International Bar Association Annual Conference 2025

Recent Developments in International Taxation

United States

Robert R Christoffel
Saul Ewing, Washington, DC
robert.christoffel@saul.com

Overview

The political and administrative landscape and climate in the United States has witnessed a seismic shift as a result of the 2024 US presidential election and the 20 January 2025 inauguration of the 47th US President, Donald J Trump ('President Trump', and together with his administration, the 'Trump Administration'). Since his first day in office, President Trump and the Trump Administration have been governing through a heavy reliance on executive orders in an attempt to implement President Trump's political agenda and roll back the perceived 'Administrative State', among others, halting US foreign aid and dismantling the US Agency for International Development (USAID). They established the Department of Government Efficiency (DOGE) to cut government spending to 'save taxpayer money', implementing a hiring freeze that led to widespread layoffs by US federal agencies, including at the US Department of the Treasury (the 'Treasury') and US Internal Revenue Service (IRS), and rejecting international initiatives, including the Paris Climate Agreement and Organisation for Economic Cooperation and Development (OECD) global tax deal.

As a result of the 2024 elections for the US Congress ('Congress', which includes the US House of Representatives (the 'House') and US Senate (the 'Senate')), the Republican Party (the 'GOP', which is the party of the President) gained control of the Senate while holding narrow control of the House. However, due to unique Senate rules requiring at least 60 votes to avoid a filibuster (ie, an attempt by the minority party to delay or block a vote on a legislative measure advanced by the majority party), the GOP majority in Congress must rely on a special procedure (ie, 'budget reconciliation') to pass legislation enacting tax, spending and US federal debt limit changes. However, budget reconciliation legislation is limited, prohibiting provisions of reconciliation bills that are 'extraneous' to the reconciliation's basic purpose of implementing budget changes (the so-called 'Byrd Rule').

Thus far, this political quagmire has continued to limit legislative activity by Congress, especially with regard to US domestic and international taxation. Despite a dearth of any noteworthy legislative activity, the US federal court remains active, rendering a number of significant decisions relating to international taxation, and the Treasury and IRS have issued, at least until the end of 2024, a slew of Treasury regulations and other guidance relevant to international taxation.
Below is a high-level overview of these and other notable US developments relevant to international taxation since June 2024.

US federal legislation

No significant US federal tax legislation was enacted by Congress during the general reporting period from June 2024 to the end of May 2025.

Yet, a flurry of political debates and negotiations within the Trump Administration and GOP, as well as legislative efforts, were ongoing towards the end of this period, pushed to pass as soon as possible by GOP members in Congress, ideally by 4 July 2025, what President Trump called a 'One Big, Beautiful Bill'. Aside from devoting billions of dollars to complete the construction of the 'southern border wall', budget increases for the US Department of Defense, substantial cuts to Medicaid and

other non-tax items, this piece of legislation was initially expected to include the following US federal tax law changes:

- extend, if not make permanent, the expiring provisions of the Tax Cuts and Jobs Act of 2017 (the 'TCJA': for a full list, see below under the heading 'Expiring US federal tax provisions'), including lower individual tax rates, extending the lower rate for foreign-derived intangible income (FDII), increasing the standard deduction, expanding child tax credit, changing estate tax and a 20 per cent passthrough deduction, and potentially reactivating or extending TCJA provisions that have expired, for example, full research and development expensing, 100 per cent bonus depreciation and increased net interest deductions; and
- new tax cuts, including eliminating taxes on tips and overtime, lowering the corporate tax rate to 15 per cent for some companies, eliminating taxes on Social Security benefits, and increasing or eliminating the state and local tax deduction cap.

In mid-May 2025, the House Committee on Ways and Means released a corresponding bill, named 'The One Big Beautiful Bill',[1] that would, if enacted as drafted, implement the US federal tax law changes outlined above. Notably, it would not, as some expected based on prior statements from President Trump, include a tax hike on the wealthiest Americans, but instead, would make permanent the 37 per cent top rate for individuals from the TCJA. On the financial side, based on scoring for the draft House bill, these legislative measures would cut taxes by more than $4tn, while reducing spending by at least $1.5tn over a decade. At the same time, the bill would increase the debt ceiling by $4tn. The draft House bill also includes some surprises, such as making interest on car loans tax deductible, if the car is made in America, higher taxes on foundations and endowments of wealthy private universities, and on the international side, creating a new five per cent excise tax on foreign remittances (subject to some exceptions) and a new measure (the so-called 'revenge tax') to combat (perceived) 'discriminatory and extraterritorial' foreign taxes on US citizens and corporations by raising relevant US federal income tax rates (including withholding rates) on 'applicable persons', which would exclude individuals that are citizens or residents of the US and only capture individuals who are tax residents of 'discriminatory foreign countries'.

In addition, on the cuts side, renewable energy tax breaks and credits, including for electric vehicles and energy-efficient home improvements, would end at the close of 2025 or be scaled back over subsequent years; amortisation deductions for certain sports franchises would see limits; and the excess business loss limitation would be made permanent. The bill was passed,[2] with some changes, by the full House on the narrowest GOP margin possible (215-214) on 22 May 2025. In the Senate, particularly the Senate Finance Committee, the House-passed bill was subject to more substantial changes. Ultimately, the Senate narrowly passed[3] the bill in its revised form on 1 July 2025, only due to Vice-President JD Vance casting the tie-breaking vote. After a marathon session and many GOP-internal deals with party law-makers, the House then passed the Senate bill without amendment on 3 July 2025. President Trump signed the bill into law on 4 July 2025, as 'An Act to provide for reconciliation pursuant to title II of H Con Res 14'[4] (the 'Reconciliation Act').

The Reconciliation Act includes many of the components of the original House bill and is expected to bring about many of the corresponding economic and social changes outlined above, including making permanent existing US federal income tax rates and brackets; temporarily providing for no tax on tips and overtime; temporarily allowing a tax deduction on car loans; making permanent the 20 per cent qualified business income deduction for many pass-through businesses; the 100 per cent bonus depreciation for 'qualified property'; the immediate expensing of domestic research and experimental expenditures, reinstating the broader limitation on business interest expense deductibility based on earnings before interest, taxes, depreciation and amortisation (EBITDA); enhancing the advanced manufacturing investment credit to boost the production of semiconductors in the US; and renewing and reforming the 'Opportunity Zone' programme, while at the same time cutting and heavily scaling back all forms of clean energy tax credits and incentives.

On the US international tax side, the Reconciliation Act covers more areas than initially expected based on the House-passed bill. As was expected, it generally provides incentives for domestic businesses, trying to bring jobs back to the US and punishing businesses that leave the US, with benefits for domestic income and harsher US taxation of international income. Positive news for the international community was the last-minute exclusion of the revenge tax from the Senate-passed bill due to an announced[5] deal between the Treasury and the other G7 countries at the G7 summit in June 2025 in Canada, which plans to exclude US companies from the application of the global minimum tax rules under Pillar Two (as defined below), essentially setting the groundwork for a 'side-by-side system'.

