One, Big, Beautiful Bill and the Real Estate Industry

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July 10, 2025

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The One, Big, Beautiful Bill Act

The One, Big, Beautiful Bill Act

On July 4th, 2025, the president signed into law the One, Big, Beautiful Bill Act (the "OBBBA"), making permanent a number of the provisions included in the Tax Cuts and Jobs Act of 2017 (the "TCJA") and including other changes.

- While the OBBBA includes a number of important provisions, it is important to recognize the provisions that were not included in the OBBBA. Examples of excluded provisions that have been of concern to the real estate industry include:
  - No specific change to the taxation of carried interests.
  - Preservation of like-kind exchanges for real estate assets.
  - No change to tax rates on capital gain.
  - No limitation on SALT deduction for corporate taxpayers (including REITs).
  - No "revenge" tax under what would have been a new section 899.
    - The elimination of this provision came about as a result of Treasury's agreement with the G7 countries to exclude U.S. companies from Pilar 2 taxes. D Flatley & L. Vella, *Treasury Deal Kills "Revenge Tax" that Spooked Wall Street*, BNA Daily Tax Report (June 26, 2025)
- The slides that follow summarize some of the provisions contained in the OBBBA that are of greatest interest to the real estate industry.

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Tax Rates

Tax Rates

Existing individual tax rates and brackets are permanently extended under the OBBBA.

The House and Senate Bills took somewhat different approaches in addressing indexing of the rate bracket thresholds for inflation, and the OBBBA follows the Senate Bill, which was slightly less favorable for the 22%, 24%, and 32% rate brackets.

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Alternative Minimum Tax

For taxable years 2018 through 2025, the TCJA increased the AMT exemption amounts and the thresholds at which AMT exemptions phase out for individual taxpayers. For 2025, these amounts are as follows:

For married taxpayers filing a joint return (or for a surviving spouse), the AMT exemption amount is $137,000; the phase-out threshold is $1,252,700.

For married taxpayers filing a separate return, the AMT exemption amount is $68,500; the phase-out threshold is $626,350.

For all other individual taxpayers, the exemption amount is $88,100; the phase-out threshold is $626,350.

For tax years 2018 to 2025, both the increased exemption amounts, and phase-out thresholds are adjusted annually for inflation using the percentage by which chained CPI for the prior year exceeds the chained CPI for 2017.

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Alternative Minimum Tax

The OBBBA (following the Senate Bill) makes the increase in the AMT exemption amounts from TCJA permanent but would revert the exemption phaseout thresholds to 2018 levels of $500,000 ($1,000,000 in the case of taxpayers filing a joint return).

Under the OBBBA, the rate at which the AMT exemption phases out would be increased from 25% to 50%, which would result in the exemption amount being reduced more quickly as income increases beyond the applicable phase out threshold.

The House Bill would have made permanent the increased alternative minimum tax exemption and phase-out of thresholds enacted by the TCJA.

The provision is effective for taxable years beginning after December 31, 2025

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Deduction Limitations

Deduction Limitations

The OBBBA limits the use of itemized deductions.

- Itemized deductions are reduced by 2/37 of the lesser of (a) the taxpayer's itemized deductions, or (b) the amount by which (I) taxable income (determined without regard to itemized deductions and ignoring this limitation) exceeds the dollar amount at which the 37% rate bracket begins.
  - The limitation does not apply to the 20% deduction under section 199A.
  - This provision is effective for taxable years beginning after December 31, 2025.
  - The House Bill had provided for a higher reduction for SALT taxes that were otherwise allowed as itemized deductions, but the Senate eliminated the different treatment of SALT taxes, and the OBBBA contains the Senate provision.
- Prior to 2018, a different limitation (referred to as the "Pease limitation") had applied to itemized deductions for taxpayers with adjusted gross income that exceeded as specified amount, but that limitation was suspended by the TCJA through December 31, 2025.

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Deduction Limitations

The OBBBA makes permanent the elimination of miscellaneous itemized deductions.

The OBBBA makes permanent the elimination of the deduction for personal exemptions (except for a temporary senior exemption).

The OBBBA makes permanent the cap on mortgage size for qualified residence interest at $750,000 ($375,000 for married filing separately).

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State Taxes

SALT Deduction Limitation

In general, the OBBBA increases the limitation for deduction of SALT taxes, unless otherwise exempted, to $40,000 for 2025 (or half such amount for married individuals filing separately).

