



# Focus session - US

2025 KPMG Asia Pacific Tax Summit

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# Agenda

- 01** Current state of the IRS
- 02** Introduction to One Big Beautiful Bill
- 03** Proposed U.S. Section 899 Retaliatory tax measures
- 04** Impact of OBBB – International provisions
- 05** Impact of OBBB – Domestic provisions
- 06** CAMT and other key developments

# Today's presenters



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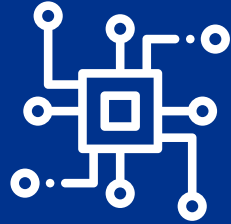
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# **Current state of the IRS**

# Budget cut on IRS; Staffing challenges



## IRS workforce losses

The IRS lost 25% of its staff (25,500 employees) from Feb to May 2025, primarily through the Reduction InForce (RIF) and Deferred Resignation Program (DRP).



## Audit implications

Fewer Audits: reduction in overall number of audits is expected.

Narrowed Scope: focus shift to high-risk area.

Prolonged Timelines: potential loss of expertise slowing the pace of audit progression and resolution.

**Outlook:** Despite the IRS being authorized to hire 3,500 seasonal staffs, operational disruptions, and delays are expected to continue throughout the upcoming filing seasons.

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# **Introduction to One Big Beautiful Bill Act**

# Background

- On July 4, 2025 the One Big Beautiful Law Act (OBBBA), was signed into law. It had been approved by the Senate on July 1, 2025 and then passed without change by the House of Representatives on July 3, 2025.
- The reconciliation bill includes modifications to various international tax provisions of the Internal Revenue Code.
- It provides for a permanent extension of individual and business tax rates (scheduled to sunset at the end of 2025) enacted under the TCJA in 2017.



