Senate Finance Committee Proposes Key Departures From House Provisions for the One Big Beautiful Bill Act

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June 25, 2025

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Key Points

- The Senate Finance Committee's version of the tax-related proposals aim to deliver on Senate Republicans' promise to make many of the TCJA's individual and corporate tax measures permanent.
- The bill includes several key modifications to other international tax provisions that were not in the House proposals and amends some of the president's signature tax priorities.
- It also makes several important changes to the framework of new Section 899.
- Senate and House Republicans must reach agreement on key issues, including the SALT deduction cap amount and achieving significant cuts to Medicaid spending.

On June 16, 2025, the Senate Finance Committee released its version of the tax-related proposals (Senate Bill) for inclusion in the One Big Beautiful Bill Act (OBBBA). In line with the bill the House passed on May 22, 2025 (House Bill), the Senate Bill incorporates many changes similar to provisions originally enacted in the Tax Cuts and Jobs Act (TCJA) and a version of new Section 899.

However, the Senate Bill goes further, aiming to deliver on Senate Republicans' promise to make many of the TCJA's individual and corporate tax measures permanent and significantly modifying Section 899.

The Senate Bill also includes several key modifications to other international tax provisions that were not in the House Bill and amends some of President Donald Trump's signature tax priorities, including the rules applicable to taxes on tips and relief to taxpayers receiving Social Security benefits.

Further amendments to the Senate Bill are anticipated in the coming days as it goes through the "Byrd Bath" with the Senate parliamentarian to determine which, if any, provisions are not in accordance with the requirements for inclusion in a reconciliation bill.

Moreover, Senate and House Republicans still must reach agreement on key issues, including:

- The amount of the state and local tax (SALT) deduction cap.
- The speed with which renewable energy credits will be sunset.
- How best to achieve significant cuts to Medicaid spending.

Nevertheless, Republican leaders remain committed to a target date for OBBBA's enactment of July 4, 2025.

Below, we provide a summary of certain key provisions of the Senate Bill and highlight significant differences between the Senate and House bills. (For more on the House tax proposals, see our May 29, 2025, client alert.)

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Corporations

Deduction for Domestic Research Expenditure

The Senate Bill makes permanent the deduction of domestic research expenditures beginning in 2025 and provides transition rules to unwind capitalization of those expenditures from 2022 to 2024.

Section 163(j) Interest Deduction Limitation

The Senate Bill makes permanent the computation of adjusted taxable income by reference to earnings before income taxes without regard to deductions for depreciation, amortization or depletion (EBITDA) beginning in 2025. However, the Senate Bill also excludes Subpart F and global intangible low-taxed income (GILTI) income, as well as any associated Section 78 gross-up, from adjusted taxable income beginning in 2026.

Additionally, the Senate Bill provides an ordering rule under which interest capitalization (other than as required with respect to certain produced property and certain straddles) occurs after application of the limitation beginning in 2026. This provision appears aimed at certain planning using elective capitalization of interest to mitigate the impact of the business interest deduction limitation.

Bonus Depreciation and Other Cost Recovery Incentives

The Senate Bill makes bonus depreciation permanent for eligible property acquired after January 19, 2025. However, qualified production property must be placed in service before 2031.

International

New Changes to GILTI and FDII

While the House Bill made only minor rate changes to the GILTI and foreign-derived intangible income (FDII) regimes (and repealed other scheduled changes), the Senate Bill contains more significant amendments.

- **Increased rates.** The Senate Bill reduces the Section 250 deduction for GILTI (from 50% to 40%) and FDII (from 37.5% to 33.34%). It also increases (from 80% to 90%) the portion of foreign income taxes that domestic corporations are deemed to have paid with respect to GILTI. Taking these changes together, the effective rate for both GILTI and FDII would be 14% going forward (an increase from the current 13.125%).
- **Elimination of QBAI.** Under current law, GILTI and FDII are each reduced by a deemed 10% return on certain tangible business assets (QBAI) owned by the applicable taxpayer. The Senate Bill eliminates QBAI from the calculation of both GILTI and FDII.
- **GILTI expense allocation.** Under current law, in calculating the foreign tax credit (FTC) limitation for deemed-paid foreign taxes associated with GILTI, taxpayers are often required to allocate a portion of certain group expenses (*e.g.*, interest, stewardship expense) to foreign-source income, thereby reducing the FTC limitation. The Senate Bill modifies these rules by limiting expenses that are allocated to GILTI to only those expenses that are directly allocable to that income, potentially increasing the FTC limitation in the GILTI basket for many taxpayers.
- **Calculation of deduction eligible income.** The Senate Bill also makes other changes to the calculation of deduction eligible income (DEI), which is a necessary component in calculating FDII. DEI would no longer include income from certain sales (or deemed sales) of property that gives rise to rents or royalties, as well as certain categories of passive income. The Senate Bill also modifies the expense allocation rules for purposes of calculating DEI.

