

# Washington, DC update

December 2025



The better the question. The better the answer. The better the world works.



Shape the future  
with confidence

# Tax, health and trade priorities for the remainder of the year

## Tax extenders

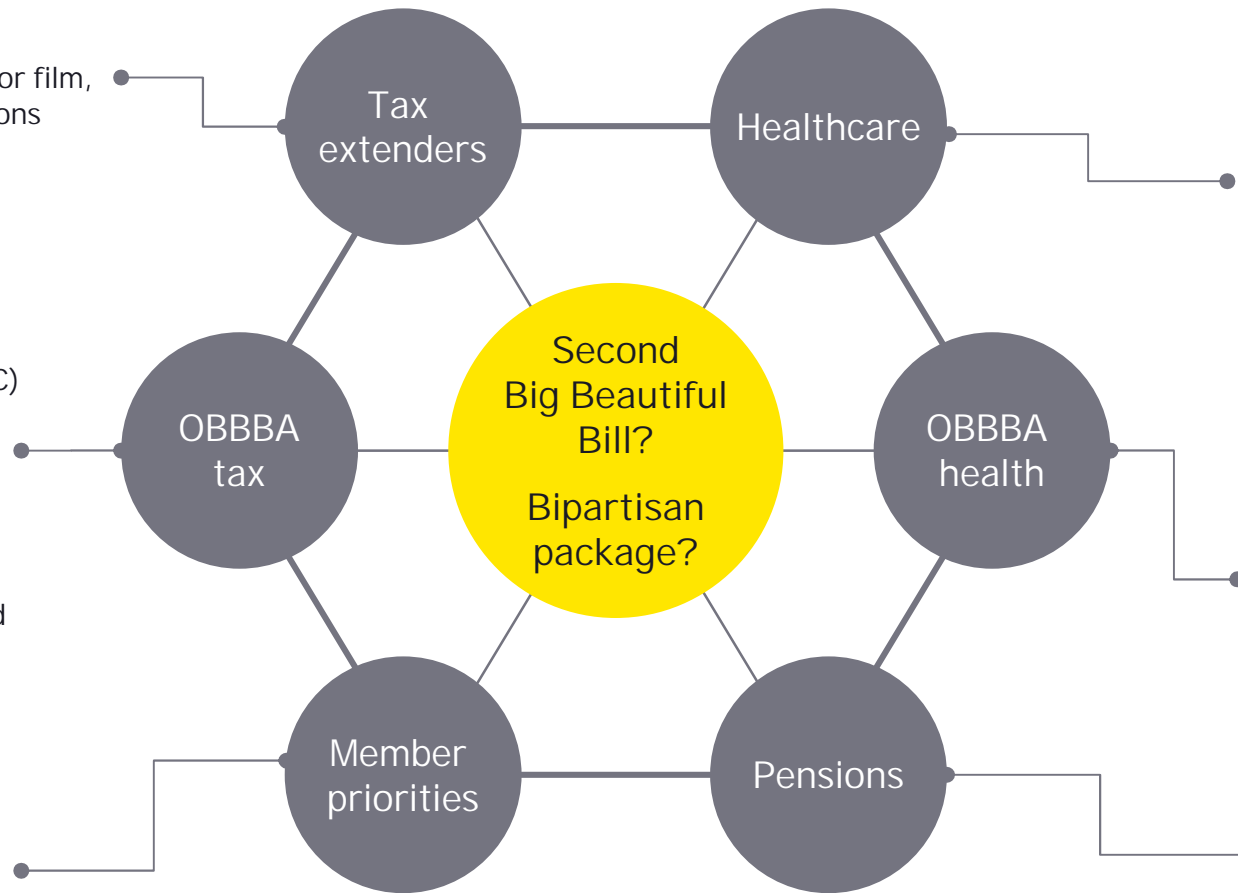
- Work Opportunity Tax Credit (WOTC)
- Section 181 special expensing rules for film, television and live theatrical productions
- Empowerment Zone incentives

## Tax items dropped from One Big Beautiful Bill Act (OBBBA)

- Third-party litigation reform
- Business Development Company (BDC) extension to 199A deduction
- 199A deduction increase to 23%
- International tax changes including BEAT reforms and provisions in Senator Tillis bill
- Trump tax increase proposals: carried interest, sports league owners

## Other items

- Member priorities
- Technical corrections to OBBBA
- Cryptocurrency tax provisions
- Trade program extensions (AGOA)