The amount would be $40,400 for 2026 and the limitation amount for each subsequent year would be 101% multiplied by the limitation amount for the prior year, until 2030, when the limitation amount would go back to $10,000.

The limitation amount is subject to a phase out by reference to 30% of the excess of a taxpayer's modified gross income over $500,000 (or half such amount for married individuals filing separately) in 2025, with the modified gross income amount being increased in the same ratios as the limitation amount through 2029.

While the House Bill and earlier versions of the Senate Bill contained provisions limiting deductions under the PTET regime, the OBBBA, as signed by the president, contains no such limitation.

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Section 199A

Section 199A

Under the OBBBA, the 20% deduction under section 199A with respect to qualified business income (and REIT dividends) is made permanent.

- The House Bill had proposed raising the deduction to 23%, expanding the deduction for specified service trades or businesses for taxpayers with taxable income below a threshold amount, and making the phaseout of the deduction more favorable for taxpayers that either would be impacted under the wage- or unadjusted basis-limitation or are in a specified service trade or business due to eclipsing the threshold taxable income amount. The House Bill also had provided that qualified BDC interest dividends (i.e., dividends from an electing business development company attributable to net interest income allocable to a qualified trade or business) would be added to the list of income that qualifies for the deduction under section 199A.
  - All of these provisions were eliminated in the Senate Bill and are not included in the OBBBA.

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Excess Business Loss Limitations

Excess Business Loss Limitation

TCJA enacted section 461(l), which provides that, for taxpayers other than C corporations, excess business losses will not be allowed as a deduction in the current year, but instead will be carried over as part of a taxpayer's NOL.

The OBBBA makes section 461(l) permanent.

- Under the House Bill, if an excess business loss would have been disallowed in a taxable year beginning after December 31, 2024, the loss would have been included in the taxpayer's calculation of aggregate deductions attributable to the taxpayer's trade or business in the following taxable year for purposes of applying section 461(l) in that year, but the Senate eliminated this provision, and it is not included in the OBBBA.

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Depreciation

Extension of 100% Depreciation

The OBBBA reinstates on a permanent basis the 100% additional first-year depreciation deduction under section 168(k) for property acquired after January 19, 2025.

The bonus depreciation applies with respect to “qualified property,” which, as relevant to the real estate industry, generally includes property with a recovery period of 20 years or less.

A transitional rule is provided on an elective basis allowing 40% or 60% expensing (depending on the type of property) for property placed in service in the first taxable year ending after January 19, 2025.

The House Bill would have limited the expensing provision to property placed in service before January 1, 2030, but the Senate changed the provision to make it permanent, and the OBBBA expensing provision is permanent.

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Increased Dollar Limitation under Section 179

The OBBBA increases the dollar limitation for elective expensing under section 179 for certain depreciable business property (i.e., tangible property which is section 1245 property or qualified real property (for which an election is made) acquired by purchase for use in an active trade or business) from $1 million to $2.5 million and would increase the acquisition amount at which the available deduction would begin phase out from $2.5 million to $4 million.

- The provision is effective for taxable years beginning after December 31, 2024.

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Expensing of Qualified Production Property

The OBBBA provides for 100% expensing of costs related to the construction of certain manufacturing property that is "qualified production property."

- "Qualified production property" is nonresidential real property located in the United Stated (or a possession) that the taxpayer uses as an integral part of a qualified production activity and for which original use commences with the taxpayer.
  - Construction of the property must begin after January 19, 2025, and before January 1, 2029, and the property must be placed in service before January 1, 2031.
    - The House Bill had provided that the property must be placed in service before 2033.
  - Expensing under this provision would be elective.
  - The Senate added a provision stating that property used by a lessee shall not be considered to be used by the taxpayer as part of a qualified production activity, making clear that leased manufacturing facilities will not qualify for expensing, and this provision is contained in the OBBBA.

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Expensing of Qualified Production Property

The OBBBA provides for 100% expensing of costs related to the construction of certain manufacturing property that is "qualified production property." (cont'd)

- Qualified production property would not include the portion of any nonresidential real property which is used for functions unrelated to manufacturing, production, or refining of tangible personal property (e.g., offices, parking, lodging, etc.).
- A "qualified production activity" involves the manufacturing, production, or refining of a qualified product (i.e., tangible personal property).
  - The activities must result in the substantial transformation of the property.
  - "Production" activities are limited to agricultural and chemical production, but this does not seem to limit what might be manufacturing or refining.
- Recapture applies if the property ceases use as a qualified production activity within 10 years of being placed in service.