Additional positive news was the scaling back of the new excise tax on foreign remittances, which is now only one per cent and generally limited to remittances funded by cash or similar instruments, exempting remittances of funds from US bank accounts or funded with a US-issued debit card or credit card. Other notable changes to the existing US international tax rules include the following:

- global intangible low-taxed income (GILTI): GILTI was renamed 'net CFC tested income' in tandem with the repeal of the exclusion for qualified business asset investment (QBAI), raising the effective rate to 14 per cent beginning after 31 December 2025; eliminating most expense apportionment other than direct expenses; and reducing the foreign tax credit (FTC) limitation to a ten per cent haircut;
- foreign-derived intangible income (FDII): FDII was renamed 'foreign-derived deduction eligible income' in tandem with the repeal of QBAI, raising the effective rate to 14 per cent beginning after 31 December 2025, making modifications to deemed intangible income (DII) and excluding certain items;
- base erosion and anti-abuse tax ('BEAT'). The rate of BEAT was slightly increased to 10.5 per cent permanently beginning for tax years after 31 December 2025, permanently retaining favourable treatment for certain tax credits, such as research credits and the portion of applicable section 38 credits, but not providing the anticipated high-tax exception;
- restoring the limitation on downward-attribution (section 958(b)(4)): This should reduce the number of controlled foreign corporations (CFCs) in foreign parented corporate structures,

while introducing a new section 951B that can cause downward attribution from foreign persons in certain cases and cause the 'subpart F' and GILTI/net CFC tested income rules to apply to certain persons denominated as a 'foreign controlled US foreign corporation' as if the former foreign person was a US shareholder and the latter corporate entity was a CFC;

- limiting the business interest expense deduction (section 163(j)): The deduction is otherwise expanded to EBITDA, as noted above, by excluding 'subpart F' and GILTI inclusions; section 78 gross-up amounts; and inclusions under section 956 from the computation of adjusted taxable income (ATI);
- making permanent the CFC look-through rule (section 954(c)(3)): This allows dividends, interest, rent and royalties received from a related CFC to be excluded from another CFC's foreign personal holding company income if paid out of earnings that are neither 'subpart F' income nor income that is effectively connected with a US trade or business;
- repealing the election for a one-month deferral in determining the tax year of a specified foreign corporation ('SFC') (prior section 898(c)(2)): This requires that an SFC's tax year must conform to the majority US shareholder's tax year;
- modifying the 'subpart F' income pro rata share rules (except in respect of inclusions under section 956): This generally requires a US shareholder that owns stock in a CFC on any day during the tax year to include in income its pro rata share of that CFC's 'subpart F' income and GILTI/'net CFC tested income', even if the shareholder does not own such stock on the last day of the year on which the foreign corporation is a CFC, with the pro rata share being determined based on such income being 'attributable' to the US shareholder's shares in the foreign corporation while owned by the US shareholder and while the foreign corporation was a CFC; and
- changing the sourcing of income from the sale of certain inventory produced in the US under section 863(b)(2) for purposes of the FTC limitation under section 904 by adding a new rule (section 904(b)(6)): Effective for tax years beginning after 31 December 2025, the new rule will treat the portion of such income that is attributable to the seller's foreign office or other fixed place of business as foreign source (up to 50 percent).

Expiring US federal tax provisions (Pre-Reconciliation Act)

Prior to the enactment of the Reconciliation Act, a number of important TCJA tax provisions had already or were set to expire at the end of 2025, unless Congress was to act and extend or even make them permanent. A copy of the full list of expiring US federal tax provisions 2024–2034, prepared by the staff of Congress's Joint Committee on Taxation, is available at the following link: **www.jct.gov/publications/2025/jcx-1-25/**.

Select US case law

Unlike the prior reporting period, which had to cover a myriad of significant US court cases that decided important tax and non-tax issues that fundamentally affect international tax (eg, *Moore*,[6] *Loper*

Bright,[7] *Corner Post*[8] and *YA Global*[9]; see the 2024 update on Recent Developments in International Taxation – United States[10]), the period from July 2024 was fairly quiet in terms of such seminal case law. Nonetheless, there were still a number of noteworthy decisions that are expected to meaningfully influence US international taxation and tax policy going forward.

YA Global Investments LP v Commissioner, 161 TC No 11 (Nov 2023)

As previously reported (see the 2024 update on Recent Developments in International Taxation – United States),[11] in November 2023, in this case, the US Tax Court (the 'Tax Court') held that a Cayman Islands investment fund was engaged in a 'US trade or business' through an agency relationship with its US investment manager, operating through an office in the US and being compensated through a management fee based on a percentage of the fund's assets plus an incentive fee, and failed to withhold tax on income that was effectively connected with its US trade or business ('ECI') and allocable to its non-US partners. In August 2024, the Tax Court rejected[12] reconsidering its decision on the basis of the US Supreme Court's (the 'Supreme Court') decision in the *Loper Bright*[13] case that brought about the demise of the 'Chevron doctrine' of judicial deference to federal agency interpretations of federal statutes. Subsequently, in April 2025, the fund filed a notice of appeal to the US Court of Appeals for the Third Circuit seeking review of the Tax Court decision.

Varian Medical Systems v Commissioner, 163 TC No 4 (Aug 2024)

In this unanimous decision, considering for the first time since the Supreme Court's *Loper Bright*[14] decision the validity of Treasury regulations, the Tax Court found[15] for the taxpayer and invalidated relevant Treasury regulations that had been issued to fix an effective date mismatch relevant for fiscal year taxpayers in respect of the non-application of the TCJA's dividends received deduction (DRD) under section 245A of the US Internal Revenue Code of 1986, as amended (the 'Code') to deemed dividends under section 78 of the Code, which leads to results contrary to clear tax policy. In its decision, however, the Tax Court determined that the Treasury regulation 'impermissibly attempts to change an unambiguous provision of the statute' by modifying the clear language of section 78 of the Code, and thus, 'falls outside the boundaries of any authority that Congress may have delegated under Section 245A'.

United States v Schwarzbaum, 11th Cir, No 22-14058 (Aug 2024)

The US Court of Appeals for the 11th Circuit has created a 'circuit split' on the issue of whether penalties for wilful failure to file Report Foreign Bank and Financial Accounts (FBAR) with the Treasury's Financial Crimes Enforcement Network ('FinCEN') are subject to the excessive fines clause of the Eighth Amendment to the US Constitution, in particular as such penalties may exceed the value of the unreported foreign accounts, the holding[16] for the taxpayer, reasoning 'that [the penalties levied] are grossly disproportionate to the offence of concealing that account […]'

Ryckman v Commissioner, 163 TC No 3 (Aug 2024)

In this decision, following the Supreme Court's *Loper Bright*[17] decision, the Tax Court reaffirmed[18] that 'great weight' deference is to be given to tax treaty interpretations by the IRS (in line with the Supreme Court's decision in the 1982 *Sumitomo Shoji America, Inc*[19] case).

Mukhi v Commissioner*,* 163 TC No 8 (Nov 2024)

The Tax Court, contrary to a prior decision by the US Court of Appeals for the DC Circuit (*Farhy v Commissioner*, 100 F 4th 223 (DC Cir 2024), rev'g and remanding 160 TC 399 (2023)), held[20] that the IRS lacks statutory authority to assess penalties against an individual who failed to file Form 5471: *Information Return of US Persons with Respect to Certain Foreign Corporations* with respect to three foreign corporations under section 6038(b) of the Code. This decision sets up a potential 'circuit split' if, on appeal, the US Court of Appeals for the Eighth Circuit rules in favour of the taxpayer.

Bruyea v United States, Fed Cl, Case No 23-766T (Dec 2024)

In this decision, the US Court of Federal Claims confirmed[21] that treaty-based FTCs, unlike FTCs under domestic law, reduce a taxpayer's net investment income tax liability to eliminate double taxation because 'a treaty, when ratified, supersedes prior domestic law […]' For further details, see 'US DTA with Canada (Dec 2024)' below.

Eaton Corp et al v Commissioner, 164 TC No 4 (Feb 2025)

Because 'any double taxation will be temporary', in this case, the Tax Court denied[22] the taxpayer's FTC eligibility for foreign income taxes paid or accrued by certain lower-tier subsidiaries that were CFCs, which the taxpayer held through a domestic partnership. The interposition of a domestic partnership essentially cuts off any deemed-paid FTCs for the domestic corporate parent because the partnership did not distribute any earnings up the chain and does not qualify as a 'domestic corporation' under the relevant FTC rules.

Select Treasury regulations and other guidance

Treasury regulations

FINAL REGULATIONS ON EXCISE TAX ON THE REPURCHASE OF CORPORATE STOCK: PROCEDURE AND ADMINISTRATION (JULY 2024)

After issuing proposed regulations in April 2024 regarding the US excise tax, implemented as part of the Inflation Reduction Act of 2022 (the 'IRA'), under section 4501 of the Code on corporate stock repurchases after 31 December 2022 equal to one per cent of the aggregate fair market value of stock that certain corporations repurchased during the taxable year, with certain adjustments (as reported in the 2024 update on Recent Developments in International Taxation – United States[23]), the Treasury and IRS promulgated final regulations in July 2024 (TD 10002[24]) that provide guidance regarding procedural aspects, including record-keeping, as well as the form and timing of reporting and payment (the first due date for publicly traded corporations, or specified affiliates of foreign publicly traded corporations, to file and pay was 31 October 2024) of the excise tax. Still missing are regulations that finalise the proposed regulations on the scope and calculation of the excise tax, which creates a dilemma for taxpayers as they will have filed their excise tax returns based on the (potentially inaccurate) rules of the proposed regulations that could, in some cases, result in significant overpayments of excise tax.