## Healthcare

- Pharmacy benefit manager reforms
- Site neutral payments
- Medicare Advantage payment reform
- Rural emergency hospitals
- Disproportionate share hospital (DSH) cut delay
- Physician payment reform
- Make permanent or extend Medicare telehealth flexibilities

## Health items dropped from OBBBA

- Immigration-related Medicaid changes
- Health savings account items:
  - On-site employee clinics
  - Individual coverage health reimbursement arrangements (ICHRA)s
  - Sports and fitness expenses

## SECURE 3.0 retirement package

- Improvements to SECURE 2.0's pension-linked emergency savings accounts
- Auto IRA enhancements

# Two paths for future legislation

---

## Republican priorities – reconciliation bill

- Items omitted from OBBBA:
  - Barring states from using their own funds to provide Medicaid to illegal immigrants
  - Third-party litigation reform
  - BDC extension to 199A deduction
  - Health Savings Account provisions
  - Increasing the Section 199A passthrough deduction to 23%
  - Revival of Section 899 reciprocal tax?
- No capital gains tax on home sales
  - Current exclusion: \$250,000 (\$500,000 joint)

## Bipartisan priorities – could be attached to spending bill

- Extension of Affordable Care Act enhanced Premium Tax Credits expiring at end of 2025
- Cryptocurrency tax provisions
- Tax extenders
  - WOTC
  - Section 181 special expensing rules for film, television and live theatrical productions
  - Empowerment Zone incentives
- US-Taiwan tax relief
- Pharmacy benefit manager reforms
- SECURE 3.0 retirement provisions
- Trade program extensions



A photograph of the U.S. Capitol building in Washington, D.C., featuring its iconic dome and neoclassical architecture. The scene is framed by vibrant yellow autumn leaves in the foreground on the left and green trees at the base of the building. The sky is a clear, bright blue.

# 01

## OBBA: key international (related) provisions



# Summary of OBBBA international provisions

## GILTI/FTCs

- GILTI (which is renamed “net CFC tested income” or “NCTI”) deduction reduced to 40% (12.6% effective tax rate, or 14% considering FTCs)
- QBAI eliminated
- NCTI FTC haircut reduced from 20% to 10%
- Solely for foreign tax credit limitation purposes, expenses that are not directly allocable to NCTI (including interest and R&E) are allocated and apportioned to US source income if they would have otherwise been allocated and apportioned to NCTI
- Eliminates Section 78 gross-up attributable to Section 960(b) taxes (i.e., deemed paid FTCs on PTEP distributions)
- 10% FTC haircut for foreign taxes imposed (or deemed paid) on NCTI PTEP distributions, for NCTI inclusions after June 28, 2025
- Base differences allocated to general category (previously allocated to the foreign branch category)

## FDII

- FDII deduction reduced to 33.34% (14% effective tax rate)
- QBAI eliminated (such that FDII is now just FDDEI)
- Interest and R&E not allocated to DEI
- Except as otherwise provided in regulations, DEI does not include income and gain from the sale or disposition of (1) Section 367(d) intangibles; and (2) property of a type that is subject to depreciation, amortization, or depletion (effective for amounts received/property transferred after June 16, 2025)

# Summary of OBBBA international provisions

BEAT	<ul style="list-style-type: none"><li>▪ Rate increased from 10% to 10.5%</li></ul>
Section 163(j)	<ul style="list-style-type: none"><li>▪ Permanent reinstatement of depreciation/amortization add-back in 2025 (previously in effect 2018-2021)</li><li>▪ Application of disallowance to capitalized interest in 2026 and later</li><li>▪ NCTI, subpart F income and Section 78 gross-up excluded from adjusted taxable income in 2026 and later</li></ul>
Section 863(b): partial limitation	<ul style="list-style-type: none"><li>▪ Section 904(b)(6) would allow income from US-produced inventory sold abroad to be up to 50% foreign source for Section 904 purposes</li></ul>
Other	<ul style="list-style-type: none"><li>▪ Changes to pro rata share rules in Section 951(a)(2)</li><li>▪ Reinstatement of prohibition on downward attribution under Section 958(b)(4) and introduction of new Section 951B inclusion rule</li><li>▪ Section 954(c)(6) "look through" made permanent</li><li>▪ Section 898(c) one-month deferral for CFCs eliminated</li></ul>