New Changes to BEAT

The Senate Bill repeals certain changes to the base erosion anti-abuse tax (BEAT) scheduled to take effect in 2026, as does the House Bill. However, the Senate Bill also makes significant changes to the BEAT regime that were not included in the House Bill. These changes include, for **all** applicable taxpayers:

- Increasing the BEAT rate (from 10% to 14%).
- Reducing the base erosion percentage threshold (from 3% to 2%).
- Excluding certain payments that are subject to sufficient rate of foreign tax (18.9%) from the definition of base erosion payment.
- Treating certain interest payments that a taxpayer elects to capitalize as base erosion payments.

Changes to Proposed Section 899

The Senate Bill makes several important changes to the framework of new Section 899.

- **Offending foreign countries and unfair foreign taxes.** The Senate Bill renames "discriminatory foreign countries" as "offending foreign countries" (OFCs). Undertaxed profits rules (UTPRs) and digital services taxes (DSTs) are still treated as *per se* unfair foreign taxes, but the Senate Bill designates UTPRs as "extraterritorial taxes" and DSTs as "discriminatory taxes," which are now treated differently. The Senate Bill also removes diverted profits taxes from the list of *per se* unfair foreign taxes.

- **Delayed applicability date.** The Senate Bill delays the application of Section 899 until at least one year after enactment, with the result that calendar year taxpayers would generally not be affected by Section 899 until January 1, 2027.
- **Increased rates and exempt income.** In a departure from the House Bill, the Senate Bill applies the increased tax and withholding rates only to applicable persons with respect to OFCs that have enacted extraterritorial taxes. Thus, residents of countries with DSTs (but not UTPRs) would generally avoid the increased rates. In another departure from the House Bill, the Senate Bill caps the potential Section 899 rate increases at 15% above the otherwise applicable rate (compared to 20% above the statutory rate in the House Bill). For example, if a treaty reduces the withholding rate on in-scope interest payments to 5%, the Senate Bill would increase that rate to 10% in Year 1, 15% in Year 2 and 20% (*i.e.*, 15% above the reduced treaty rate) in Year 3 and beyond. In contrast, under the House Bill, the 5% annual rate increases would continue until the rate reached 50% (*i.e.*, 20% above of the 30% statutory rate) in Year 9 and beyond.

  Finally, the Senate Bill explicitly provides that the Section 899 rate increases are applicable where an otherwise in-scope tax is not imposed by reason of a separate "exemption or exception." The Senate Bill then carves out specific exclusions or exemptions that are not affected by the Section 899 rate increases, including for "portfolio interest" that is excluded from U.S. tax. Although this clarification with respect to portfolio interest is helpful, significant questions remain on the treatment of other exempt income that may or may not be in scope, including certain income of foreign Section 501(c)(3) organizations and qualified foreign pension funds.
- **Super BEAT.** The Senate Bill provides that applicable corporations with respect to OFCs that have enacted either discriminatory taxes (including DSTs) or extraterritorial taxes (including UTPRs) are subject to "Super BEAT" rules. Consistent with the House Bill, Super BEAT would generally apply to corporations more than 50% owned by applicable persons (including those resident in OFCs that have enacted DSTs and other discriminatory taxes). However, unlike the House Bill, the Senate Bill limits the applicability of Super BEAT to an applicable corporation with a base erosion percentage of above 0.5% (instead of the generally applicable 2%). The Senate Bill also does not increase the BEAT rate specifically for applicable corporations under Section 899 and instead would apply the new 14% BEAT rate applicable to all corporations (described above). Finally, in addition to the other Super BEAT consequences contained in the House Bill, the Senate Bill provides that the new exclusion from BEAT for payments subject to sufficient foreign tax (described above) **would not** apply to corporations subject to Super BEAT, potentially significantly increasing their BEAT liability.
- **Applicable persons.** The Senate Bill is generally consistent with the House Bill in setting out the persons to which Section 899 applies. However, while the House Bill had left the term "publicly held corporation" undefined, the Senate Bill adopts a narrow definition of that term, requiring that 80% of stock by vote and value be regularly traded on certain exchanges. Corporations that do not meet this narrow definition, even if resident in a non-OFC, may be subject to Section 899 based on the residence of their (or their ultimate parent's) shareholders. The precise determination of shareholder residence may be difficult, if not impossible, for many widely held corporations, creating significant uncertainty as to Section 899's potential application in those cases. The Senate Bill also clarifies that partnerships, disregarded entities, other pass-through entities and branches would be applicable persons only to the extent provided by the Treasury secretary in future guidance. Under the House Bill, it was arguably unclear whether future guidance would be required to treat those entity types and branches as applicable persons.