FINAL REGULATIONS UNDER SECTION 367(B) OF THE CODE RELATED TO CERTAIN TRIANGULAR REORGANISATIONS AND INBOUND NON-RECOGNITION TRANSACTIONS ('KILLER B TRANSACTIONS') (JULY 2024)

With the intention to kill Killer B Transactions, that is, triangular reorganisations involving foreign corporations used to (allegedly) avoid US taxes, in July 2024, the Treasury and IRS promulgated final Killer B Transaction regulations (TD 10004),[25] which generally cover the treatment of property used to acquire parent stock or securities in connection with certain triangular reorganisations involving one or more foreign corporations; the consequences to persons that receive parent stock or securities pursuant to such reorganisations; and the treatment of certain subsequent inbound non-recognition transactions following such reorganisations and certain other transactions. At a high-level, these anti-avoidance rules are aimed at perceived types of abusive transactions that may enable taxpayers to repatriate foreign earnings or other assets tax-free or achieve a corporate tax 'inversion' to a lower tax jurisdiction. Generally, these transactions generally involve cross-border 'triangular B reorganisations' under section 368(a)(1)(B) of the Code, in which a foreign subsidiary first buys stock in its own corporate parent and then uses that stock to acquire (stock or property of) another target corporation. Because the scope of the rules is extremely broad, taxpayers cannot be certain that even legitimate, non-abusive transactions will not get entangled in them, but on the other hand, may subject the regulations to challenge under the revised Supreme Court jurisprudence concerning the legal review of government regulations, as articulated in its *Loper Bright*[26] decision (which overturned the prior Chevron deference, as reported in the 2024 update on Recent Developments in International Taxation – United States).[27] The release of the final regulations was somewhat surprising as certain other legal and regulatory changes had, at least in the eyes of many practitioners, largely rendered the government's previous concerns moot.

FINAL REGULATIONS ON THE REPORTING OF DIGITAL ASSET TRANSACTIONS AND THEIR DEMISE (JULY AND DECEMBER 2024, AND MARCH AND JULY 2025)

At first, in July and December 2024, the Treasury and IRS finalised two sets of regulations addressing gross proceeds and basis reporting by brokers, and the determination of the amount realised and basis for digital asset transactions (TD 10000);[28] and gross proceeds reporting by brokers that regularly provide services effectuating digital asset sales (TD 10021),[29] respectively. The former require brokers to file information returns and furnish payee statements reporting gross proceeds and an adjusted basis on dispositions of digital assets effected for customers in certain sale or exchange transactions. They also require real estate reporting persons to file information returns and furnish payee statements with respect to real estate purchasers who use digital assets to acquire real estate. These rules generally apply to digital asset brokers that act as agents for a party in the transaction, such as operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers and certain processors of digital asset payments (PDAPs), as well as persons that interact with their customers as counterparties to transactions, such as owners of digital asset kiosks; brokers who accept digital assets as payment for commissions and certain other property; brokers that transact as dealers in digital assets; and certain issuers of digital assets who regularly offer to redeem those digital assets. They became effective on 9 September 2024 and apply to sales on or after 1 January 2025. The latter set of final

rules require brokers that regularly provide services effectuating certain digital asset sales and exchanges, specifically through decentralised finance ('DeFi') platforms, to file information returns and furnish payee statements reporting gross proceeds on dispositions of digital assets effected for customers in certain sale or exchange transactions (ie, a new information return, IRS Form 1099-DA: *Digital Asset Proceeds From Broker Transactions*). These rules initially became effective on 28 February 2025, and would have applied to DeFi sales on and after 1 January 2027, with transitional relief for certain penalties and backup withholding during 2027 and 2028. However, in March 2025, the GOP-led Congress passed a joint resolution (H.J.Res.25)[30] nullifying the final regulations under TD 10021 and prohibiting the IRS from promulgating similar rules. President Trump signed the resolution into law on 10 April 2015, repealing these DeFi broker reporting regulations under the Congressional Review Act (CRA, which allows Congress to strike down regulations issued by federal agencies for up to 60 days after issuance); a first for tax regulations in US history. The Treasury and IRS removed[31] the final regulations effective on 11 July 2025.

FINAL REGULATIONS ON THE EXCISE TAX IMPOSED ON CERTAIN SALES BY MANUFACTURERS, PRODUCERS OR IMPORTERS OF DESIGNATED DRUGS (JULY 2024)

In July 2024, the Treasury and IRS finalised rules on procedures for the excise tax under section 5000D of the Code regarding certain sales by manufacturers, producers or importers of designated drugs, including rules on how taxpayers must report liability for such tax (TD 10003).[32] These rules generally come into play if manufacturers, producers or importers of designated drugs refuse to comply with the Medicare Drug Price Negotiation Program, which was established under the prior administration of the 46th US President, Joseph R Biden Jr ('President Biden', and together with his administration, the 'Biden Administration') by the IRA. Section 5000D(e)(1) of the Code defines 'designated drug' as 'any negotiation-eligible drug (as defined in [S]ection 1192(d) of the Social Security Act) included on the list published under [S]ection 1192(a) of such Act which is manufactured or produced in the US or entered into the US for consumption, use, or warehousing'. Under the final rules, taxpayers must report the excise tax on IRS Form 720: *Quarterly Federal Excise Tax Return*, and file the return in each quarter in which they incur liability for the tax. The rules became effective on 5 August 2024 and apply retroactively to calendar quarters beginning on or after 1 October 2023.

PROPOSED REGULATIONS ON QUALIFIED DOMESTIC TRUSTS (AUGUST 2024)

In August 2024, the Treasury and IRS released proposed regulations amending the US federal estate tax regulations applicable to estates of decedents passing property to or for the benefit of a non-citizen spouse in a domestic trust for which the executor of the decedent's estate has made an election to be a 'qualified domestic trust' and the trust satisfies all of the requirements for such treatment under applicable US federal tax law and regulations (REG-119683-22).[33] Those amendments mainly involve removing outdated references and updating the definition of 'finally determined'.

FINAL ANTI-MONEY LAUNDERING REGULATIONS FOR RESIDENTIAL REAL ESTATE TRANSFERS (AUGUST 2024)

Peripherally related to international tax, but materially important to inbound real estate transactions and investments, in August 2024, FinCEN finalised regulations that require certain persons involved in real estate closings and settlements to submit reports (including foreign jurisdiction tax identification, passport and entity registration numbers, as applicable), and keep records on certain non-financed transfers of residential real property to specified legal entities and trusts on a nationwide basis (RIN 1506-AB54).[34] These reports are expected to assist the Treasury, law enforcement and national security agencies in addressing 'illicit finance vulnerabilities in the U.S. residential real estate sector, and to curtail the ability of illicit actors to anonymously launder illicit proceeds through transfers of residential real property, which threatens U.S. economic and national security'. The rules take effect on 1 December 2025.

PROPOSED AND FINAL REGULATIONS ON FOREIGN CURRENCY GAINS AND LOSSES (AUGUST AND DECEMBER 2024)

In 2024, the Treasury and IRS released three sets of guidance relating to foreign currency gains and losses. The first set, proposed regulations REG-111629-23,[35] was released in August 2024, and addresses the time for making and revoking certain elections relating to foreign currency gains or losses. These elections relate to a taxpayer's, including a CFC's, election to use a mark-to-market method of accounting for computing its foreign currency gain or loss, and certain other elections that affect how such gain and loss of a CFC is classified for the purposes of the US 'subpart F' income rules and ultimately taxed for US federal income tax purposes. The other sets of regulations were released in December 2024. A set of final regulations, TD 10016,[36] much broader than the proposed regulations, generally address how to determine taxable income or loss and foreign currency gain or loss with respect to a qualified business unit (QBU) that operates in a currency other than the currency of its owner, and in particular, the methods that are permitted to be used (ie, denying the use of the 'earnings and capital method' that was described in the proposed regulation from 1991 and making the 'foreign exchange exposure pool (FEEP) method' the default rule). A QBU is any separate and clearly identified unit of a trade or business of a taxpayer that maintains separate books and records. The final regulations generally maintain the approach of regulations that were proposed in 2023 and include an election to treat all items of a QBU as marked items (subject to a loss suspension rule); an election to recognise all foreign currency gain or loss with respect to a QBU on an annual basis; and a new transition rule. The final regulations generally apply to tax years beginning after 31 December 2024. The final set, proposed regulations REG-117213-24,[37] also addresses the determination of taxable income or loss and foreign currency gain or loss with respect to a QBU, but mainly provides for an election that is intended to reduce the compliance burden of accounting for certain disregarded transactions between a QBU and its owner (ie, allowing, in certain circumstances, the use of a yearly average exchange rate rather than the spot rate applicable on the date of each relevant transfer).