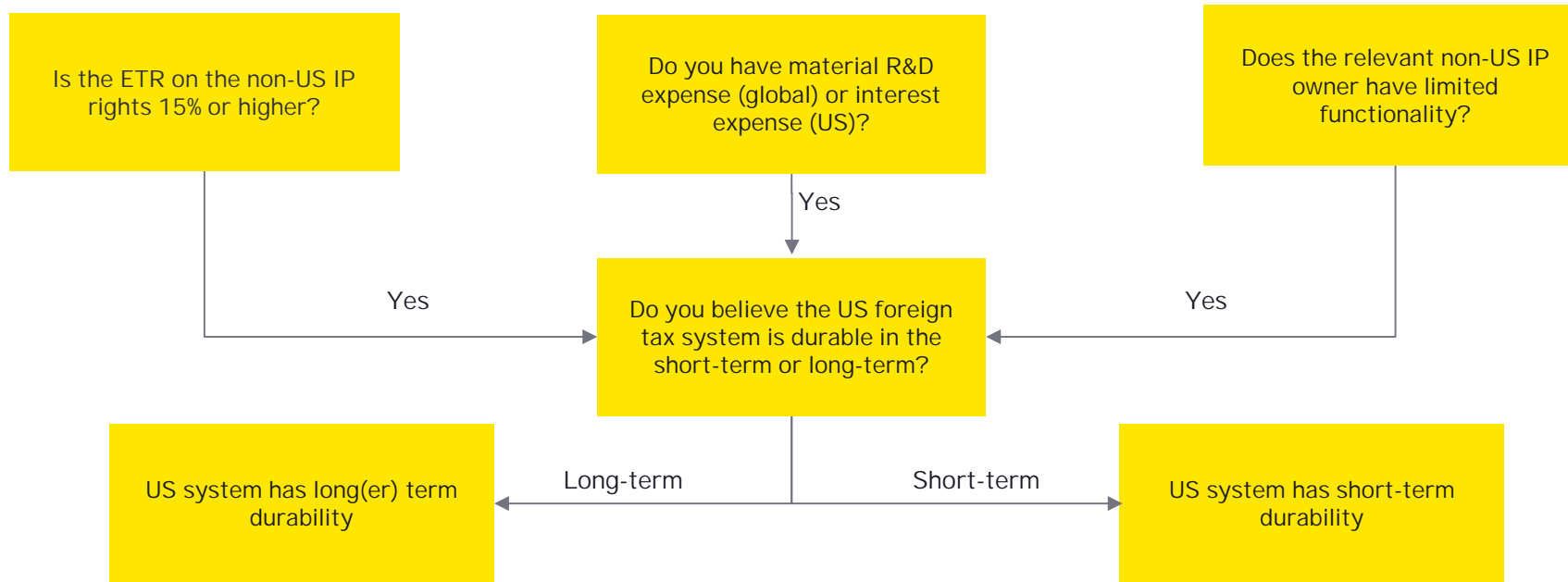
# 02

## Post-OBBA: IP alignment considerations



# Revisiting IP frameworks post-OBBBA

Do you have non-US IP rights outside the US?



*Within short- and long-term options consider and assess the items below.*

Local country considerations:

1. Is there a material built in gain?
2. Is there a difference between capital gain rate and standard rate?
3. Is the applicable rate of tax 21% or higher?
4. Can exit taxes be incurred over time via a "die on the vine" license?

US CFC tax considerations:

Do you anticipate material gain for US tax purposes?

US tax attribute considerations:

1. Do you have BEAT capacity?
2. Do you have foreign tax credit capacity?
  - Excess GILTI
  - Excess branch
  - Excess G/L





# 03

How has OBBBA  
impacted FTC profile?



# GILTI changes

"Breakeven rate" increased to 14%, expense apportionment relief, QBAI eliminated

---

- GILTI changes (40% deduction, 10% FTC disallowance, elimination of expense apportionment) create a "breakeven rate" of 14%; if the foreign cash ETR is 14% or more, no US tax is generally imposed on GILTI inclusion
  - Consider whether OBBBA and other developments (P2 "side-by-side," DPL repeal, etc.) increase likelihood of excess limit position
- Excess credit vs. limit profile
  - Excess credit:
    - Rebasketing GILTI taxes to general can still increase likelihood of utilization
    - Interest expense taken in 2026+ can reduce GILTI drag ("GILTI stock" no longer a bad attribute)
  - Transitioning from excess credit to excess limit:
    - Maximize excess GILTI credit usage in 2025
    - Consider unwinding prior approach (e.g., high-tax subpart F)
  - Excess limit:
    - Increase GILTI credit usage (eliminate tested losses, §960(d) haircut, etc.)
    - Consider whether additional foreign profits can be taxed at GILTI rate (current branch, subpart F income, etc.)