# Overview of the key provisions of OBBBA

**Among the important business provisions of the enacted Senate bill are provisions that:**

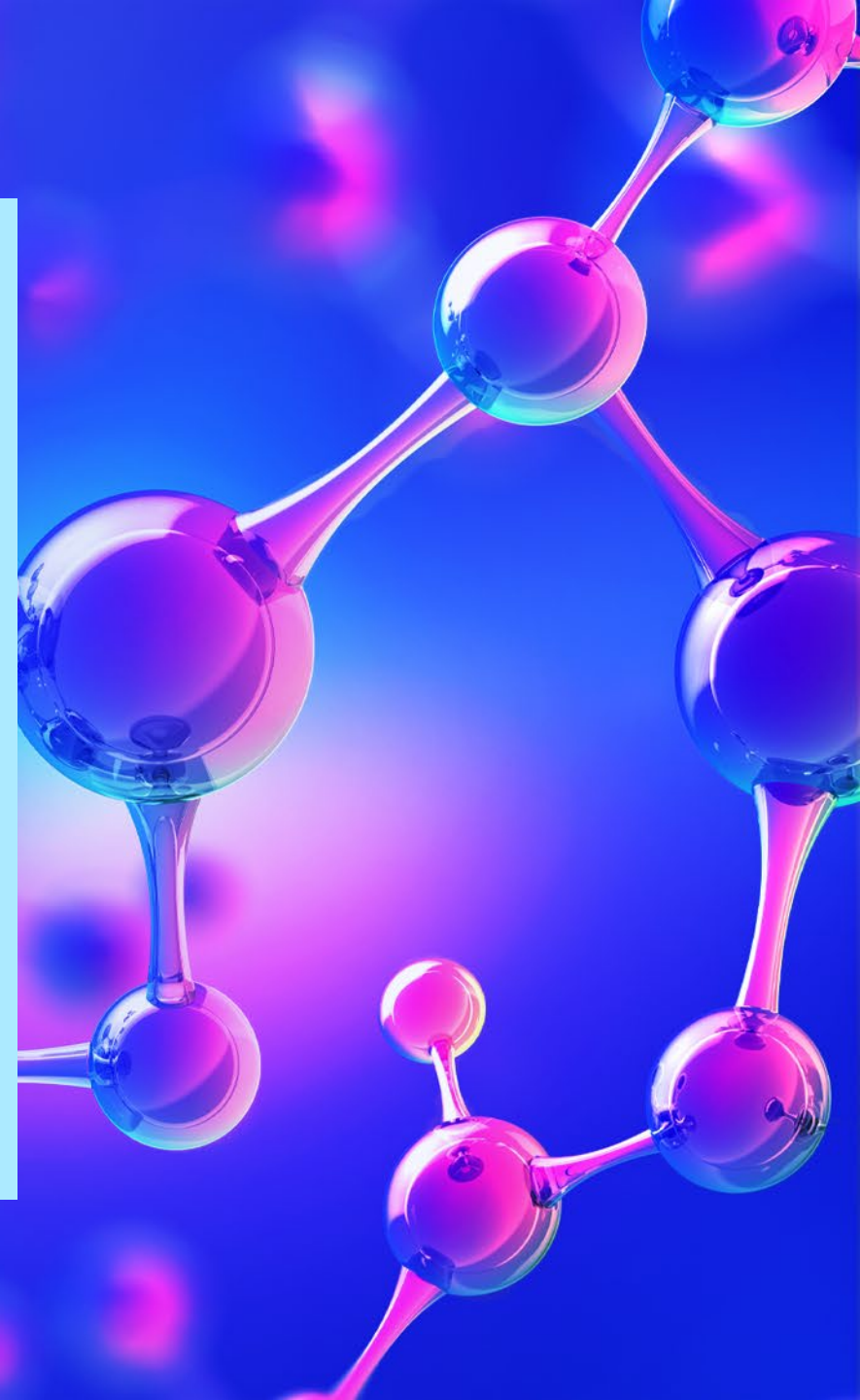
- The "Big Three Business Extenders" – Reinstate and make permanent expensing of R&D costs, reinstate the higher EBITDA cap on the deduction for interest, and reinstate 100% bonus depreciation.
  - OBBBA would further extend the latter two provisions for five years.
- Make permanent the section 199A deduction for passthrough business income (but at the current 20% rate instead of the higher 23% rate of the House bill).
- Make extensive reforms to the U.S. international tax regime, including to foreign-derived intangible income (FDII), global intangible low-taxed income (GILTI), and the base erosion anti-abuse tax (BEAT), and permanently extend the CFC look-through rule of 954(c)(6).
- Impose a 1% tax on remittances to a recipient outside the United States (would have been 3.5% under the prior version).
- Repeal or phase out energy tax credits created by the Inflation Reduction Act (IRA).

# Removal of Section 899 from OBBB

- The proposed retaliatory tax under Section 899 was removed following the announcement of a political agreement with other G7 countries regarding certain Pillar 2 taxes.
- What does it mean for US tax laws to co-exist with the Pillar 2 regime?
  1. US GILTI as Qualified IIR (UTPR Safe Harbour Extension still required?) Note: US GILTI effective rate increases to 14% in OBBB.
  2. Domestic Top-up Tax regimes still continue in jurisdictions US Groups operate in?
  3. GloBE Information Return Filing and Pillar 2 compliance still required?
- What about US tax credits and QRTCs?

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**Spotlight:  
Proposed U.S. Section  
899 Retaliatory Tax  
Measures**



# Recap - Section 899 (Senate version)

1. Increase US federal income tax and withholding tax rates on the income of foreign persons in jurisdictions that have adopted extraterritorial taxes by 5% per year, up to a 15% maximum increase.
2. Section 892 for foreign governments (SWFs) no longer applicable.
3. Modify application of BEAT provisions by eliminating US\$500M gross receipts threshold for BEAT applicability, reduce the base erosion percentage threshold to 0.5%, and addback certain tax credits when determining BEAT liability.
4. Targets offending foreign countries – a foreign country that has an extraterritorial tax or a discriminatory tax that applies to U.S. persons or foreign corporations that are majority U.S.-owned.

