International Tax Matters
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QB3 As It Touches International Matters and More
International Traps and Stumbles That We Still See
Clients Thinking About Moving to Canada? Think Carefully

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QB3 As It Touches International Matters and More

The US Congress has enacted the One Big Beautiful Bill Act (OB3 or OBBB), formally renamed “An Act to Provide for Reconciliation Pursuant to Title II of H.Con.Res. 14”, and it was signed into law on July 4th, 2025. Most of the attention has been understandably focused on domestic tax matters, but OB3 actually contained numerous changes on the international side. A few of the changes may be relevant to tax practitioners like us and are covered below, while many really only relate to large international companies. However, for those who may actually be curious about those other changes, a summary in included at the end of this handout.

Electronic Funds Transfers Abroad (Remittance Transfers)

OB3 introduced a new excise tax on international remittance transfers effective for transfers made after December 31st, 2025. This is new tax and control territory for the US, although many third-world countries and authoritarian regimes have used these types of financial controls for decades.

When introduced in the House, the purpose of this new tax was defended as follows: The Committee believes that the ability of non-citizens and non-nationals of the United States to send payments to individuals in other countries through the system of remittance transfers may encourage illegal immigration and lead to the overreliance of some jurisdictions on the receipt of such remittance flows.

Further revisions were made as contained in the Senate-enacted version of the proposed reconciliation legislation and are summarized as follows: A remittance transfer is an electronic transfer of money sent by a consumer (an individual and not a business or other legal entity) in the US to a recipient in a foreign country, typically exceeding $15. These transfers are commonly known as international wire transfers.

The excise tax will be imposed on *cash remittances* – that is, only on any remittance transfer for which the sender provides cash, a money order, cashier's check, or any other similar physical instrument to the remittance transfer provider - rather than on all types of electronic transfers.

Excepted from the remittance transfer tax would be funds 1) withdrawn from an account held in or by a financial institution that is subject to Bank Secrecy Act (BSA) reporting, or 2) funded with a debit or credit card that is issued in the US.

In the final OB3 version, the excise tax is 1 percent of the transfer amount, to be paid by the sender with respect to such transfer. The obligation to collect the tax is imposed on the remittance transfer provider (typically banks, credit unions, or companies such as Western Union), who collects the tax and remits such tax quarterly to the US Department of the Treasury. The remittance transfer provider has secondary liability if the tax is not paid at the time the transfer is made.

Interesting History and Observations:

- The Remittance Tax impacts only individuals located in the US who, through an electronic movement, transmit "cash" funds to any recipient in a foreign country. The Senate version eliminated the so-called "US citizen or national sender exception".
- The language in the Senate version limits the excise tax to cash transfers or their equivalents instead of all electronic transfers, as had been proposed in the House version. This also removed any uncertainty of the applicability of this tax to cryptocurrency or stablecoin transfers.
- The House version prior to the final House vote started at 5 percent, which was later reduced to 3.5 percent, and the Senate version further reduced the tax to only 1 percent.
- The final version is estimated to raise approximately $10 billion annually. At a tax rate of 1%, that means one trillion dollars of cash source wires each year – which we suspect is wildly optimistic. It begs the question as to what is the true motivation behind this type of tax, and the original House version may give us a hint as to that answer.
- The provision will also apply to individuals in the US who are outside the banking system and rely on cash wire transfers to remit funds to family members abroad.

OB3 Unexpected Benefit

Estates of foreign decedents with assets in the US in excess of the standard $60,000 exemption are subject to the US Estate Tax. Absent an Internal Revenue Code or bilateral treaty exception, the estate of a foreign decedent will pay US Estate Tax on the excess over $60,000 at graduated rates as high as 40 percent. OB3 has provided an unanticipated benefit to certain foreign estates.

With OB3 making permanent an increased estate tax exemption of $15 million (indexed to increase with inflation) per individual, estates of foreign decedents dying after 2025 that are eligible to claim the benefits of certain bilateral estate tax treaties can benefit from this exemption. For example, some treaties (such as Canada's income tax treaty or the Switzerland and United Kingdom estate tax treaties) allow prorated exemptions based on the proportion of US situs assets to worldwide assets. Therefore, if such a foreign person's worldwide estate is under $15 million, there will not be any US federal Estate Tax.