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Section 163(j)

Section 163(j) – Business Interest Limitation

Under section 163(j), as enacted in TCJA, a taxpayer is prohibited from deducting business interest expenses (i.e., interest allocable to a trade or business) in excess of the sum of:

- Business interest income, and
- 30% of adjusted taxable income.
  - Through 2021, adjusted taxable income was defined as taxable income other than (1) items not allocable to a trade or business, (2) business interest income and deductions, (3) depreciation, amortization, and depletion, (4) the 20% deduction for business income, and (5) NOLs.
    - Since 2021, depreciation, amortization, and depletion has been deducted in determining adjusted taxable income, therefore resulting in a more restrictive limitation under section 163(j).
    - The OBBBA provides that depreciation, amortization, and depletion will again be excluded from the calculation of adjusted taxable income for taxable years beginning after December 31, 2024.
    - The House Bill would have terminated the rule for taxable years beginning on or after January 1, 2030, but the Senate made the provision permanent, as does the OBBBA.

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Section 163(j) – Business Interest Limitation

For purposes of section 163(j), the OBBBA (following the Senate Bill) also added to the definition of "adjusted taxable income" (1) subpart F inclusions under section 951(a), (2) GILTI inclusions under section 951A(a), and (3) the gross up under section 78 for deemed paid foreign tax credit (adjusted for certain items).

- These items generally relate to amounts required to be recognized in gross income by a U.S. shareholder of a foreign corporation.
- This provision applies to taxable years beginning after December 31, 2025.

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Section 163(j) and Capitalized Interest

Prior to the OBBBA, the Code provided no ordering rule for coordinating the interest limitation rules under section 163(j) with other Code provisions under which business interest expense may be capitalized.

- Regulations promulgated provide a coordination rule indicating that business interest capitalized under a provision that subjects interest to capitalization is not subject to the section 163(j) limitation.

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Section 163(j) and Capitalized Interest

The OBBBA (following the Senate Bill) provides a statutory ordering rule that subjects interest that is capitalized to the section 163(j) limitation and further provides that the amount of business interest expense allowable after the application of the business interest expense limitation would be applied to otherwise capitalized business interest expense before any other business interest expense.

- The OBBBA also provides that any business interest expense disallowed under section 163(j) in a prior year and subsequently carried forward will not be treated as interest to which any interest capitalization provision applies.
- Importantly for real estate, the OBBBA provides that section 163(j) does not apply to interest capitalized under section 263A(f) relating to real or tangible personal property produced by the taxpayer or acquired for resale.
  - The OBBBA also provides that interest capitalized under section 263(g) (i.e., interest related to straddles) is not subject to section 163(j).
- This provision is effective for taxable years beginning after December 31, 2025.

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Residential Development and Section 460

Residential Development and Section 460

Under section 460, the percentage completion method is the default method for accounting for taxable income under a long-term contract.

- The percentage completion method essentially requires taxpayers to recognize income and expense as costs are incurred under a long-term contract.

Taxpayers qualifying for the home construction contract exception are eligible to use the completed contract method.

- This method allows taxpayers to defer recognition of income and expenses until the contract is completed.

Historically, a partial exception existed for residential construction contracts.

- Qualifying taxpayers could use the 70/30 percentage of completion/capitalized cost method whereby 70% of the taxpayer's long-term contract income is computed using the percentage of completion method, with the remaining 30% being calculated under an exempt contract method such as the completed contract method.
- A residential construction contract evaluates qualification by reference to buildings containing more than four dwelling units as compared to a single units for home construction contracts.

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Residential Development and Section 460

The OBBBA, following the Senate Bill, repealed the 70/30 method for residential construction contracts and permits such contracts to use any exempt contract method, including the completed contract method.

- The OBBBA also exempts a residential construction contract that is not a home construction contract from section 263A if (1) the contract is estimated to be completed within the 3-year period beginning on the contract commencement date, and (2) the builder meets the section 448(c) gross receipts test for the taxable year in which the contract is entered into.