Restoration of Section 958(b)(4) and Addition of Section 951B

The Senate Bill would also make two other important changes to the Subpart F anti-deferral regime: restoring Section 958(b)(4) — which the TCJA removed from the Internal Revenue Code (the Code) — and adding new proposed Section 951B. These changes have appeared in draft legislation since shortly after TCJA's enactment, as a means to rectify the unintended consequences of TCJA's repeal of Section 958(b)(4).

Section 958(b)(4). This rule limits so-called "downward attribution" of stock of a potential controlled foreign corporation (CFC) to a U.S. shareholder. Specifically, Section 958(b)(4) limits the circumstances in which a U.S. subsidiary is treated as constructively owning CFC stock held by the U.S. subsidiary's owner. When TCJA removed Section 958(b)(4) and thus introduced "downward attribution" into Subpart F, that change dramatically increased the number of foreign corporations treated as CFCs, particularly within foreign-parented groups. This proliferation of CFCs had major unintended consequences both under Subpart F and under other international Code provisions that cross-reference to Subpart F's CFC definition. The Senate Bill's restoration of Section 958(b)(4) would again limit downward attribution in determining CFC status and thus would materially reduce the number of foreign corporations treated as CFCs.

Section 951B. In tandem with restoring Section 958(b)(4), the Senate Bill proposes to add new Section 951B, a provision that addresses the types of ownership structures that originally motivated TCJA's repeal of Section 958(b)(4). In sum, Section 951B creates a new parallel Subpart F regime for foreign-controlled foreign corporations. These are certain foreign corporations that would be CFCs if Section 958(b)(4) were not in the Code (that is, if downward attribution applied). In essence, Section 951B subjects foreign subsidiaries within certain foreign-parented structures to Subpart F, but in a more targeted manner than TCJA's repeal of Section 958(b)(4).

Remittance Transfers

The House Bill included a new excise tax (initially 5% but later reduced to 3.5%) on certain transfers of money abroad by persons who are not U.S. citizens or nationals. The Senate Bill clarifies that the tax does not apply to transfers from an account held in or by a financial institution, as defined under the Bank Secrecy Act (*e.g.*, banks, trust companies, credit unions, brokers and dealers), or to transfers funded with a debit or credit card issued in the U.S. A credit equal to the amount of excise tax paid during the taxable year is available to individuals who have a Social Security number.

Additional International Tax Provisions

Other international tax provisions in the Senate Bill that were not in the House Bill include:

- A permanent extension of Section 954(c)(6), commonly referred to as the "CFC look-through rule," which is otherwise scheduled to expire to at the end of 2025.
- A repeal of the one-month deferral election in determining the taxable year of certain CFCs under Section 898(c)(2).
- A modification of the pro rata share rules in calculating Subpart F and GILTI income, which would generally affect those calculations upon certain transfers of CFC stock.
- Changes to the sourcing rules for certain sales of inventory produced in the U.S. for purposes of calculating the FTC limitation.

Individuals

SALT Cap

The Senate Bill significantly modifies the House's proposed increase in the individual deduction cap for specified taxes including state and local sales, income and property taxes. Whereas the House Bill increased the cap from $10,000 ($5,000 for married individuals filing separately) to $40,000 in 2025 (50% of that amount for married individuals filing separately) with 1% annual increases through 2033, the Senate Bill maintains the existing $10,000/$5,000 cap structure.

As a corollary, the Senate Bill does not include any of the income limitations that the House Bill used to reduce the available deduction to a floor of $10,000 for higher-income individuals.

The Senate Bill includes the "substitute payment" rules from the House Bill, which subjected to the cap any payments made to a tax authority that provide the payor with a tax benefit. The Senate Bill also includes a modified list of taxes subject to the cap as well as excepted taxes that are not subject to the cap.