Practitioner's Note:
It is important to check specific state Estate Tax rules and thresholds, as a state Estate Tax could still apply.

An Update on the NIIT Foreign Tax Credit

The IRS position is that a foreign tax credit is not available to offset the Net Investment Income Tax (NIIT). The government has argued that a foreign tax credit is only available against taxes in the Chapter 1 of the Internal Revenue Code (IRC), which covers income taxes, and not against those taxes regulated by Chapter 2 where the NIIT is placed – notwithstanding that it is called an "income tax". The IRS also takes the position that the NIIT overrides most tax treaties because the NIIT was created after most tax treaties were last signed.

On December 5th, 2024, the Court of Federal Claims issued an opinion (Bruyea v United States, 174 Fed. Cl. 238 – 2024) holding that Article XXIV(1) of the Canada/US Tax Treaty provides for a foreign tax credit against the NIIT despite the US law limitation clause. The Court noted that Articles XXIV(1) and XXIV(4) of the Treaty apply to US taxes on income "irrespective of the manner in which they are levied". The Court further stated that the Canada/US Tax Treaty guarantees that any future amendment to US law will not change the general principle of the Treaty's goal to eliminate double taxation.

The Court of Federal Claims is a court of nationwide jurisdiction, meaning that all taxpayers can rely on its opinions. The Bruyea case provides substantial authority for the position that, under the Canada/US Tax Treaty, US citizen or US resident taxpayers with Canadian source income can take a foreign tax credit against the NIIT.

Not surprisingly, the IRS has appealed Bruyea to the Court of Appeals for the Federal Circuit. A hearing of the merits of the case is expected in late fall of 2025 or early 2026 with a decision likely by mid-2026. Stay tuned.

In the meantime, although the case law is not finally settled, the Bruyea decision provides substantial authority to claim a foreign tax credit against the NIIT on Canadian source income under the Canada/US Tax Treaty (remember to include Form 8833 to claim the treaty benefit). There is a chance that the IRS may reject these returns, but we believe that the technical basis for them is well founded. Also, remember that there is a ten-year statute of limitations for refund claims due to foreign tax credit changes.

More People May Be Required to Report CFC Ownership

If a foreign corporation is a CFC at any time during a tax year of the foreign corporation, each US shareholder who owns stock in that corporation during the CFC year is now required to include a pro rata share of the corporation's Subpart F income for the CFC year in gross income. This change eliminates the "last day of the CFC's taxable year" inclusion rule. Now, for income inclusion purposes, every person who is a US shareholder of a CFC *at any time* during the CFC's taxable year, not limited to holding shares on the last day of the taxable year, is required to include in income its pro rata share of the CFC's Subpart F and GILTI income.

International Traps and Stumbles That We Still See

Closer Connection to a Foreign Country (8840)

Just because a person meets the substantial presence test, they can still be treated as a nonresident alien if they:

1. Were present in the United States for less than 183 days during the year;
2. Maintained a tax home in a foreign country during the year; and
3. Have a closer connection during the year to one foreign country in which they have a tax home than to the United States (unless they have a closer connection to two foreign countries, discussed in the following sub-section).

For determining whether they have a closer connection to a foreign country, their tax home must also be in existence for the entire current year, and must be located in the same foreign country for which they are claiming to have a closer connection.

The foreign person must file Form 8840, Closer Connection Exception Statement for Aliens, to claim the Closer Connection Exception. If they are filing a US federal income tax return, such as Form 1040-NR, attach Form 8840 to the income tax return. If they do not have to file a US federal income tax return, send Form 8840 to the Internal Revenue Service Center (indicated in the instructions attached to Form 8840) by the due date for filing the income tax return.

If they do not timely file Form 8840, the claim for the Closer Connection Exception may be denied.