PROPOSED AND FINAL REGULATIONS ON DUAL CONSOLIDATED LOSSES (DCLS) AND DISREGARDED PAYMENTS (AUGUST 2024 AND JANUARY 2025)

After releasing a set of proposed regulations in August 2024 (REG-105128-23),[38] which, among others, address the effect of intercompany transactions and items arising from stock ownership in calculating the amount of a DCL; the application of the DCL rules to certain 'foreign taxes that are intended to ensure that multinational enterprises pay a minimum level of tax' (ie, taxes levied under Pillar Two, as defined below); and certain disregarded payments that give rise to losses for foreign tax purposes ('disregarded payment losses' or DPLs), the Treasury and IRS promulgated final DCL regulations in January 2025 (TD 10026), which finalise some, but not all, elements of the proposed DCL regulations. The final DCL regulations specifically address DPLs that give rise to deductions for foreign tax purposes and avoid the application of the DCL rules. They generally affect US corporate owners that make or receive such disregarded payments (eg, interest and royalty payments from a non-US entity that is disregarded for US federal tax purposes). To combat potential 'double deduction' outcomes, the rules require an income inclusion similar to the one that the owner would have had with respect to the payments had the payments been regarded for US federal tax purposes. Transitional relief is provided in such cases, delaying the applicability of the rules until 1 January 2026. The final regulations do not touch upon the approach of the proposed DCL regulations to taxes levied under Pillar Two, which in essence require that when a US company uses a loss incurred abroad for purposes of the Pillar Two minimum tax calculation, the loss will no longer be available to the US company as a deduction for purposes of its US income tax calculation, but offer additional transitional relief in the form that the DCL rules will apply without taking into account such taxes with respect to losses incurred in taxable years beginning before 31 August 2025, which, according to the preamble of the final DCL regulations, will 'allow additional time to consider future OECD guidance and legislation enacted by foreign jurisdictions that would implement the GloBE Model Rules'.

PROPOSED REGULATIONS ON THE CORPORATE ALTERNATIVE MINIMUM TAX (CAMT) (SEPTEMBER 2024)

The CAMT was originally created by the IRA and imposes a 15 per cent minimum tax on the adjusted financial statement income (AFSI) of large corporations with average annual AFSI income exceeding $1bn (ie, 'applicable corporations') for taxable years beginning after 31 December 2022. After issuing various pieces of guidance regarding the CAMT, as reported in the 2024 update on Recent Developments in International Taxation – United States,[39] in September 2024, the Treasury and IRS issued proposed regulations REG-112129-23,[40] addressing the application of the CAMT and affecting taxpayers that are applicable corporations, certain taxpayers that own interests in applicable corporations and certain entities in which applicable corporations hold interests. At a high-level, the proposed CAMT regulations provide guidance, including helpful examples, on identifying an 'applicable financial statement'; determining AFSI and computing AFSI adjustments (eg, in respect of purchase accounting and push down accounting, depreciation and amortisation, and ECI); determining the AFSI and CAMT basis consequences of certain transactions involving foreign corporations (referred to as 'covered asset transactions'); identifying applicable corporations that are subject to the CAMT; and the application of the CAMT rules to CFCs, foreign-parented multinational groups,

consolidated groups and partnerships with corporate partners, as well as the determination of the CAMT FTC. While a large portion of the proposed regulations are proposed to apply to taxable years ending after 13 September 2024, most other rules are proposed to be effective for taxable years ending after the publication date of the final regulations. Taxpayers, however, may rely on the former for any taxable year ending on or before 13 September 2024, provided that the taxpayer and each member of its 'test group' meets certain consistency requirements. Currently, with the Trump Administration's freeze on rulemaking (see, eg, executive order called 'Regulatory Freeze Pending Review'),[41] and President Trump's and the GOP's overall changes in tax priorities, it is highly uncertain when (if ever) the proposed CAMT regulations will be finalised.

PROPOSED AND FINAL REGULATIONS ON CLEAN ENERGY TAX CREDITS AND RELATED INITIATIVES (SEPTEMBER, OCTOBER AND DECEMBER 2024, AND JANUARY 2025)

In the months leading up to the final days of the Biden Administration, the Treasury and IRS issued a slew of new proposed regulations, and finalised existing proposed regulations in support of President Biden's clean energy initiatives and climate change mitigation policies (under President Biden, the US set a target of achieving zero emissions from the power sector by 2035 and to reach carbon neutrality by 2050). Included in these efforts were, in September 2024, proposed regulations providing guidance on the clean electricity low-income communities bonus credit amount programme under section 48E(h) of the Code (REG-108920-24),[42] which allocates bonus tax credits for clean energy projects in low-income communities and was established in 2022 by the IRA for 2025 and succeeding years. The programme covers certain clean electricity generation facilities that produce electricity without combustion and gasification. Additionally, the proposed rules would expand bonus tax credit eligibility to technologies beyond wind and solar (eg, hydro power and geothermal). Following the proposed rules, in October 2024, final regulations on the advanced manufacturing investment credit rules under sections 48D and 50 of the Code (TD 10009)[43] were released, which implement the advanced manufacturing investment credit established by the CHIPS Act of 2022 to incentivise the manufacture of semiconductors and semiconductor manufacturing equipment within the US. The final rules provide the eligibility requirements for the credit, and a special ten-year credit recapture rule that applies if there is a significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern. To the surprise of some, the regulations make clear that the credit also applies to solar ingots and wafers, which will support the domestic production of solar panels. In addition, in October 2024, the Treasury and IRS finalised rules regarding the advanced manufacturing production credit (TD 10010).[44] The credit was established by the IRS to incentivise the production of 'eligible components' within the US, which include certain solar energy components, wind energy components, inverters, qualifying battery components and applicable critical minerals. The final regulations generally implement the statutory provisions of section 45X of the Code, and include generally applicable definitions; rules regarding the computation of the credit amount; the definition of 'produced by the taxpayer'; the requirement to produce eligible components in the US; the production and sale in a trade or business requirement; the sale of integrated components; the interaction between sections 45X and 48C of the Code; and an anti-abuse rule, and also address specific record-keeping and reporting requirements. Next, in December 2024, the Treasury and IRS finalised regulations on the definition of energy property and rules applicable to the energy credit (TD 10015).[45]

Specifically, these final rules address eligibility for the investment tax credit under section 48 of the Code, including guidance on the statutory requirements for an 'energy project', and implement certain amendments of the credit made by the IRA, which generally expanded the types of energy properties that can receive the credit. Finally, in January 2025, the Treasury and IRS promulgated final regulations on the clean electricity production credit under section 45Y of the Code and the clean electricity investment credit under section 48E of the Code, which were also established under the Biden Administration by the IRA (TD 10024).[46] The final rules include rules for determining greenhouse gas emissions rates resulting from the production of electricity, petitioning for provisional emissions rates and determining eligibility for these credits in various circumstances, and are relevant for taxpayers that claim the clean electricity production credit with respect to a qualified facility or the clean electricity investment credit with respect to a qualified facility or energy storage technology, as applicable, that is placed in service after 2024. These final regulations become effective on 15 January 2025. Now, under the Trump Administration and with a GOP majority in Congress, the future of the IRA energy tax incentives is uncertain as they may be subject to policy challenges or their (prospective) removal simply used as revenue offsets for the extension of the TCJA tax cuts.