# Section 899: Who is impacted?

## Section 899 would apply to applicable persons:

- ▶ A government of a discriminatory foreign country (turns off 892 benefits in addition to rate increases)
- ▶ An individual (other than a U.S. citizen or resident) that is a resident of a discriminatory foreign country
- ▶ A foreign corporation that is resident of a discriminatory foreign country, other than a United States-owned foreign corporation within the meaning of section 904(h)(6) (**50% or more test**)
- ▶ A private foundation created or organised in a discriminatory foreign country
- ▶ A foreign corporation that is more than 50% owned within the meaning of section 958(a) by an applicable person
- ▶ A trust that is majority owned by one or more applicable persons
- ▶ A foreign partnership, branch, or any other entity identified by the Secretary with respect to a discriminatory foreign country

# Section 899: Increased rates of tax

- Increases specified rates of tax by **five percentage points annually (capped at 15% / 20% over the statutory rate)** imposed on :
  - FDAP Income of non-U.S. individuals
  - Individual FIRPTA gains
  - ECI and FDAP income of corporations
  - Branch profits tax
  - Withholding on FDAP of individuals and corporations
  - Withholding on dispositions of U.S. real property interests
  - Foreign private foundation tax

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# **Impact of OBBB – Key international provisions**



# Amendment to Base Erosion and Anti-abuse Tax (BEAT)

## BEAT Rate

- Increased from 10% to 10.5% (11.5% for certain banks and registered securities).
  - Lower than previously scheduled increase to 12.5% under the TCJA.

## Removal of Clause Excluding Payments Subject to Foreign Tax from BEAT

- Certain payments subject to a sufficient rate of foreign tax may now be included in the definition of base erosion payments.

## Amendment Effective Date

- Apply to taxable years beginning after 31 December 2025.

## Key Observations

- Foreign-parented groups should be aware of the modifications to the section 163(j) limitation on interest expense deductions (limited, in part, to 30% of "adjusted taxable income").
- This change will generally increase the amount of interest expense currently deductible and will be significant for foreign companies investing in the U.S. and growing their operations.

# Amendment to Global Intangible Low-Taxed Income (GILTI)

## Current law

- GILTI is currently taxed at a rate of 10.5% by means of a 50% deduction under Section 250.
- GILTI deduction was to be reduced from 50% to 37.5% (resulting in a 13.125% rate) for tax years beginning after December 31 2025.

## Tax reform under OBBBA

- Removed the 10% deemed return on tangible assets (Qualified Business Asset Investment or QBAI).
  - GILTI is now referred to as “net CFC tested income” (NCTI)
  - All net income of CFC is now included in NCTI
- Makes permanent a 40% GILTI deduction (resulting in a 12.6% rate).
- Minimum level of tax payable on a US multinational corporation’s foreign earnings rises to 12.6% (14% if the group is in an excess NCTI credit position).
- Applicable to tax years of foreign corporations beginning after December 31 2025.