Exchange Rates

Most often, foreign sourced income and foreign assets will be denominated in the currency of the source country. US tax reporting requires that all entries on US tax returns be expressed in US Dollars, so it will be necessary to convert all foreign currency amounts accordingly. The appropriate rate to use is that prescribed by the US Treasury's Financial Management Service. These rates are approximately the same as what is known as the Interbank Rate.

The other factor to consider is whether to use the Spot Rate (the actual rate on a specific day), the Annual Average Rate, or the Calendar Year-End Rate. Generally, the annual average rate should be used to report most income and expense items when the amount being reported is a composite of multiple transactions over the course of a year.

For the reporting of purchases and sales of capital assets, including stock transactions, the spot rate on each purchase date must be used for the cost basis, and the spot rate on each sales date must be used for the proceeds. *It is not acceptable to simply calculate the gain or loss in a foreign currency and then translate that amount into US Dollars.* In circumstances where there has been significant variability in exchange rates over a period of time, the resultant gain or loss in US Dollars can vary greatly from the same in the domestic currency – even resulting in situations where there was a capital loss in the other country and a capital gain in the US, or vice versa.

When translating the values of a balance sheet of a foreign entity into US Dollars, the spot rate for the date of the balance sheet is what should be used, while the period's average exchange rate should be used for the income statement.

Finally, certain IRS forms require that reportable items be converted into US Dollars at the calendar year-end rate. These situations will be identified in the instructions to the form being used.

In all instances, be particularly careful to use the exchange rate in the correct manner (calculating it in the right direction). It is surprising just how often this mechanical inversion does occur, resulting in overstatements or understatements of the item being recorded.

Depreciation

When reporting the foreign business activities of a US taxpayer, it is *not* acceptable to simply take the depreciation expense that may have been computed under the foreign country's rules, translate that into US Dollars, and report the resultant expense. Instead, depreciation must be recomputed using US rules and conventions. It must be calculated on the US Dollar cost of the asset at the time of acquisition, using US rates for foreign assets. Note: Section 179 treatment and accelerated depreciation rates are not available for property used predominantly outside of the US.

This requirement extends to reporting a US partner's share of income from a foreign partnership (although it may be impractical when dealing with large foreign publicly traded partnerships), and to the reporting of activities from a Controlled Foreign Corporation.

Practitioner's Note:
Beware of the US convention of Depreciation Allowed or *Allowable*. If a taxpayer fails to take depreciation because of an oversight and later disposes of the property at a gain, recapture will apply even in cases where no deduction was taken – resulting in real double taxation. For example, Canada does not permit a taxpayer to use depreciation (known as Capital Cost Allowance or CCA) to create or increase a loss for rental property. A US citizen has rental property in Canada operating at a loss and takes no CCA deduction. The US tax return is prepared simply by recording the same expenses as those taken in Canada, omitting any depreciation over many years. The property is then sold and there is a huge recapture of allowable depreciation without any corresponding benefit of a deduction or even a Passive Activity Loss carry forward.

Tax-Free Accounts or Investments

Just because an investment is tax-free in one country does not mean that it is tax-free in another. One example is the matter of US Municipal Obligations interest income. While Muni Bond income is generally tax-exempt by the IRS, it is most often taxable by other countries. In reverse, Canada has an investment known as a Tax-Free Savings Account (TFSA). The income earned in such an account must be included in the US tax return of any US person owning such an investment.

US LLC with One Foreign Owner as Seller of US Real Estate

A single member LLC is a legitimate legal entity, but defaults to being disregarded for purposes of US income tax reporting. Any US income tax reporting is done in the name of the owner, not in the name of the LLC. For example, if a foreign individual is the only owner of a US LLC, the US income tax reporting is done in the name of the foreign

individual. In this situation, the FIRPTA withholding rules would apply as the seller for purposes of FIRPTA is the foreign individual, not the US LLC. The same would hold true if the single owner was a foreign corporation or other foreign entity.

To avoid the application of the FIRPTA rules, it is important that the buyer be able to demonstrate that the seller is not a foreign person. If there is any doubt, we recommend that a certification, under penalty of perjury, be obtained from the seller establishing his/her non-foreign status.

Practitioner's Note:
A US Person (US citizen or Green Card Holder) residing in a foreign country is *not* a foreign person for FIRPTA purposes.