Final regulations on repatriations of intangible property (IP) (October 2024)

In October 2024, the Treasury and IRS promulgated final regulations under section 367(d) of the Code containing rules for certain repatriations of IP (TD 9994).[47] These rules terminate the continued application of certain tax provisions arising from a previous transfer of IP to a foreign corporation when the IP is repatriated to certain US persons (ie, to prevent excessive taxation and not dissuade companies from bringing IP back to the US) and affect certain US persons that previously transferred IP to a foreign corporation. Contrary to taxpayer requests, the final rules do not apply retroactively but are effective for dispositions of IP occurring on or after 10 October 2024.

Final regulations on withholding for retirement plan payments made to US taxpayers living outside the US (October 2024)

In October 2024, the Treasury and IRS promulgated final regulations on withholding on certain distributions under section 3405(a) and (b) of the Code (TD 10008),[48] relating to income tax withholding on certain periodic payments and non-periodic distributions from employer deferred compensation plans, individual retirement plans and commercial annuities that are not eligible rollover distributions. These rules address a payor's obligation to withhold income taxes in the circumstances in which those payments or distributions are made to payees outside the US, and affect payors and payees of those periodic payments and non-periodic distributions. The final regulations became effective on 21 October 2024, but taxpayers may apply them to earlier payments and distributions.

Proposed regulations on previously taxed earnings and profits (PTEP) and related basis adjustments (December 2024)

After a long wait, in December 2024, the Treasury and IRS finally issued proposed regulations that address PTEP of foreign corporations and related basis adjustments, affecting such corporations and their shareholders (REG-105479-18).[49] Generally, PTEP relates to foreign income that is repatriated

to the US after US income tax has already been levied on it. The goal of the proposed regulations is to prevent double taxation of such income, while preventing potential abuse, and to establish the fundamental framework for how the PTEP system will operate (noting that future guidance will be needed to address remaining open items, such as non-recognition transactions, redemptions and structures where CFCs are partners in a partnership). The proposed PTEP regulations generally provide rules for PTEP accounting (both at the shareholder-level and foreign corporation-level), certain exclusions from gross income, and related determinations and adjustments. An integral part of the proposed PTEP accounting rules is the establishment of various accounts, which include, at the shareholder-level, annual PTEP accounts (tracking a foreign corporation's PTEP with respect to a 'covered shareholder'), dollar basis pools (tracking the basis in US dollars of a foreign corporation's PTEP with respect to a 'covered shareholder') and PTEP tax pools (tracking the US dollar amount of foreign income taxes associated with a foreign corporation's PTEP with respect to a covered shareholder), which are established and maintained by a 'covered shareholder' with respect to a foreign corporation in which the shareholder owns stock, and at the foreign corporation-level, corporate PTEP accounts and corporate PTEP tax pools (tracking a foreign corporation's PTEP and associated foreign income taxes, respectively), which each relate to a single 'covered shareholder' of the foreign corporation. For the purposes of these rules, a 'covered shareholder' is any US person, other than a domestic partnership, that owns stock in a foreign corporation. In addition, the proposed regulations set forth rules regarding necessary adjustments to the various PTEP-related accounts to reflect CFC inclusions, distributions and certain other transactions that occur during the tax year of the foreign corporation. Moreover, the proposed rules provide guidance in respect of distributions of PTEP, such as when a covered shareholder can exclude PTEP from gross income or how to treat PTEP distributed through a chain of CFCs in order to prevent double taxation (eg, excluding PTEP distributed from a lower-tier CFC to an upper-tier CFC from the upper-tier CFC's 'subpart F' income). PTEP has grown in significance since the TCJA due to the increased US taxation of foreign income under the mandatory repatriation tax in section 965 of the Code and GILTI in section 951A of the Code. The proposed regulations would generally become effective for tax years of foreign corporations starting on or after the date final regulations are issued.

FINAL REGULATIONS ON THE TAXATION OF PARTNERSHIPS (DECEMBER 2024 AND JANUARY 2025)

In December 2024, after promulgating final regulations (TD 10014)[50] relating to a partner's share of recourse liabilities of a partnership (providing guidance, in particular, as to when and to what extent a partner is treated as bearing the 'economic risk of loss' for such a liability when there is an overlapping economic risk of loss by multiple partners for the same liability), and amending the rules for tiered partnerships and related parties in respect of the same, in January 2025, the Treasury and IRS issued final regulations (TD 10028)[51] addressing partnership related-party basis adjustment transactions, which involve partnership distributions and transfers of partnership interests, as 'transactions of interest', a type of reportable transaction, which requires 'material advisers' and certain participants in such transactions to file disclosures with the IRS. As a type of anti-abuse rule, these final regulations generally aim at preventing partners and partnerships in complex structures from shifting the partnership tax basis and corresponding cost recovery deductions or reduced gain (or increased loss) among related and certain other persons within partnerships. Although the scope of the final regulations

has been somewhat softened (inter alia, by increasing certain thresholds), compared to the prior proposed regulations (REG-124593-23),[52] the rules impose substantial reporting burdens on taxpayers, while final regulations on the substance of related-party transactions are still outstanding (the issuance of such rules was announced by the IRS in Notice 2024-54).[53] The future of these final basis-shifting regulations is uncertain. President Trump, per an executive order issued in February 2025, called 'Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative',[54] may force a withdrawal of the rules, as the order requires agency heads to identify certain classes of regulations, including 'regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition', and provide these lists to the Administrator of the Office of Information and Regulatory Affairs, which is tasked to 'develop a Unified Regulatory Agenda that seeks to rescind or modify these regulations as appropriate'. In response, in April 2025, the Treasury and IRS issued Notice 2025-23,[55] which announces their intention to remove the final basis-shifting regulations. In the interim, the Notice provides immediate relief from penalties for participants of relevant transactions and material advisers thereto.

GUIDANCE ON DIGITAL CONTENT AND CLOUD TRANSACTIONS (JANUARY 2025)

In January 2025, the Treasury and IRS released a long awaited guidance package (including final regulations (TD 10022),[56] proposed regulations (REG-107420-24)[57] and a request for comments on whether these rules should be expanded beyond their current application to the US international tax provisions (Notice 2025-6)[58]) on classifying and sourcing 'digital content transactions' and 'cloud transactions'. Important highlights of these regulations include: treat all cloud transactions solely as the provision of services; employ a predominant character rule, which applies to both digital content transactions and cloud transactions, to classify transactions with multiple elements (including *de minimis* elements); source sales of copyrighted articles transferred through an electronic medium to the customer's location, using the customer's billing address as a proxy, regardless of whether that purchaser is a related or unrelated party (subject to a new anti-abuse rule); and source cloud transactions to the place where the service is performed, which is to be established through a formula composed of a fraction that relies on three factors: the intangible property factor, the personnel factor and the tangible property factor. The final regulations piece of the guidance generally applies to taxable years beginning on or after the date of publication (14 January 2025), but taxpayers can elect to submit a retroactive application back to 14 August 2019 (if certain requirements are met). The future of the proposed regulations on sourcing cloud transactions is less clear as US tech companies have already urged the IRS to withdraw these rules, suggesting that intellectual property and research would otherwise be incentivised to be moved offshore.

PROPOSED SPIN-OFF AND REORGANISATION REGULATIONS (JANUARY 2025)

In January 2025, the Treasury and IRS also released proposed regulations (REG-112261-24)[59] relating to corporate separations, incorporations and reorganisations qualifying, in whole or in part, for non-recognition of gain or loss, affecting corporations and their shareholders, and security holders. The proposed rules are particularly focused on the distribution and retention of controlled corporation stock; assumption of liabilities by controlled corporations; exchange of property between distributing

corporations and controlled corporations; and distribution and transfer of consideration to distributing corporation shareholders and creditors, but also include rules on reorganisation plans. This release follows IRS pronouncements in 2024, which drastically revised the IRS guidelines for private letter ruling requests regarding spin-off transactions (Revenue Procedure 2024-24)[60] and sought feedback on various perceived open issues concerning such transactions (Notice 2024-38).[61] The proposed regulations would generally apply to transactions occurring after the date the proposed regulations were finalised.