# Permanent extension of look-through rule for CFCs

## Prior law

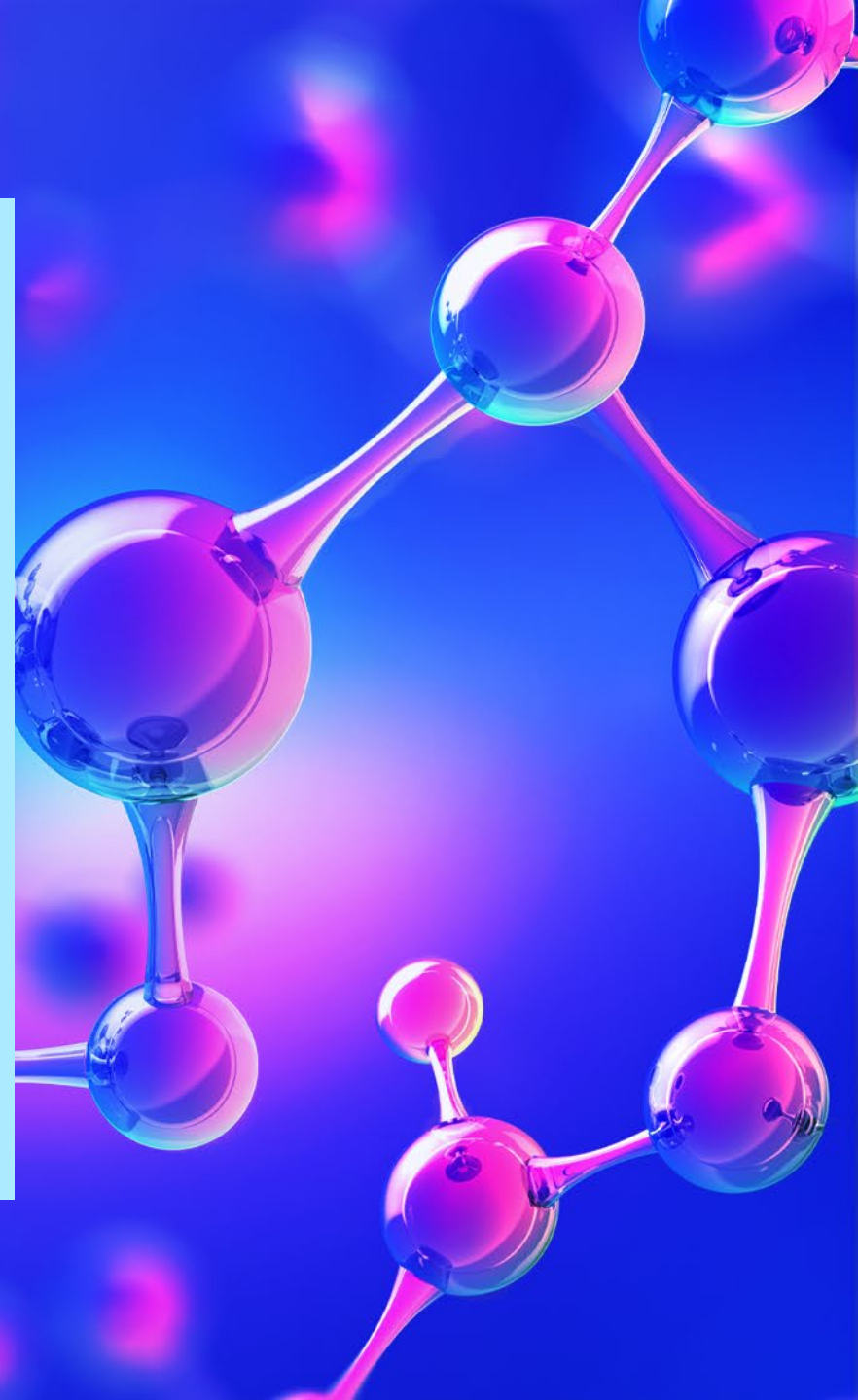
- Section 954(c)(6) was first enacted as a temporary provision in 2005 and was scheduled to expire for tax years of foreign corporations beginning on or after January 1, 2026.
- The provision allows dividends, interest, rents, and royalties received from a related CFC to be excluded from foreign personal holding company income if paid out of earnings that are neither subpart F income nor income that is effectively connected with a U.S. trade or business.

## Tax reform under OBBBA

- Makes permanent the look-through rule of section 954(c)(6).

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# **Impact of OBBBA – Key domestic provisions**



# Domestic provisions – Section 174 R&D expensing

## Current law

Capitalisation and amortisation of R&D expenditures:

- 5 years for domestic; or
- 15 years for foreign

## Tax reform under OBBBA

- Allow for **full expensing permanently for US R&D expenditure** while **non-US R&D expenditure is still subject to capitalisation and amortisation over 15 years**
- Taxpayers may elect to capitalize and amortize their US research expenditures (for a period of not less than 60-months), amortisation would begin in the month in which benefits are first realized.