Comparison of Form 8938 and FBAR Requirements

The Form 8938 filing requirement does not replace or otherwise affect the taxpayer's obligation to file the FinCEN FBAR, Form 114. Unlike form 8938, the FBAR is not filed with the IRS – it is filed directly with the office of Financial Crimes Enforcement Network.

A somewhat oversimplified way of distinguishing between the purposes of the two forms, 8938 and the FBAR, can be described as follows:

Form 8938 *discloses interests* in foreign financial assets;

While the FBAR *discloses access to cash* from foreign financial assets.

Practitioner's Notes:
1. If the taxpayer is a joint owner of a foreign asset, the taxpayer has an interest in the entire asset, and the value of the entire asset is what must be disclosed on form 8938.
2. If the taxpayer has an interest in a foreign estate or a foreign trust, that is considered a specified foreign financial asset that needs to be disclosed unless it is already reported on form 3520. In the case of a foreign estate, the taxpayer has to have reason to know that they have an interest in that estate – typically once they receive a notice from the executor of the estate or they have received a distribution from the estate.
3. If the taxpayer has an interest in a foreign pension plan or foreign deferred compensation plan, this is a reportable foreign asset. If it is not possible to establish the value of the foreign pension plan, then the value should be indicated as unknown. However, if the taxpayer has received any payments from the foreign pension plan, the annual value cannot be less than the total of the annual payments received.

Clients Thinking About Moving to Canada? Think Carefully

When a person moves from the US to Canada and becomes a Canadian resident, there are numerous cross-border tax and investment issues to be aware of. These issues can create significant tax traps and compliance headaches if not properly thought through beforehand. Below are some selected issues and traps:

1. **US Tax Filing and Reporting Obligations**
    a. Worldwide Taxation: US citizens and green card holders are taxed on their worldwide income, even after moving to Canada.
    b. Ongoing Filing: US persons must continue to file US tax returns (Form 1040), FBAR (FinCEN 114), FATCA (Form 8938), and possibly other forms (e.g., 3520, 3520-A, 5471, 8621) depending on their investments and financial accounts.
    c. Trap: Failure to comply can result in significant penalties. Many Canadian investment vehicles (e.g., TFSAs, FHSAs, RDSPs, Canadian mutual funds) create additional US reporting requirements.

2. **Passive Foreign Investment Companies (PFICs)**
    a. What is a PFIC? Most Canadian mutual funds, ETFs, and some private companies with mainly passive assets are considered PFICs for US tax purposes.
    b. Why is this a problem? US persons (including US citizens and green card holders) must file Form 8621 for *each* PFIC held, which is complex and time-consuming. The US tax treatment of PFICs is punitive, often resulting in higher tax and interest charges on gains, and can lead to double taxation if not managed properly.
    c. Trap: Even if the investment is tax-efficient in Canada, it can create significant US tax and reporting burdens. RRSPs are generally exempt from PFIC reporting, but TFSAs, FHSAs, and other non-registered accounts are not.

3. **Single-Member LLCs (Limited Liability Companies)**
    a. Canadian Tax Treatment: Canada treats US LLCs as corporations, ***not** as flow-through entities*. This means that income earned by the LLC is not automatically attributed to the member for Canadian tax purposes, but taxed in the LLC entity itself.

b. US Tax Treatment: The US treats a single-member LLC as a disregarded entity (i.e., flow-through), so the member is taxed directly on the LLC's income.
c. Trap: This mismatch can result in double taxation, as Canada may not recognize US taxes paid at the member level as creditable against Canadian corporate tax on the LLC's income. In addition, distributions from the LLC to the Canadian resident will be treated as dividends in Canada, potentially subject to high tax rates with no foreign tax credit for US tax already paid – unless the dividends are paid in the same year as the income in earned.