PROPOSED REGULATIONS ON BASE EROSION AND ANTI-ABUSE TAX RULES FOR QUALIFIED DERIVATIVE PAYMENTS (QDPS) ON SECURITIES LENDING TRANSACTIONS (JANUARY 2025)

Despite, or perhaps because of, the impending change of the administration, in January 2025, the Treasury and IRS released a flurry of guidance, including proposed regulations regarding the BEAT imposed on certain large corporate taxpayers with respect to certain payments made to foreign-related parties (REG-107895-24).[62] These rules relate to how QDPs with respect to securities lending transactions are determined and reported and would affect corporations with substantial gross receipts that make payments to foreign-related parties. A QDP is any payment made by a taxpayer pursuant to a derivative with respect to which the taxpayer: (1) recognises gain or loss as if such a derivative were sold for its fair market value on the last business day of the taxable year (and additional times as required under a statute or the taxpayer's method of accounting); (2) treats any gain or loss recognised as ordinary; and (3) treats the character of all items of income, deduction, gain or loss with respect to a payment pursuant to the derivative as ordinary. QDPs are not base erosion payments for purposes of the BEAT if the taxpayer satisfies certain reporting requirements. The proposed rules reflect the Treasury's and IRS's view that mark-to-market gains and losses on the securities leg of securities lending transactions with a foreign-related party should not be treated as a QDP (and therefore not be subject to QDP reporting). Consequently, only substitute payments and other payments made to a foreign-related party under an intercompany securities lending transaction that are not payments of cash collateral or interest thereon would be QDPs. The rules are proposed to be applicable to taxable years beginning on or after the date these rules are finalised.

CTA REGULATIONS: NEW, LIMITED FILING OBLIGATIONS (MARCH 2025)

The Corporate Transparency Act (CTA), enacted to enhance transparency in business ownership and combat financial crime, requires certain companies doing business in the US to report beneficial ownership information (BOI) to FinCEN. The CTA applies to most companies, including corporations, limited liability companies and similar entities registered to do business in the US, and failure to comply with the CTA can result in fines and potential imprisonment. As reported in the 2024 update on Recent Developments in International Taxation – United States,[63] regulations promulgated under the CTA generally required the filing of BOI with FinCEN by 1 January 2025. However, after a period of back-and-forth and uncertainty, in March 2025, the Treasury announced[64] that it will, first, not enforce any penalties or fines associated with the BOI reporting rule under existing regulatory deadlines; second, not enforce any penalties or fines against US citizens or domestic reporting companies, or their beneficial owners after the forthcoming rule changes take effect; and third, be

issuing proposed rulemaking that will narrow the scope of the rule to foreign reporting companies only. Following the announcement, later in March 2025, FinCEN issued a new interim final rule and request for comment (RIN 1506-AB49),[65] revising the BOI reporting requirements under the CTA, including exempting US companies and US persons from BOI reporting requirements, potentially exempting foreign beneficial owners of US entities and applying reporting requirements exclusively to foreign entities defined as 'foreign reporting companies'. These are entities formed under foreign law that have registered to do business in any US state or tribal jurisdiction. Such entities must file BOI reports with FinCEN within 30 days of their registration.

Other guidance

IRS CHIEF COUNSEL MEMORANDUM (CCM 202436010)[66]

Released in September 2024, the memorandum denies the DRD under section 245A(a) of the Code in the case of a dividend by a CFC, which is wholly owned by a US parent corporation, from a foreign corporation that is not a CFC but a 'specified 10-percent owned foreign corporation' because, under the Code's plain language, the DRD is limited to dividends received by a 'domestic corporation' and neither other statutory provisions nor the legislative history of the DRD change this plain language interpretation.

IRS CHIEF COUNSEL MEMORANDUM (CCM 202436009)[67]

Released in September 2024, the memorandum confirms the eligibility of services provided to the US government (including any political subdivision, agency or instrumentality thereof) outside the US as eligible for the deduction for FDII under section 250 of the Code.

IRS GENERIC LEGAL ADVICE MEMORANDUM (AM 2024-002)[68]

Released in October 2024, the memorandum provides legal advice on how the taxable income limitation in section 246(b) of the Code applies to limit deductions under sections 243 (DRD for dividends from domestic corporations), 245(a) (DRD for US-source portion of dividends from certain foreign corporations) and 250 (deduction for FDII and GILTI) of the Code with respect to years in which the taxpayer has profitable foreign operations but otherwise unprofitable US operations. The advice essentially takes the position, based on the provision's text, the evolution of the statutory language and policy considerations, that the limitation in section 246(b) also applies to the deduction for FDII and GILTI, although, on its face, it is limited to DRDs that corporations can claim for certain dividends.

NOTICE 2024-78[69]

In this notice, issued in October 2024, the IRS extended temporary relief provided in a prior notice for reporting foreign financial institutions (FFIs) in jurisdictions with a Model 1 intergovernmental agreement (IGA) to report US taxpayer identification numbers under the Foreign Account Tax Compliance Act of 2010 ('FATCA') for certain pre-existing accounts if such an FFI complies with the procedures set out in the October notice, and the IRS will not determine that there is significant non-compliance with the FFI's obligations under the IGA solely due to the failure to report.

NO 24 MISC 594[70]

As evidenced by an order from the US District Court for the Southern District of New York, granted in December 2024 (No 24 Misc 594),[71] and the related Acting US Attorney's press release,[72] the IRS increasingly issues 'John Doe' summonses to overseas trust companies, related entities and vendors to obtain records on US taxpayers who may have used these networks of offshore service providers to hide assets and evade taxes.

NOTICE 2025-04[73]

In this notice issued in December 2024, the Treasury and IRS announced their intention to issue proposed regulations that will, for transfer pricing (TP) purposes under section 482 of the Code, provide a new method for pricing certain controlled transactions involving 'baseline marketing and distribution activities' fully in line with the OECD's simplified and streamlined approach (SSA), as described in the OECD report on 'Pillar One – Amount B: Inclusive Framework on BEPS'[74] (the 'OECD Report'). In addition, the notice already provides guidance concerning the application of the SSA to in-scope transactions undertaken by parties subject to US tax with respect to those transactions before the issuance of those proposed regulations, and further, confirms that US taxpayers generally may rely on the SSA, as set forth in the OECD Report, subject to the notice guidance. Despite the Trump Administration's rejection of the OECD global tax deal (as further reported under 'US participation in OECD Pillars One and Two' below), the IRS continues to encourage taxpayers to use the SSA as laid out in the OECD Report.

IRS GENERIC LEGAL ADVICE MEMORANDUM (AM 2025-001)[75]

Released in January 2025, the memorandum provides new guidance on the relationship between the general arm's length standard (ALS) and TP adjustments (ie, the specific periodic adjustments) under Treasury regulations promulgated under section 482 of the Code. Specifically, this memorandum highlights that, in the case of high-profit-potential intellectual property transferred or contributed by a multinational enterprise to a subsidiary under a license or a cost-sharing arrangement, the IRS may later use periodic adjustments based on actual profits (when actual profits attributable to the intellectual property significantly exceed profit projections) to ensure that reported income aligns with the 'commensurate with income' standard and that taxpayers cannot 'focus solely on comparables or other ex ante information, while ignoring actual profit performance […]'

IRS CHIEF COUNSEL MEMORANDUM (CCM 202502005)[76]

Released in January 2025, the memorandum finds that the source of services income generally is determined by reference to the place at which the entity's employees or other agents perform such services, and if a contractor entity subcontracts to a subcontractor entity work that it has contracted to provide, then, unless the subcontractor is treated as an agent for such a purpose, the source of income derived by the contractor is not determined by reference to the place of performance by the subcontractor. On that basis, the memorandum concludes that, generally, activities performed by a wholly owned CFC cannot be attributed to its US shareholder ('USP') for the purposes of sourcing the USP's services income to determine the USP's credit limitation under section 904(a) of the Code with respect to each separate limitation category.

IRS PRIVATE LETTER RULING (PLR 202502002)[77]

Released in January 2025, the ruling provides guidance on whether certain income earned from providing research and development services constitutes foreign-derived deduction eligible income (FDDEI) in full for purposes of the FDII deduction under section 250 of the Code. The PLR ruled, relying on the benefits concept in the controlled services regulations under section 482 of the Code, that general services income earned by a domestic corporation qualified as FDDEI may benefit from the FDII deduction, even though the foreign recipient utilised the services to manufacture products that were sold back (at arm's length) to a related US distributor for distribution into the US because the services did not directly result in any benefit to the US distributor.