Robust scenario modeling: Important to forecast excess credit vs. limit profile and consider interaction of OBBBA, approach, OECD developments, business change, etc.



# 04

OBBBA: other selected  
international tax impacts



# US-Situs R&D and Section 174

## Flexibility and complexity

- Modeling is critical: Electivity requires robust modeling to understand interaction with GILTI, FDDEI, BEAT, CAMT, FTCs, §163(j), etc.

Treatment of US-Situs R&D	Options	Flexibility to make elections	Transfer of capitalized §174 expenses	Basis recovery upon disposition
Previously capitalized §174 accounts (Cal. 2022-2024; FY23-FY25)	<ol style="list-style-type: none"> <li>1. One-year acceleration (2025)</li> <li>2. Two-year acceleration (2025 and 2026)</li> <li>3. Continue to amortize</li> </ol>	<ul style="list-style-type: none"> <li>■ Election can be made separately by each distinct trade or business.</li> <li>■ Will acceleration election be “all or nothing”?</li> </ul>	<ul style="list-style-type: none"> <li>■ Transfers in §381 transactions, but does not follow the asset in a non-§381 (e.g., does not follow asset in §351)</li> </ul>	<ul style="list-style-type: none"> <li>■ Remaining amount likely does not reduce amount realized (not entirely clear for dispositions before May 12, 2025).</li> <li>■ Loss deductions are not allowed.</li> </ul>
Future §174A expenses (For 2025 or FY26 and beyond)	<ol style="list-style-type: none"> <li>1. Deduct currently</li> <li>2. Elect under §174A(c) to amortize over five years or more</li> <li>3. Elect under §59(e) to amortize over 10 years</li> </ol>	<ul style="list-style-type: none"> <li>■ §174A(c): Appears to be all or nothing, with amortization beginning when benefits of expenditure are realized.</li> <li>■ §59(e): Annual election made with respect to any dollar amount.</li> </ul>	<ul style="list-style-type: none"> <li>■ §174A(c): Follows asset</li> <li>■ §59(e): Follows asset</li> </ul>	<ul style="list-style-type: none"> <li>■ Yes.</li> </ul>



# Section 163(j) changes

“DA” reinstatement, ETI bump removal and treatment of capitalized interest

- ATI reverts to EBITDA for tax years beginning after December 31, 2024.
- The CFC ETI “bump” that allowed subpart F and GILTI inclusions to increase US shareholder §163(j) capacity has been eliminated for tax years beginning after December 31, 2025.
  - 2025 will be taxpayers’ “last chance” to benefit from CFC ETI.
  - Taxpayers may then need to restructure to allow the US group to benefit from CFC §163(j) capacity.
- New ordering rule requires §163(j) limitation to be calculated prior to interest capitalization.
  - Effective for tax years beginning after December 31, 2025, such that taxpayers may still avail themselves of capitalization approaches (e.g., §266) in 2024 and 2025.

Modeling and analysis needed: The loss of the CFC ETI bump and capitalization approaches may outweigh the benefit of “DA” reinstatement, increasing US §163(j) pressure.

FDDEI/GILTI interaction: Approaches to increase 2025 interest deductibility may have a negative impact on FDDEI and GILTI, as any interest carried to 2026 would not reduce GILTI FSI or FDDEI.