- The OBBBA also provides that the beneficial treatment for residential construction contracts will apply for purposes of the alternative minimum tax in the case of non-corporate taxpayers.

In effect, the new law permits condominium developers to qualify for the completed contract method, thus allowing for the deferral of income until the year when the residential contract is completed.

The provision is effective for contracts entered into in taxable years beginning after July 4, 2025.

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Qualified Opportunity Zones

Qualified Opportunity Zones

The OBBBA makes permanent the existing QOZ program for investments made into QOFs on or after January 1, 2027 (“OZ 2.0”).

- Under OZ 2.0, eligible QOZs will be designated every 10 years.
  - Investments made in a QOF before 1/1/2027 are subject to the current QOZ designations.
  - Beginning on July 1, 2026, new QOZs will be selected by states and designated by Treasury.
    - These QOZ designations will apply to QOF investments made on or after January 1, 2027 and before January 1, 2037.
    - Low-income community is now defined in section 1400Z-1.
  - Tracts contiguous to low-income communities are no longer eligible.
- Every 10 years after July 1, 2026, the QOZ designation process will be repeated.

There are gain deferral and reduction benefits that accompany QOZs.

- Gains invested in a QOF after December 31, 2026, would be deferred and recognized 5 years after the date of investment in the QOF.
  - The adjusted basis of any QOF investment held for at least 5 years would be increased by an amount equal to 10% of the deferred gain, or 30% for investments made into rural QOF investments.
- A taxpayer who holds its QOF investment for at least 10 years could elect, on the sale or exchange of the QOF investment, to adjust the tax basis of the disposed investment to (1) the FMV on the date or sale, or (2) the FMV on the 30th anniversary of the investment date (for investments sold after 30 years).

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Qualified Opportunity Zones

QOZ 2.0 is structured to encourage investments in QOFs that are investing in rural areas.

- Gain reduction benefit is increased from 10% to 30%
- Substantial improvement threshold for QOZ business property is reduced from 100% of tax basis to 50% of tax basis
- A rural area means any area other than:
  - A city or town that has a population of greater than 50,000 inhabitants; and
  - Any urbanized area contiguous and adjacent to such city or town.

A rural QOF (eligible for the additional benefits) is a QOF that holds at least 90% of its assets in QOZ property that is either:

- QOZ business property substantially all the use of which is in a QOZ comprised entirely of a rural area; or
- A QOZB in which substantially all the tangible property owned or leased is QOZ business property substantially used in a QOZ that is comprised entirely of a rural area.

QOFs and QOZBs would be subject to enhanced reporting requirements.

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Low Income Housing Tax Credit

Low Income Housing Tax Credit

Under current law, in order for a low-income building to be eligible for the low-income housing tax credit, the building must have received a credit allocation from the state or must have been financed with proceeds from certain tax-exempt bonds that are subject to the private activity bond volume limit.

- The OBBBA makes permanent the increase in the state housing credit ceiling that was available in calendar years 2018 through 2021 (under TCJA) but would decrease the ceiling amount to 12% (instead of 12.5%).
  - The House Bill would have increased the state housing credit ceiling for calendar years 2026-2029 by increasing the population formula for each state.
- Consistent with the House and Senate Bills, the OBBBA modifies the tax-exempt financing requirement to allow additional buildings financed with tax-exempt bonds to qualify for some credits without receiving a credit allocation from the state housing credit ceiling.
- These provisions are applicable for buildings placed in service in taxable years beginning after December 31, 2025.

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New Markets Tax Credit

New Markets Tax Credit

The OBBBA permanently extends the New Markets Tax Credit ("NMTC") program allowing the Community Development Financial Institutions Fund ("CDFI") to allocate $5 billion of NMTCs each year going forward.

- The OBBBA provides a 5-year carryforward for any NMTCs that are not allocated by the CDFI to Community Development Entities in a given year.
- The NMTC was set to expire on December 31, 2025, and the new provision is effective beginning in the 2026 calendar year.

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Non-Partner Capacity Payments Under Section 707(a)(2)(A)

Section 707(a)(2)(A) Payments

A small minority of practitioners have asserted a position that the IRS cannot characterize a transaction as the disguised sale of a partnership interest under section 707(a)(2)(A) in the absence of regulations because the provision is qualified by the phrase "[u]nder regulations prescribed by the Secretary."