IRS PRIVATE LETTER RULING (PLR 202504005)[78]

Released in January 2005, the ruling confirms, with respect to the DRD under section 245A(a) of the Code, that any 'hovering deficit' (stemming from an earnings and profits ('E&P') deficit to which a foreign subsidiary succeeded after a merger with another foreign subsidiary under section 381 of the Code) is not taken into account in computing a surviving foreign subsidiary's current or accumulated E&P, other than to offset post-transaction accumulated earnings, and thus, does not affect the subsidiary's undistributed foreign earnings, which would reduce the DRD benefit.

US double taxation agreement (DTA) developments

US DTA with Belarus (December 2024)

On 17 December 2024, the Treasury announced,[79] in response to a similar action by the Republic of Belarus, that the US has provided formal notice to the Republic of Belarus to confirm the suspension of the operation of Article 3(1)(g) of the countries' income tax treaty, with related letters, signed at Washington on 20 June 1973, by mutual agreement, effective from 17 December 2024 until 31 December 2026, or earlier if mutually determined by the two governments. The suspension affects the tax exemption (zero per cent withholding) for interest on credits, loans and other forms of indebtedness connected with the financing of trade between the two countries, except where received from the conduct of a general banking business. This development follows similar announcements by the US and Russia in respect of a suspension of the US DTA with Russia, which was reported in the 2024 update on Recent Developments in International Taxation – United States.[80]

US DTA with Canada (December 2024)

In December 2024, the US Court of Federal Claims in *Bruyea v United States* issued a partial summary judgement (No 23-766T)[81] in favour of the plaintiff, a resident of Canada during the relevant tax year, allowing the plaintiff to offset his net investment income tax with FTCs, which normally is not permitted under the Code. The Court, however, determined that the US DTA with Canada provides a basis, separate from the Code, requiring the US to allow a credit against US taxes for income taxes paid or accrued to Canada, in line with one of the treaty's purposes: to eliminate or avoid double taxation. The Court further rejected the government's 'last-in-time' argument, recognising that 'the Court is required to harmonise the [t]reaty and the [Code] where possible […]'

US DTA with Switzerland (December 2024)

In December 2024, US officials signed a new competent authority arrangement (CCA)[82] with Switzerland, addressing dividends related to certain pension and retirement arrangements that may be eligible for benefits under Article 10(3)(c) (Dividends) of the countries' income tax treaty. The CCA is effective for dividends paid on or after 1 January 2020 and supersedes a prior CCA from 2021.

United States–Taiwan (January 2025)

In January 2025, the House passed the United States–Taiwan Expedited Double-Tax Relief Act (HR 33),[83] which would, if enacted, amend the Code to provide special rules for the taxation of certain residents of Taiwan with income from sources within the US. The legislation aims to address double taxation on cross-border investments between the US and Taiwan by granting treaty-like benefits to qualified Taiwan residents. It further authorises the President to negotiate a formal tax agreement that aligns with the 2016 US Model Income Tax Convention (the 'US Model Tax Treaty'). The bill, which is based on bipartisan efforts, would, among others, reduce withholding tax rates, including on interest, dividends and royalties; address the taxation of entertainers and athletes; provide for permanent establishment (PE) rules and coordination with the US branch profits tax; and define the term 'qualified resident of Taiwan', which determines eligibility. The bill was subsequently received by the Senate and referred to its Committee on Finance.

US DTA with Denmark (March 2025)

Despite the recent confrontation over Greenland between the Trump Administration and Denmark, in March 2025, US and Danish officials signed a CCA,[84] similar to the CCA with Switzerland discussed above, addressing the types of pension funds that qualify for benefits under Article 10(3)(c) (Dividends) of the countries' income tax treaty, as well as the application of Article 22 (Limitation on Benefits) to those funds. The CCA is effective for dividends paid on or after 1 February 2008.

US participation in OECD Pillars One and Two

Since the beginning of the OECD's base erosion and profit shifting (BEPS) project, the establishment of the Inclusive Framework and the development of the two-pillar solution to address the tax challenges arising from the digitalisation of the economy, the US has played a crucial role in developing, negotiating and advancing these initiatives aimed at addressing tax avoidance, ensuring the coherence of international tax rules and establishing a more transparent tax environment, including through the reallocation of taxing rights to market jurisdictions for large, profitable multinational enterprises (Pillar One) and implementing a global minimum tax rate of 15 per cent (Pillar Two). Nonetheless, Congress has yet to pass any legislation enacting any provision relating to this global tax deal, including Pillar One or Pillar Two.

Unlike the prior Biden Administration, which tried to implement Pillar Two rules, the current administration does not support these OECD lead efforts at all, and President Trump, in an executive order, rebuked them for 'allow[ing] extraterritorial jurisdiction over American income but also limit[ing] our Nation's ability to enact tax policies that serve the interests of American businesses and

workers'. The executive order goes even further and clarifies that 'the Global Tax Deal has no force or effect in the United States', thereby allegedly recapturing 'our Nation's sovereignty and economic competitiveness'. A copy of the executive order is available at the following link: **www.whitehouse.gov/presidential-actions/2025/01/the-organization-for-economic-co-operation-and-development-oecd-global-tax-deal-global-tax-deal/.**

As a consequence, at the moment, the US has effectively withdrawn from the OECD efforts, and President Trump even directed the Secretary of the Treasury to assess the compliance of US tax treaty partners and investigate potential countermeasures against foreign countries with tax rules that could disproportionately impact American businesses.

At this time, it is unclear whether the executive order will also impact existing IRS guidance related to the global tax deal. Overall, from a US perspective, the fate of the OECD pillars continues to hang in the balance, and any short term US implementation is highly unlikely.

In the meantime, President Trump tries to ready the US to fight against the enactment of digital services taxes (DSTs) by foreign governments targeting US companies. In a memorandum[85] for the Secretary of the Treasury and an accompanying fact sheet,[86] released in February 2025, the Trump Administration announced how it plans to respond to such DSTs, fines, practices and policies that foreign governments levy on US companies, including through tariffs using section 301 of the Trade Act of 1974 and punitive taxes under section 891 of the Code.

---

[1] See https://docs.house.gov/meetings/WM/WM00/20250513/118260/BILLS-119-CommitteePrint-S001195-Amdt-1.pdf accessed 6 October 2025.
[2] See www.congress.gov/bill/119th-congress/house-bill/1/text accessed 6 October 2025.
[3] See www.congress.gov/bill/119th-congress/house-bill/1/text/eas accessed 6 October 2025.
[4] See n 2 above.
[5] See https://home.treasury.gov/news/press-releases/sb0181 accessed 6 October 2025.
[6] See www.supremecourt.gov/opinions/23pdf/22-800_jg6o.pdf accessed 6 October 2025.
[7] See www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf accessed 6 October 2025.
[8] See www.supremecourt.gov/opinions/23pdf/22-1008_1b82.pdf accessed 6 October 2025.
[9] See https://dawson.ustaxcourt.gov/case-detail/28751-15 accessed 6 October 2025.
[10] See www.ibanet.org/document?id=TC-Country-Report-2024-United-States accessed 6 October 2025.
[11] *Ibid*.
[12] See n 9 above.
[13] See n 7 above.
[14] *Ibid*.
[15] See https://dawson.ustaxcourt.gov/case-detail/8435-23 accessed 6 October 2025.
[16] See https://media.ca11.uscourts.gov/opinions/pub/files/202214058.pdf accessed 6 October 2025.
[17] See n 7 above.
[18] See https://dawson.ustaxcourt.gov/case-detail/750-21 accessed 6 October 2025.
[19] See https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457176/usrep457176.pdf accessed 6 October 2025.
[20] See https://dawson.ustaxcourt.gov/case-detail/4329-22 accessed 6 October 2025.
[21] See https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2023cv0766-31-0 accessed 6 October 2025.
[22] See https://dawson.ustaxcourt.gov/case-detail/28040-14 accessed 6 October 2025.
[23] See n 10 above.
[24] See www.federalregister.gov/documents/2024/07/03/2024-14426/excise-tax-on-repurchase-of-corporate-stock-procedure-and-administration accessed 6 October 2025.

