash tax planning now involves the interplay of all regimes. Planning can result in counter-intuitive results and tax exposure under a different regime. What should taxpayers do?

CAMT

ETR management

Pillar Two

Potential for UTPR in 2025 and beyond

US Tax

BEAT, FDII, GILTI planning

Non-US Tax Regimes

Implementation of corporate income tax in jurisdictions that have not historically levied corporate income taxes

Optimizing the Location of IP in a Pillar Two World

Methods of transferring IP

- License
- Sale
- Section 367(d) contribution
- Section 311(b) / 332 distributions
- The transfer of IP may be followed by cost sharing
- Circumstances when moving IP is easier (e.g., acquisition)

Considerations Regarding Movement of Target IP

- Potential exit tax
- Potential challenges regarding whether IP has actually moved, or whether profits should remain in Target
- BEAT considerations on IP transfers to the United States
- FDII
- Non-tax considerations

For companies that inbounded IP in tax years 2019 and 2020, are they still better off?

Optimizing the Location of IP in a Pillar Two World

Example: Target Acquisition

Parent is considering its options:

- Move the IP to Parent
- Keep the IP in Target
- Move the IP to a new IP Principal

Parent
(Country X)

Target
(Country Y)

Group IP

Senior executives living in Country X

Target IP

Skilled workforce living in Country Y

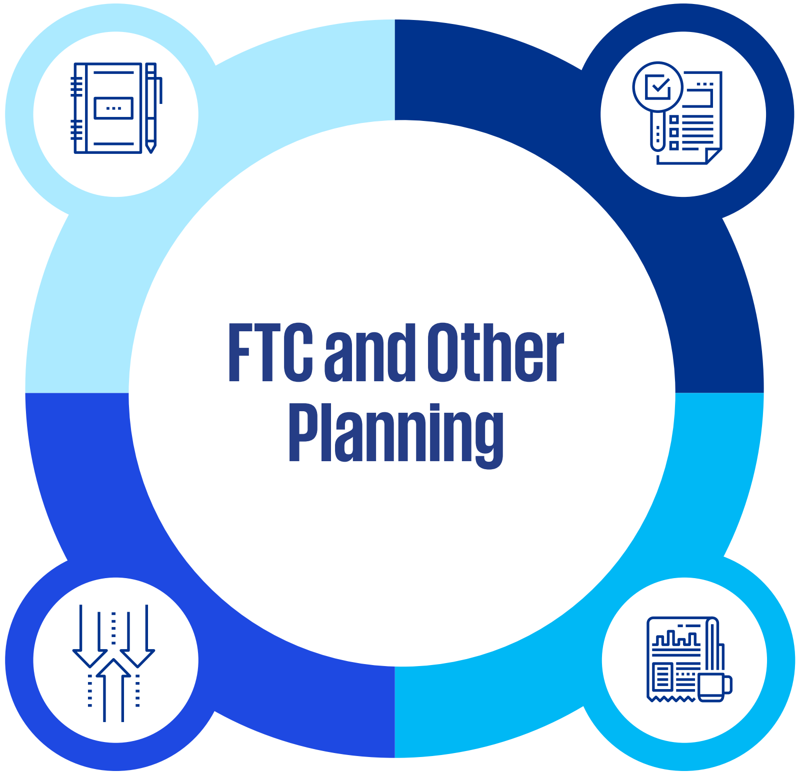
What incentives exist for inbounding IP in light of potential sourced-based taxation, Pillar Two, and the reduction of the FDII benefit?

- Reality for taxpayers is incentives for U.S. tax purposes may be offset by global provisions.

Planning for 2025: FTC and Other Planning

Affirmative Subpart F and FTC Planning

GILTI Check-the-Box Planning



Pillar Two Planning: Future Flexibility for Taxpayers

GILTI High Tax Election Planning

Planning For 2025: FDII Advanced Payments

No Pre-payment	2024	2025
Gross FDDEI	105	105
FDDEI Expense	100	100
FDDEI	5	5
Total FDDEI		**10**

Pre-payment	2024	2025
Gross FDDEI	210	0
FDDEI Expense	100	100
FDDEI	110	0
Total FDDEI		**110**

Facts:

- USCo performs services for ForCo and charges cost plus 5%.
- USCo typically incurs $100 od expense for performing these services each year.

Pre-payment for Services:

- Without pre-payment, USCo will have $5 of FDDEI in 2024 and 2025, or $10 of FDDEI over two years.
- However, if ForCo accelerates its 2025 payment of services to 2024, USCo could earn $110 of FDDEI over the same period, potentially maximizing its FDII deduction before the FDII deduction decreases in 2025.
- Importantly, the incremental accelerated gross FDDEI in Year 1 is not offset by Year 2 deductions (because FDDEI cannot be negative), and any “loss” in FDDEI in the following year does not carryforward or carryback.

KPMG Observation:

For applicable taxpayer subject to CAMT, the benefit illustrated of accelerating FDII payments may be offset by CAMT, and later, Pillar Two’s UTPR.

Present and Future of BEAT

- Nuisance to taxpayers or driver of actual cash tax cost?
- Risk of loss of credits is a serious concern
  - Foreign tax credits and general business credits
  - Beginning in 2025, R&D, LIHTC and renewable energy credit provisions no longer apply
- Need to model BEAT in multiple scenarios to avoid a surprise
  - Higher interest rates vs. lower interest rates
- Consideration will need to be given to CAMT and CAMT liability drivers, including timing differences, where tax liability is deferred and advanced, permanent book to tax differences, and mark-to-market elections

Looking to the future of TCJA Policy

- How long do taxpayers have to worry about fundamental tax changes every few years?
- Policy considerations:
  1. Reconsideration of country-by-country GILTI
  2. November 2024 elections impact to the US tax regime
  3. Application of UTPRs to US MNEs' domestic profits
  4. Should or will the U.S. conform more closely to Pillar Two?

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