The SALT cap provisions remain in flux, and it is possible that something closer to the House Bill's proposal may ultimately emerge from the Senate.

Partnership SALT Deduction Disallowance

The Senate Bill modifies the House Bill's proposed disallowance of a deduction for specified taxes, including state and local sales, income and property taxes made by a partnership in certain industries. The Senate Bill generally allows (subject to new limitation rules) a deduction for an individual's share of state and local taxes.

Irrespective of industry, the proposed limitation rules allow an individual a deduction for up to the greater of $40,000 or 50% of the individual's allocated share of the state and local taxes incurred by the partnership. The Senate Bill also clarifies that state and local real or personal property taxes paid or accrued in carrying on a trade or business fall outside of the deduction limitations.

Section 199A Deduction

The Section 199A deduction for certain qualified business income (QBI) earned by noncorporate taxpayers would be made permanent at 20% (as compared to 23% under the House Bill) for taxable years beginning after December 31, 2025. The Senate Bill also:

- Introduces a new minimum deduction of $400 for taxpayers with at least $1,000 of QBI from any qualified trade or business in which they materially participate.
- Expands the existing deduction limit phase-in range.
- Indexes threshold amounts for inflation for taxable years beginning after 2026.

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Excess Business Losses

Both the House and Senate bills make permanent the excess business loss limitation applicable to noncorporate taxpayers. In short, this provision caps the amount of available trade or business losses at $250,000 ($500,000 for joint filers), adjusted for inflation.

Both versions would also, retroactive to the beginning of 2025, change the treatment of disallowed losses from recharacterization as net operating losses to a cumulative total of trade or business losses, which would significantly reduce the ability of many individual taxpayers to benefit from those losses.

Floor on Deduction of Contributions Made by Individuals

The Senate Bill also reduces the deduction for charitable contributions of an itemizing individual in a similar manner to the OBBBA's proposed reduction to the corporate charitable deduction. Specifically, an individual's deduction would be allowable only to the extent that the individual's contributions exceed 0.5% of adjusted gross income. As with the proposed 1% floor on corporate charitable deductions, amounts disallowed by the floor may be carried over only in years when the taxpayer's contributions exceed the applicable percentage limitation for that type of contribution.

The Senate Bill also makes permanent the 60% percentage limitation for cash contributions to public charities, meaning that an individual can deduct an amount of up to 60% of adjusted gross income in a given year. In addition, the Senate Bill clarifies that the 60% limitation applies only to a taxpayer who contributes cash, and no other property, to public charities.

Energy

The Senate Bill includes key changes to the renewable energy credit provisions in the House Bill. Most notably, in lieu of the stringent phase-out rules for Section 45Y production tax credits and Section 48E investment tax credits that would have necessitated most power generation and storage projects to begin construction 60 days after the enactment of the bill, the Senate Bill generally preserves the full Section 45Y and 48E credits for projects that begin construction by 2033.

Notably, however, the Senate Bill introduces a different, accelerated phase-down for solar and wind projects, paring down the credit amount by 40% for projects that begin construction in 2026 and by 80% for projects that begin construction in 2027, with a full elimination thereafter.

Section 45Y and 48E credits are also expressly denied starting in 2026 with respect to certain residential solar or wind energy projects that are leased to a homeowner.

The Senate Bill also terminates Section 45V clean hydrogen production credits for projects that begin construction after 2025 and removes from the five-year accelerated depreciation classification any Section 45Y qualified facility and Section 48E qualified property and energy storage technology, resulting in those projects having seven-year depreciation schedules.

These amendments are, on the whole, less stringent than the accelerated repeals proposed by the House Bill, but they nonetheless mark a significant contraction of the clean energy credit regime under the Inflation Reduction Act, particularly with respect to wind and solar projects.

Other Proposals

Endowment Tax

The Senate Bill's changes to the existing tax on net investment income of certain private colleges and universities generally are consistent with the changes made by the House Bill, except that the highest rate bracket in the Senate Bill is 8%, a significant reduction from the top rate of 21% in the House Bill.

Net Investment Income Tax on Certain Private Foundations

The Senate Bill omits the House Bill's provision to increase the current 1.39% excise tax on the net investment income of certain private foundations.

Qualified Opportunity Zones

In addition to computational enhancements and modifications to eligibility, the Senate Bill permanently renews the opportunity zone (OZ) program and creates rolling 10-year OZ designations.

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