# Other OBBBA key international tax impacts

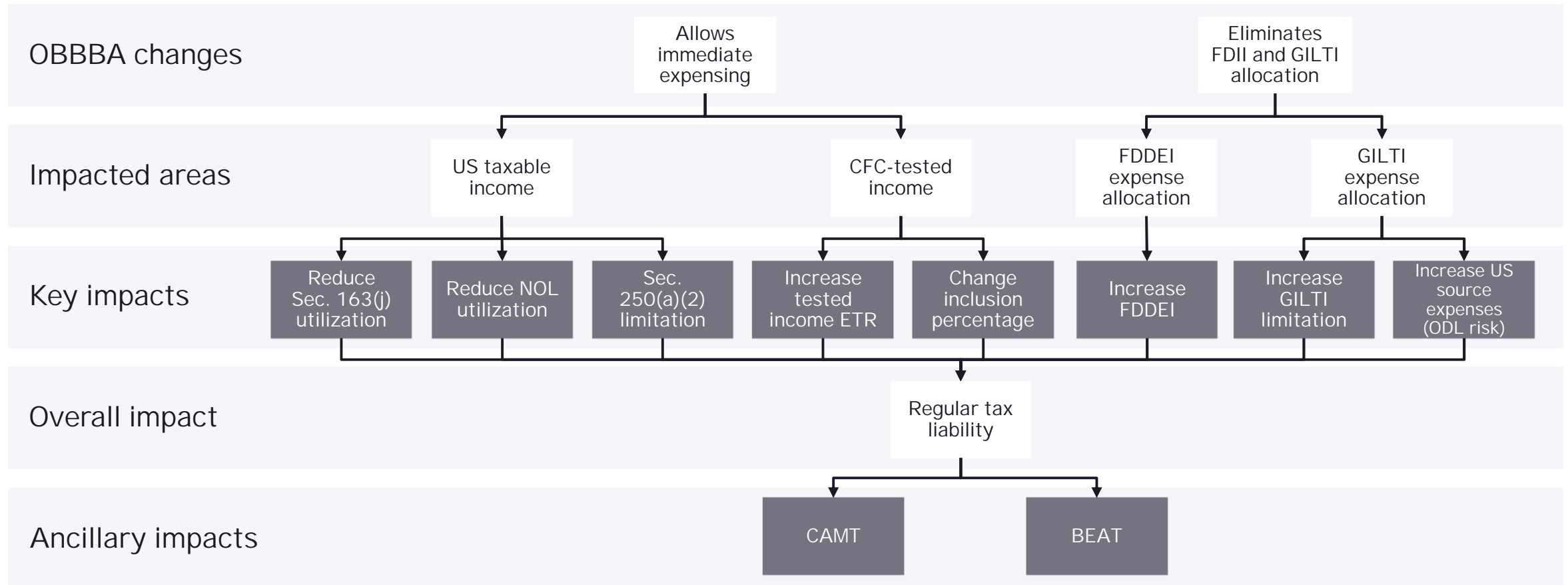
## Risks and opportunities

---

- Favorable interest expense apportionment changes related to GILTI.
- Unfavorable Section 367(d)/FDDEI change.
  - Increased importance of sale vs. license character in certain transactions.
- CAMT interaction with Section 174 immediate expensing, enhanced FDDEI regime and bonus depreciation.
- Interaction of immediate expensing provisions and maximizing foreign tax credit capacity and Section 250 deduction.
- Section 898(c)(2) repeal. Expect one-month “stub period” in December 2025 for calendar year taxpayers with CFCs that previously made election.
  - Unclear allocation of the stub period taxes. Expected guidance from Treasury forthcoming.



# Impacts of expense apportionment and immediate Section 174 expensing







# 05

OBBBA: new pro-rata  
share rules



# Background and reasons for change

---

- § 951(a)'s pro rata share rules
  - Originally enacted in 1962 and extended to GILTI (now NCTI) under the Tax Cuts and Jobs Act (TCJA)
  - Generally requires US shareholders to include in gross income their pro rata shares of a CFC's subpart F income and tested income
- Problem: "hot potato" (or "last relevant day") approach
  - Old § 951(a) tied pro rata shares to ownership of CFC stock on the "last relevant day," which is the last day of the foreign corporation's tax year on which it is a CFC
  - In cases involving midyear dispositions of CFC stock, old §951(a) generally reduced a US shareholder's pro rata share for dividends made by the CFC to another person (§951(a)(2)(B) dividend to another person reduction)
    - No requirement for the dividend to be taxable, even if the dividend represented subpart F income or tested income attributable to a US seller's ownership period
- Result: under- or over-taxation of CFC earnings
  - Midyear dispositions of CFC stock could result in a US shareholder's pro rata share being disproportionate to the amount of subpart F income and tested income attributable to the US shareholder's ownership of CFC stock
  - Divergent treatment of pro rata shares and dividend income – for example, through the enactment of the §245A DRD for domestic corporations – amplified concerns with (i) conversions of pro rata shares into dividend income and (ii) reductions of pro rata shares through issuances and redemptions
  - Treas. Reg. § 1.245A-5(e) and (f) was the principal regulatory response to these concerns