# Domestic provisions – Bonus depreciation

## Current law

Bonus depreciation was 100% through 2022, then phased down:

- 80% in 2023
- 60% in 2024
- 40% in 2025
- 20% in 2026
- Expires in 2027

## Tax reform under OBBBA

- **Permanent reinstatement of 100% bonus depreciation for property acquired after 19 Jan 2025**
- Remove limitation for self-constructed property and requirement that qualified property be constructed and placed in service before 2027
- **Transitional election for 40% bonus depreciation** (in lieu of 100%) during the first tax year ending after 19 Jan 2025

# Domestic provisions – Section 199A qualified business income deduction

## Current law

Section 199A allows certain individuals, trusts, and estates to deduct 20% of their business income, qualified REIT dividends, and PTP income.

- The deduction is **subject to** certain **limitations and thresholds** such as W-2 wages and capital investment
- S199A sets to **expire after December 31, 2025**

## Tax reform under OBBBA

- Make S199A permanent and deduction rate remains at 20%
- Increase phase-in limits
  - \$50,000 to \$75,000 (for single filer)
  - \$100,000 to \$150,000 (for joint filer)
- New minimum deduction of \$400 for taxpayers who materially participate (within the meaning of section 469(h)) in trade or business that has qualified business income of at least \$1,000

# Domestic provisions – Qualified small business stock gain exclusion

## Eligibility Based on Holding Period:

- **100% Exclusion:** Stock acquired after **Sept 27, 2010**
- **75% Exclusion:** Stock acquired **Feb 18, 2009 – Sept 27, 2010**
- **50% Exclusion:** Stock acquired **Aug 11, 1993 – Feb 17, 2009**

## Tax Implications:

- Remaining gain taxed at **up to 28%**
- **7% of excluded gain** (for 50%/75% cases) is an alternate minimum tax (AMT) preference item

## Per-Issuer Gain Limitation:

- Greater of:
  - **\$10M** (or \$5M if married filed separately), reduced by prior gains
  - **10 x basis** in disposed QSBS

## QSBS Qualification Criteria:

- Corporation's **aggregate gross assets** ≤ **\$50M** before and after issuance

# Domestic provisions – Qualified small business stock gain exclusion

## New Partial Exclusion Tiers (Section 1202(a)(5)):

- **100% Exclusion:** Held  $\geq$  **5 years** (unchanged)
- **75% Exclusion:** Held  $\geq$  **4 years**
- **50% Exclusion:** Held  $\geq$  **3 years**

## AMT

- **No AMT preference** for any excluded gain

## Increased Thresholds:

- Per-Issuer Limit: Raised from **\$10M to \$15M**
- Gross Assets Cap: Raised from **\$50M to \$75M**

# Overall impact of OBBBA on CAMT

## The three business extenders generally decrease taxable income

- OBBBA's reduction of the FDII deduction could initially appear to increase regular taxable income, but the favorable changes could significantly increase the amount of income eligible for the FDII deduction and reduce regular tax, particularly for companies with significant fixed assets and R&E activity.

## Refresher on CAMT

- A CAMT-applicable corporation is one that, taking into account certain aggregation rules, averages more than \$1 billion of AFSI for the three-taxable-year period preceding a current year (for e.g., 2022 through 2024 for a calendar-year corporation testing for 2025).
- Once a CAMT-applicable corporation, always a CAMT-applicable corporation, even if its three-taxable year average AFSI falls below \$1 billion.

## CAMT impact

- Interplay of the favorable OBBBA changes with CAMT raises many issues, particularly when there is a reduction in regular taxable income but no corresponding decrease in AFSI, which could cause a taxpayer to become more susceptible to a CAMT liability.
- Taxable income does not determine whether a taxpayer is subject to CAMT.
- Taxpayers would be wise to quantify the impact of OBBBA by modeling their overall tax liability (sum of regular tax liability, section 59A base erosion and anti-abuse tax liability, and CAMT liability) and expected tax attributes (for e.g. CAMT credits) both for 2025 and future years.