4. **Controlled Foreign Corporations (CFCs) and Foreign Affiliates**
    a. US CFC Rules: US citizens who control non-US corporations (including Canadian corporations) may be subject to Subpart F and GILTI (Global Intangible Low-Taxed Income) rules, resulting in immediate US tax on certain types of income, even if not distributed.
    b. Canadian FAPI Rules: Canadian residents who control non-Canadian corporations may be subject to the Foreign Accrual Property Income (FAPI) regime, which attributes passive income earned by the foreign corporation to the Canadian shareholder.
    c. Trap: These rules can result in double taxation and complex compliance, especially if the corporation is considered a CFC for US purposes and a foreign affiliate for Canadian purposes.

5. **Foreign Reporting Requirements in Canada**
    a. T1135: Canadian residents must report specified foreign property (including US accounts, shares, and real estate not for personal use) when the total cost of all assets exceeds C$100,000.
    b. T1134: If you are a Canadian resident and you own shares in a company outside Canada, or have some control over a foreign corporation, you usually have to report this to the Canada Revenue Agency by filing Form T1134.
    c. Trap: Failure to file can result in significant penalties. The first year of Canadian residency is generally exempt, but reporting is required in all subsequent years.

6. **Other Traps**
    a. **US Gift Tax vs Canadian rules:** Gifts made by US citizens are subject to US gift tax rules, and any gift tax paid in the United States cannot be claimed as a credit in Canada. For Canadian tax purposes, cash gifts are neither taxable nor reportable. However, gifts of property are treated as a

if sold at fair market value, which may trigger a capital gain for the taxpayer making the gift.

b. **Canadian Principal Residence Exemption:** Canada exempts all capital gains on the sale of a principal residence, but the US only allows a limited exclusion (US$250,000 for singles or US$500,000 for married couples), and the excess is taxable in the US.
c. **Currency Exchange Gains:** Changes in exchange rates can create taxable gains or losses in both countries. Because each country measures transactions in its own currency, it is possible to have a gain in one country and a loss in the other, or vice-versa, solely due to currency exchange differences.

And for Those Who Really Want to Dig Into the Weeds…….
OB3 Additional International Changes

Removal of Section 899 and Corresponding "Side-by-Side" Agreement:

In a welcome and auspicious development, an understanding was reached with the G7 countries that – upon the removal of proposed Section 899 from the U. House of Representatives and US Senate versions of OB3, along with the agreement of a side-by-side solution for the implementation of the global minimum tax – US parented groups would be excluded from the application of the Pillar Two Global Anti-Base Erosion (GloBE) Income Inclusion Rule (IIR) and the Undertaxed Payment Rule (UTPR) in respect of both their domestic and foreign profits.

The understanding between the G7 and US has relevance beyond the G7 to the Organization for Economic Cooperation and Development (OECD) and G20 Inclusive Framework, which includes more than 140 countries. However, it will be challenging to develop this side-by-side understanding and the principles on which it is based with the Inclusive Framework with a view to expeditiously reach a solution that is acceptable and implementable to all. A resolution is particularly important in view of the statement made by the chairs of the Senate Committee on Finance applauding this agreement that "Congressional Republicans stand ready to take immediate action if the other parties walk away from this deal or slow walk its implementation".

Changes Made by OB3: Unless otherwise indicated, OB3 changes would apply to tax years beginning after December 31st, 2025, and are ***permanent***.

Global Low-Taxed Income (GILTI)

- Change of Name. OB3 renames GILTI to “Net CFC Tested Income”
- Tax Rate
    - Current Law Prior to OBBB: 10.5 percent, which increases to 13.125 percent after December 31, 2025.
    - OB3: 12.6 percent.
- Foreign Tax Credit (FTC) Limitation Changes and Tax Rates After Credits
    - Current Law Prior to OB3: 20 percent “haircut” on the use of FTCs for GILTI purposes and an allocation of a broad array of expenses for GILTI FTC purposes.
    - OB3: FTC “haircut” reduced to 10 percent and expense apportionment limited to direct expenses to GILTI, a taxpayer-favorable change.
- Tax Rate for Updated Credits (after December 31, 2025)
    - Current Law Prior to OBBB: 16.4 percent.
    - OB3: 14 percent, a taxpayer-favorable change.
- Qualified Business Asset Investment (QBAI)
    - Current Law Prior to OB3: QBAI reduced the amount of income subject to GILTI.
    - OB3: Repeals QBAI, which will increase income subject to GILTI.