- The same argument presumably would apply to non-partner capacity payments under this section, which potentially include management fee-waiver arrangements.
- The OBBBA alters the quoted language to instead state "[e]xcept as provided by the Secretary" hence eliminating any argument that regulations are required to implement the provision.
  - The modified provision is effective for services performed, and property transferred, after July 4, 2025.
  - The modified provision also contains a rule of construction indicating that the new provision should not create any inference as to what was the law prior to enactment of the modified provision.

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TRS Value Limitation

Taxable REIT Subsidiary Value Limitation

Under pre-OBBBA law, not more than 20% of the value of a REIT's total assets at the end of any quarter could be represented by securities of one or more taxable REIT subsidiaries.

- The OBBBA increases this threshold to 25% of the value of the REIT's total assets.
  - The amendment is effective for taxable years beginning after December 31, 2025.

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Excise Tax on Certain Universities

Excise Tax on Certain Colleges and Universities

Under pre-OBBBA law, section 4968 applied a 1.4% excise tax on the "net investment income" of certain private colleges and universities whose endowments exceeded a specified per-student threshold amount.

- The OBBBA followed the Senate Bill in increasing the excise tax on the net investment income (and allow for graduated rates of 1.4%, 4%, and 8%) of private colleges and universities that have sizeable endowments, with the applicable rate determined based on increasing levels of specified, per-student endowment thresholds, taking into account the assets of certain related organizations.
- Under the OBBBA, an institution is only subject to the tax if it had at least 3,000 tuition-paying students in the preceding tax year, which is a significant increase from the 500 tuition-paying student threshold under pre-OBBBA law
- The provision applies to taxable years beginning after December 31, 2025.
- Among other differences, the House Bill had provided for higher rates (capping out at 21% if the student adjusted endowment was more than $2 million) and exempted "qualified religious institutions" from the excise tax.

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Reduced BEAT Tax Rate

Reduced BEAT Tax Rate

Under pre-OBBBA section 59A, the rate of tax on certain base erosion payments (the "BEAT") was scheduled to increase from 10% to 12.5% for taxable years beginning after 2025.

- The OBBBA, following the Senate Bill, increases the maximum BEAT rate from 10% to 10.5% (instead of the currently-scheduled increase to 12.5%) for taxable years beginning after December 31, 2025, and on a permanent basis.
  - The House Bill would have increased the rate to 10.1%.

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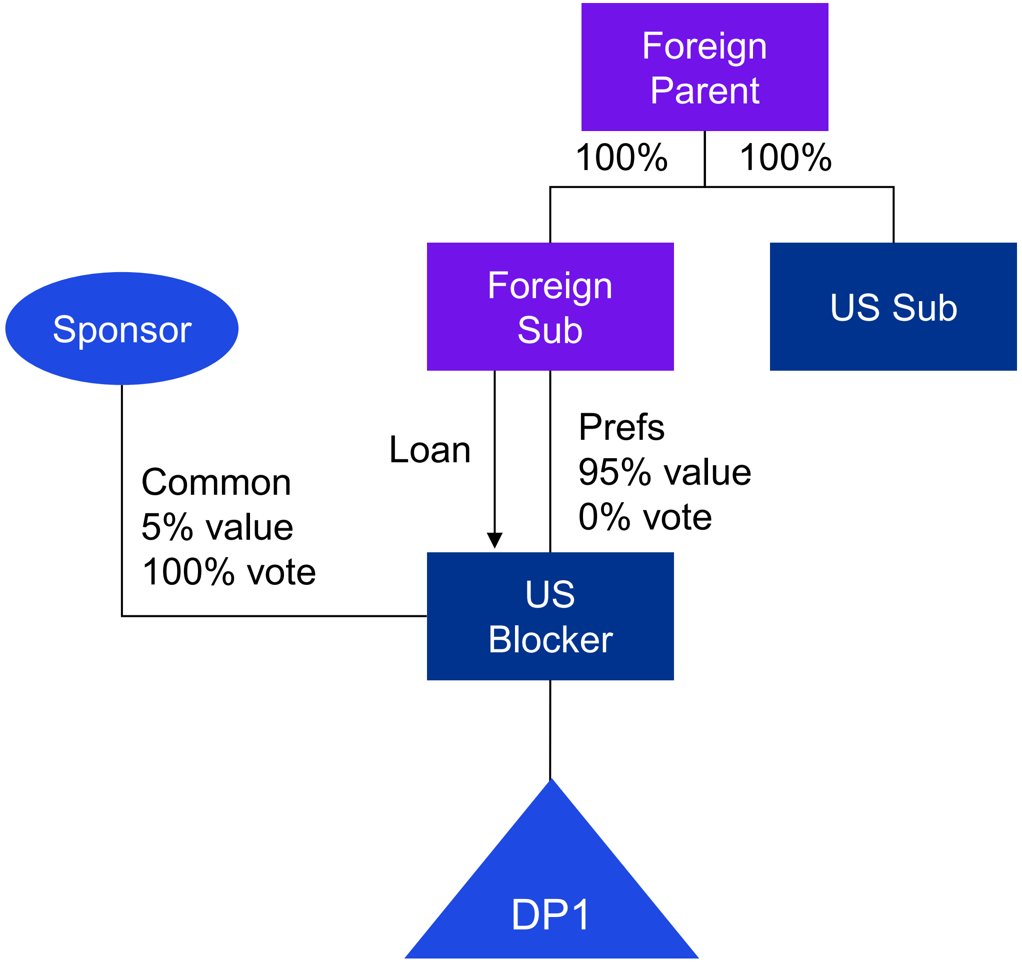
Downward Attribution and CFC Status