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# **Overview of U.S. tax compliance**

# Foreign partnership reporting obligations

- Required when there is ECI or US Source Income
- Exceptions related when only US Source Income
- May exclude foreign partner K-1s in some circumstances

# Reporting obligation - 1.6031(a)-1(b)(1)(i)

- Filing requirement. A foreign partnership is not required to file a partnership return, if the foreign partnership **does not have gross income that is** (or is treated as) effectively connected with the conduct of a trade or business within the United States (**ECI**) **and does not have gross income (including gains) derived from** sources within the United States (**U.S.-source income**). Except as provided in paragraphs (b)(2) and (3) of this section, a foreign partnership that has ECI or has U.S.-source income that is not ECI **must file a partnership return for its taxable year** in accordance with the rules for domestic partnership in paragraph (a) of this section.

# Exception – Sec. 1296 MTM

- For purposes of this paragraph (b)(1) and paragraph (b)(3)(iii) of this section, a foreign partnership will not be considered to have derived income from sources within the United States solely because a U.S. partner marks to market his pro rata share of PFIC stock held by the foreign partnership pursuant to an election under section 1298.

# Sourcing of gains on securities – Sec. 865

- a) General rule. Except as otherwise provided in this section, income from the sale of personal property—
  - By a United States resident shall be sourced in the United States, or
  - By a nonresident shall be sourced outside the United States
- b) Exception for inventory property
- c) Exception for depreciable personal property
- d) Exception for intangibles
- e) Exception for sale through offices or fixed places of business
- f) Exception for stock of affiliates

# United States resident, nonresident – Sec. 865(g)

- The term “United States resident” means—
  - Any individual who—
    - Is a United States citizen or a resident alien and does not have a tax home in a foreign country, or
    - Is a nonresident alien and has a tax home in the United States, and
  - Any corporation, trust, or estate which is a United States person [Sec. 7701(a)(30)]
- The term “nonresident” means any person other than a United States resident.
- **In the case of a partnership**, except as provided in regulations, this section shall be **applied at the partner level**.
- Separate rules apply when the partnership has an office or place of business in the U.S.  
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# United States resident, nonresident – Sec. 865(g)

- Special rules for United States citizen and resident aliens.
  - A US citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10-percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain.
  - U.S. income tax treaty benefits may allow for resourcing
- Hong Kong – gains on securities that are capital in nature (long-term) not subject to tax
  - No income tax treaty
- Singapore – does not impose tax on securities gains.
  - No income tax treaty
- China – impose tax on securities gains.
  - Income tax treaty... for now

# Foreign partnership filings - Exceptions

- A foreign partnership that has \$20,000 or less of U.S. –source income and has no ECI during its taxable year is not required to file a partnership return if, **at no time during the partnership taxable year, one percent or more of any item of partnership income, gain, loss, deduction or credit is allocable in aggregate to direct United States partners.**
- A foreign partnership with U.S.-source income is not required to file a partnership return if the partnership has no ECI and no United States partners at any time during the partnership’s taxable year.

# Who is a partner?

- A United States partner is any United States person who holds a direct or indirect interest in the partnership.
- An indirect interest is any interest held through one or more passthrough partners.
- The term “pass-thru partner” means a partnership, estate, trust, S-corporation, nominee, or other similar person.

# Modified filing obligations

- If the partnership is not a withholding foreign partnership
- All 1042 and 1042-S forms have been filed.
- The tax liability of the partners with respect to such (U.S.-source) amounts has been fully satisfied by the withholding of tax at the source under Chapter 3.
- A foreign partnership is not required to file if no U.S.-source, no ECI and no U.S. partners.
- A foreign partnership with U.S. partners must file a return and prepare K-1 for all direct U.S. partners and its passthrough partners (whether U.S. or foreign) through which a U.S. partner holds an interest in the foreign partnership.

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Questions?





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