Foreign-Derived Intangible Income (FDII)

- Change of Name. OB3 renames FDII to “Foreign-Derived Deduction Eligible Income”
- Tax Rate
    - Current Law Prior to OB3:12.5 percent rate, which increases to 16.406 percent after December 31, 2025.
    - OB3: 14 percent, a taxpayer-favorable change.
- Modifications in Deemed Intangible Income (DEI)
    - OB3 excludes 1) income or gain from the disposition (as well as a deemed disposition) of property giving rise to rents or royalties, and 2) certain passive income, including foreign personal holding company income and passive foreign investment income for which the qualified electing fund election had been made. The two foregoing categories of income are excludable irrespective that such income could be recategorized as general category income under the high tax kickout; this exclusion would apply to income attributable to amounts received or accrued after June 16, 2025. The purpose of this provision is to prevent the offshoring of intangible property, although the licensing of intangible property continues to be available.
- Computation of DEI
    - Current Law Prior to OB3: Gross DEI reduced by deductions properly allocable to DEI for the taxable year.
    - OB3: Expense apportionment against DEI limited to deductions directly related to DEI, a taxpayer-favorable change.
- QBAI
    - Current Law Prior to OB3: Contains QBAI concept.
    - OB3: Repeals QBAI; this increases FDII benefits.

Section 163(j): Limitation on Business Interest

- **Current Law Prior to OB3**
    - Limits business interest expense deduction in a taxable year to a taxpayer’s business interest income, which is 30 percent of the taxpayer’s adjusted taxable income (ATI) and the taxpayer’s floor interest plan.
    - ATI is computed by reference to earnings before interest and taxes, and after depreciation, amortization, and depletion (EBIT).
    - A US shareholder of a controlled foreign corporation (CFC) may include a portion of its GILTI, Subpart F income and associated “gross ups” under Section 78 in ATI in certain circumstances.

- **OB3**
    - ATI is computed under earnings before interest, taxes, depreciation, and amortization (EBITDA); rule made permanent; ATI determinations retroactive effective for all tax years beginning after December 31, 2024.
    - ATI is adjusted to exclude Subpart F income, GILTI inclusions and associated "gross-ups," an unfavorable change to taxpayers.
    - Further, under OB3 and compared to prior law, the Section 163(j) limitation will apply *before* the interest capitalization rules are applied, another unfavorable change to taxpayers.

Base Erosion and Anti-Abuse Tax

- **Current Law Prior to OB3**
    - The Base Erosion Minimum Tax Amount (BEMTA), also known as the Base Erosion and Anti-Abuse Tax (BEAT), is a minimum tax imposed on large multinational corporations operating in the US. The provision was enacted to discourage companies from shifting profits out of the US through "base erosion" payments made to foreign related parties.
    - The BEMTA is generally calculated by comparing 10 percent of a taxpayer's modified taxable income (MTI) to the taxpayer's regular tax liability (reduced by certain credits but not all). If the BEAT liability exceeds the regular tax liability, the taxpayer must pay the regular tax plus the excess amount.
    - Determining the BEMTA involves several steps, including identifying applicable taxpayers (generally those with average annual gross receipts of at least $500 million for the prior three tax years, meeting certain base erosion percentage thresholds of the total deductions taken by a corporation, calculating MTI by adding back specific deductions for base erosion payments, and determining the base erosion percentage based on base erosion tax benefits and deductions. (Base erosion payments must exceed 3 percent, or 2 percent in the case of banks and securities dealers). Base erosion payments typically include deductible payments or accruals to a foreign related party such as interest and royalty, rent, and services payments.
    - The BEAT rate is 10 percent for tax years from 2019 through 2025 and is set to rise to 12.5 percent beginning after December 31, 2025.
- **OB3**
    - 10.5 percent, a new rate.
    - Retains favorable current law treatment of the research credit and certain other credits for offsetting BEAT liability, a taxpayer-favorable change.
    - Does not include an exception for payments to high-tax countries (effective tax rate of 18.9 percent or greater), which was in the initial Senate version of OB3 and would have been a taxpayer-favorable change.