# Overview of changes

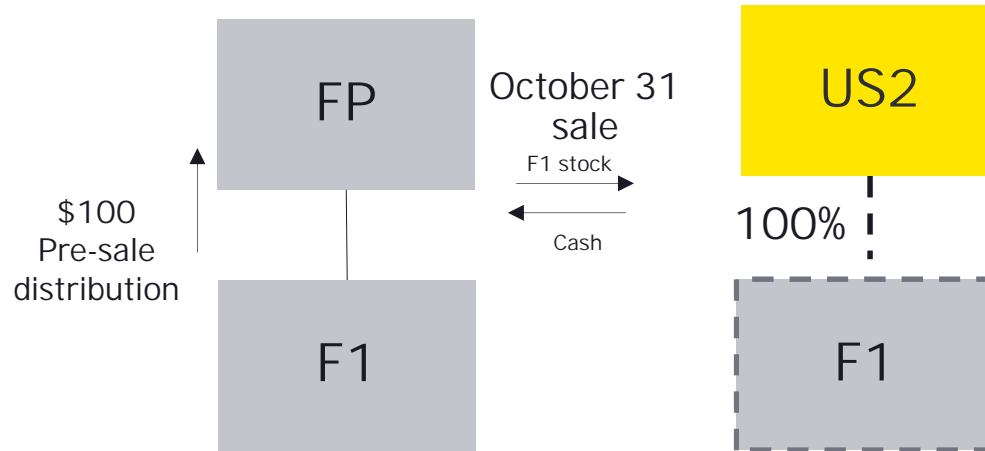
---

- New “attributable to” standard for determining pro rata shares
  - Flexible, new standard replaces the “hot potato” approach, including the §951(a)(2)(B) dividend to another person reduction
  - New standard determines pro rata shares based on the subpart F income and tested income “attributable to” a US shareholder’s ownership of stock in the CFC
- Midyear closing election (or requirement)
  - Treasury authorized to allow or require taxpayers to close a CFC’s tax year upon a direct or indirect disposition of stock in the CFC
- General takeaways
  - Better calibration of a US shareholder’s pro rata share with subpart F income or tested income that accrues during the shareholder’s ownership period
    - Thus, US shareholders that sell stock in a CFC mid-year should generally expect increased subpart F inclusions (relative to old § 951(a)). Then, related adjustments under §§959 and 961 will effectively convert what would have been dividend income under the old regime into returns of basis
  - Amplifies need for guidance confirming that §961 basis increases are generally treated as made – or taken into account – at the beginning of a CFC’s tax year or when the basis is relevant
  - Limited or no utility to Treas. Reg. §1.245A-5(e) and (f) going forward – monitor for whether Treasury and IRS turn off those rules for post-OBBBA periods



# Example: OBBBA §951 Transition Rule – example 1 (sale of a CFC by a foreign parent to a US buyer, with a pre-sale dividend paid to the foreign parent)

## Facts



- F1 has \$120 of E&P for its taxable year, consisting entirely of subpart F income
- On October 31, 10/12s through F1's taxable year, FP sells all its stock in F1 to US2, for cash
- Before the sale, F1 distributes \$100 to FP

## Results

- Old §951(a), without the transition rule. US2's pro rata share is \$20 ( $\$120 \times 100\% - \$100$ )
  - \$100 § 951(a)(2)(B) dividend to another person reduction has the effect of aligning the buyer US shareholder's subpart F inclusion with the portion of F1's subpart F income earned during buyer's ownership
- Old §951(a), with the transition rule. US2's pro rata share is \$120
  - Transition rule prevents a §951(a)(2)(B) dividend to another person reduction
  - Outcome departs from intent of the 1962 Congress, which envisioned a §951(a)(2)(B) dividend to another person reduction in this case



A photograph of the United States Capitol building in Washington, D.C., featuring its iconic dome and neoclassical architecture. The building is partially obscured by vibrant yellow and orange autumn leaves in the foreground. The sky is a clear, bright blue.

# 06

US regulatory agenda –  
what's next?



# US regulatory agenda – what's next?

---

- OBBBA-related guidance
- Deregulation
  - August 20: Notice 2025-44 (withdrawal of DCL/DPL guidance)
  - July 3: Notice 2025-36 (obsoleting 83 pieces of guidance)
  - June 2: Notice 2025-27 (CAMT relief)
  - April 17: Notice 2025-23 (partnership basis shifting)
  - April 14: Notice 2025-22 (eliminating extraneous and unnecessary guidance, incl. Rev. Rul. 91-32, basket option listed transaction notice)
- New guidance unrelated to OBBBA?
  - PTEP?
  - Cloud guidance?
  - Other?

## EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via [ey.com/privacy](https://ey.com/privacy). EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit [ey.com](https://ey.com).

Ernst & Young LLP is a client-serving member firm of Ernst & Young Global Limited operating in the US.

© 2025 Ernst & Young LLP.  
All Rights Reserved.

US SCORE no. 29277-251US  
2512-10047-CS  
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

[ey.com](https://ey.com)