Portfolio Interest & Section 958(b)(4) Repeal



- Under the "portfolio interest exemption," Foreign Sub may be exempt from USFIT on interest received from US Blocker if Foreign Sub holds less than 10% of the voting power of US Blocker and certain additional requirements are satisfied
- However, PIE not available for income received by a CFC from a related person
- Prior to the TCJA, section 958(b)(4) prevented downward attribution of stock from a foreign person to a US person for purposes of the CFC regimes. Due to repeal of section 958(b)(4) in the TCJA, US Sub is treated as owning all of the stock of Foreign Sub, causing Foreign Sub to be a CFC
- US Blocker is related to Foreign Sub because Foreign Sub owns 95% of the value of US Blocker
- Interest from US Blocker to Foreign Sub therefore not eligible for PIE
- The OBBB generally reinstates section 958(b)(4) for tax years of foreign corps beginning after 12/31/25.

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Phaseout of Clean Electricity Production and Investment Tax Credits

Phaseout of Clean Electricity Production Tax Credit

Pre-OBBBA sections 45Y and 48E allowed tax credits related to the production of clean electricity or an investment in certain clean-electricity related property.

- The OBBBA retains the current law phase-out schedule for the clean electricity production tax credit and clean electricity investment tax credit for qualified facilities other than wind and solar facilities, although it would define the "applicable year" as 2032 (i.e., it would eliminate the potential for a later phase-out if the targeted emissions rate is met after 2032).
  - For wind and solar facilities, the OBBBA generally terminates both credits so that qualified wind and solar facilities would not be credit eligible unless they either begin construction within 12 months from enactment or if they are placed in service by December 31, 2027.
    - The Administration has issued an Executive Order relating to the termination of wind and solar credits.
      - The Treasury Secretary is instructed to strictly enforce the termination of the clean electricity production and investment tax credits for wind and solar facilities.
      - This includes issuing new and revised guidance to ensure that policies concerning the "beginning of construction" are not circumvented.

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Excessive Employee Remuneration from Controlled Group

Excessive Remuneration from Controlled Group

Pre-OBBBA Section 162(m) limits the annual deduction for compensation paid to covered employees of a publicly held corporation to $1 million per employee.

- For any taxable year, covered employees will include the principal executive officer (PEO), the principal financial officer (PFO), and the three highest paid executive officers, as well as anyone who had been a covered employee in a prior tax year beginning after December 31, 2016.
- Under pre-OBBBA law, beginning in 2027, section 162(m) will expand to include the additional five highest paid employees for each tax year.

The OBBBA adds an entity aggregation rule in section 162(m).

- The provision provides that remuneration paid to a specified covered employee by any member of the controlled group is aggregated to determine the loss of deduction for amounts over $1 million.
  - The allowable deduction is allocated among the applicable controlled group members who are paying compensation to the specified covered employee.
  - The controlled group determination uses the rules under section 414(b),(c), (m), and (o), which provide that related entities are treated as a single employer for many employee benefit purposes.
- The provision applies to taxable years beginning after December 31, 2025.

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