[25] See www.federalregister.gov/documents/2024/07/18/2024-15232/guidance-under-section-367b-related-to-certain-triangular-reorganizations-and-inbound-nonrecognition accessed 6 October 2025.
[26] See n 7 above.
[27] See n 10 above.
[28] See www.federalregister.gov/documents/2024/07/09/2024-14004/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for accessed 6 October 2025.
[29] See www.federalregister.gov/documents/2024/12/30/2024-30496/gross-proceeds-reporting-by-brokers-that-regularly-provide-services-effectuating-digital-asset-sales accessed 6 October 2025.
[30] See www.congress.gov/bill/119th-congress/house-joint-resolution/25 accessed 6 October 2025.
[31] See www.federalregister.gov/documents/2025/07/11/2025-12967/gross-proceeds-reporting-by-brokers-that-regularly-provide-services-effectuating-digital-asset-sales accessed 6 October 2025.
[32] See www.federalregister.gov/documents/2024/07/05/2024-14706/excise-tax-on-designated-drugs-procedural-requirements accessed 6 October 2025.
[33] See www.federalregister.gov/documents/2024/08/21/2024-18437/revising-qualified-domestic-trust-regulations-under-section-2056a-to-update-outdated-references-and accessed 6 October 2025.
[34] See www.federalregister.gov/documents/2024/08/29/2024-19198/anti-money-laundering-regulations-for-residential-real-estate-transfers accessed 6 October 2025.
[35] See www.federalregister.gov/documents/2024/08/20/2024-18281/guidance-regarding-elections-relating-to-foreign-currency-gains-and-losses accessed 6 October 2025.
[36] See www.federalregister.gov/documents/2024/12/11/2024-28372/taxable-income-or-loss-and-currency-gain-or-loss-with-respect-to-a-qualified-business-unit accessed 6 October 2025.
[37] See www.federalregister.gov/documents/2024/12/11/2024-28371/accounting-for-disregarded-transactions-between-a-qualified-business-unit-and-its-owner accessed 6 October 2025.
[38] See www.federalregister.gov/documents/2024/08/07/2024-16665/rules-regarding-dual-consolidated-losses-and-the-treatment-of-certain-disregarded-payments accessed 6 October 2025.
[39] See n 10 above.
[40] See www.federalregister.gov/documents/2024/09/13/2024-20089/corporate-alternative-minimum-tax-applicable-after-2022 accessed 6 October 2025.
[41] See www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/ accessed 6 October 2025.
[42] See www.federalregister.gov/documents/2024/09/03/2024-19617/guidance-on-clean-electricity-low-income-communities-bonus-credit-amount-program accessed 6 October 2025.
[43] See www.federalregister.gov/documents/2024/10/23/2024-23857/advanced-manufacturing-investment-credit-rules-under-sections-48d-and-50 accessed 6 October 2025.
[44] See www.federalregister.gov/documents/2024/10/28/2024-24840/advanced-manufacturing-production-credit accessed 6 October 2025.
[45] See www.federalregister.gov/documents/2024/12/12/2024-28190/definition-of-energy-property-and-rules-applicable-to-the-energy-credit accessed 6 October 2025.
[46] See www.federalregister.gov/documents/2025/01/15/2025-00196/section-45y-clean-electricity-production-credit-and-section-48e-clean-electricity-investment-credit accessed 6 October 2025.
[47] See www.federalregister.gov/documents/2024/10/10/2024-23132/section-367d-rules-for-certain-repatriations-of-intangible-property accessed 6 October
[48] See www.federalregister.gov/documents/2024/10/21/2024-24224/withholding-on-certain-distributions-under-section-3405a-and-b accessed 6 October 2025.
[49] See www.federalregister.gov/documents/2024/12/02/2024-27227/previously-taxed-earnings-and-profits-and-related-basis-adjustments accessed 6 October 2025.
[50] See www.federalregister.gov/documents/2024/12/02/2024-27840/recourse-partnership-liabilities-and-related-party-rules accessed 6 October 2025.
[51] See www.federalregister.gov/documents/2025/01/14/2025-00324/certain-partnership-related-party-basis-adjustment-transactions-as-transactions-of-interest accessed 6 October 2025.
[52] See www.federalregister.gov/documents/2024/06/18/2024-13282/certain-partnership-related-party-basis-adjustment-transactions-as-transactions-of-interest accessed 6 October 2025.
[53] See www.irs.gov/pub/irs-drop/n-24-54.pdf accessed 6 October 2025.
[54] See www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/ accessed 6 October 2025.
[55] See www.irs.gov/pub/irs-drop/n-25-23.pdf accessed 6 October 2025.

[56] See www.federalregister.gov/documents/2025/01/14/2024-31372/classification-of-digital-content-transactions-and-cloud-transactions accessed 6 October 2025.
[57] See www.federalregister.gov/documents/2025/01/14/2024-31373/source-of-income-from-cloud-transactions accessed 6 October 2025.
[58] See www.irs.gov/pub/irs-drop/n-25-06.pdf accessed 6 October 2025.
[59] See www.federalregister.gov/documents/2025/01/16/2025-00321/guidance-regarding-certain-matters-relating-to-nonrecognition-of-gain-or-loss-in-corporate accessed 6 October 2025.
[60] See www.irs.gov/pub/irs-drop/rp-24-24.pdf accessed 6 October 2025.
[61] See www.irs.gov/pub/irs-drop/n-24-38.pdf accessed 6 October 2025.
[62] See www.federalregister.gov/documents/2025/01/14/2025-00186/base-erosion-and-anti-abuse-tax-rules-for-qualified-derivative-payments-on-securities-lending accessed 6 October 2025.
[63] See n 10 above.
[64] See https://home.treasury.gov/news/press-releases/sb0038 accessed 6 October 2025.
[65] See www.federalregister.gov/documents/2025/03/26/2025-05199/beneficial-ownership-information-reporting-requirement-revision-and-deadline-extension accessed 6 October 2025.
[66] See www.irs.gov/pub/irs-wd/202436010.pdf accessed 6 October 2025.
[67] See www.irs.gov/pub/irs-wd/202436009.pdf accessed 6 October 2025.
[68] See www.irs.gov/pub/lanoa/am-2024-002-508v.pdf accessed 6 October 2025.
[69] See www.irs.gov/pub/irs-drop/n-24-78.pdf accessed 6 October 2025.
[70] See www.justice.gov/d9/2024-12/john_doe_summonses_order.pdf accessed 6 October 2025.
[71] *Ibid*.
[72] See www.justice.gov/usao-sdny/pr/irs-obtains-court-order-authorizing-john-doe-summonses-records-relating-us-taxpayers accessed 6 October 2025.
[73] See www.irs.gov/pub/irs-drop/n-25-04.pdf accessed 6 October 2025.
[74] See www.oecd.org/en/publications/pillar-one-amount-b_21ea168b-en/full-report.html accessed 6 October 2025.
[75] See www.irs.gov/pub/lanoa/am-2025-001.pdf accessed 6 October 2025.
[76] See www.irs.gov/pub/irs-wd/202502005.pdf accessed 6 October 2025.
[77] See www.irs.gov/pub/irs-wd/202502002.pdf accessed 6 October 2025.
[78] See www.irs.gov/pub/irs-wd/202504005.pdf accessed 6 October 2025.
[79] See https://home.treasury.gov/news/press-releases/jy2754 accessed 6 October 2025.
[80] See n 10 above.
[81] See https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2023cv0766-31-0 accessed 6 October 2025.
[82] See www.irs.gov/pub/irs-lbi/switzerland-caa-pension-plans-tax-treaty-benefits-2024.pdf accessed 6 October 2025.
[83] See www.congress.gov/bill/119th-congress/house-bill/33/text accessed 6 October 2025.
[84] See www.irs.gov/pub/irs-lbi/denmark-caa-pension-plans-tax-treaty-benefits-2025.pdf accessed 6 October 2025.
[85] See www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/ accessed 6 October 2025.
[86] See www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-issues-directive-to-prevent-the-unfair-exploitation-of-american-innovation/ accessed 6 October 2025.