International Internal Revenue Code Section Revisions

Section 863(b) Source of Inventory Rule
This section is changed to enable US-produced inventory sold abroad through a foreign branch to be treated as up to 50 percent foreign source income for FTC limitation purposes. This change is taxpayer favorable and is intended to ameliorate the current Code rule that sources inventory exclusively by reference to the place of production.

Section 898(c)(2)
Section 898 generally requires a CFC to use the tax year of its majority shareholder. Section 898(c) permits a CFC to elect a tax year beginning one month earlier than the majority US shareholder's year. That elective provision is repealed to avoid deferral tax planning. The proposal applies to tax years of specified foreign corporations beginning after November 30, 2025, with a transition rule for a specified foreign corporation's first tax year beginning after November 30, 2025.

Section 951(a)(2) Pro Rata Share Rule
If a foreign corporation is a CFC at any time during a tax year of the foreign corporation, each US shareholder who owns stock in that corporation during the CFC year is required to include a pro rata share of the corporation's Subpart F income for the CFC year in gross income. This change eliminates the "last day of the CFC's taxable year" inclusion rule. Now, for income inclusion purposes, every person who is a US shareholder of a CFC *at any time* during the CFC's taxable year, not limited to holding shares on the last day of the taxable year, is required to include in income its pro rata share of the CFC's Subpart F and GILTI income. The rule for Section 956 inclusions would not change.

Section 954(c)(6)
The "look through" exception is made permanent. This exception provides that dividends, interest, rents, and royalties that one CFC receives or accrues from a related CFC retain their character and are not treated as foreign personal holding company income for CFC purposes, provided certain conditions are satisfied. Making this rule permanent is important for US international tax planning.

Section 958(b)(4)
This section, as existed prior to the Tax Cuts and Jobs Act (TCJA), is reinstated, thereby limiting constructive ownership of downward attribution of stock ownership, which had resulted in the classification of numerous foreign corporations as CFCs; this change is taxpayer favorable. Corollary to the reinstatement of the "old" Section 954(b)(4), new Section 951B is introduced, which applies downward attribution from foreign persons in select cases, as well as applies the Subpart F and GILTI rules to persons denominated as "former controlled US foreign corporation" as if the former foreign person is a US shareholder and the latter corporate entity is a CFC. The introduction of Section 951B is intended to address the types of foreign ownership structures that were the original motivation for the TCJA's repeal of Section 958(b)(4), but in a more targeted manner.

Comments
- The international tax modifications of OB3 reflect certain themes of the overall tax bill, namely, 1) making former TCJA Code sections permanent to promote stability in tax planning, 2) an implicit bias to maintain intangibles in the US, and 3) the refinement of selected Code sections to promote good tax policy. Many of these provisions were foreshadowed in an international tax bill introduced by Senator Thom Tillis (R-NC).
- When one examines the OB3 changes to GILTI and FDII provisions, there is an apparent, slight bias for US companies to retain intangibles in the United States consistent with the current administration's trade policy of "America First."
    - This is evidenced in the renaming and repurposing of GILTI to "Net CFC Tested Income" to delete the term "intangible," along with renaming FDII to "Foreign-Derived Deduction Eligible Income" to deemphasize intangible income in the operation of these provisions.
    - More substantively is the repeal of QBAI for GILTI and FDII purposes. Removing the QBAI exemption aligns US policy with broader reforms to the tax treatment of multinational enterprises aimed at broadening the tax base, discouraging the offshoring of US manufacturing, and streamlining the US international tax regime.
    - Under OB3, concerning FDII, there is a 14 percent rate on qualifying income, which includes the license but not the sale of intangibles, while the tax rate on GILTI is 12.6 percent in the absence of foreign tax credits and 14 percent if there are foreign tax credits. Further, the change in the source of intangibles produced in the US but sold through a foreign branch also is indicative of tilting activities to the United States.
    - Notwithstanding the foregoing, a bias still exists to manufacture overseas and import to the US market, as the 14 percent rate does not apply to goods manufactured and consumed in the US.