US Tax Reform: Impacts on German Companies

The US government passed a comprehensive draft law called the 'One Big Beautiful Bill' (OBBB). Some of the planned short-term measures, particularly those set out in Section 899, were eliminated during the legislative process and are not included in the final law.

Section 899 – The return of a "reciprocal tax" as originally planned
A central component of the OBBB initiative was the introduction of Section 899 to the Internal Revenue Code.

The core provision is a "reciprocal tax," also known as a retaliatory tax. The United States wanted to reserve the right to impose tax disadvantages on foreign companies based in other countries that, from an American perspective, were applying "discriminatory" tax practices toward U.S. companies.

Ultimately, the introduction was abandoned because it was agreed with the G7 countries that corporate groups with a parent company in the US would not be subject to the Income Inclusion Rule (IIR) and the UTPR under the global minimum tax due to the minimum taxation that also applies there.

Tightening of the OECD's Base Erosion and Anti-abuse Tax (BEAT) rule
Another critical point within the "One Big Beautiful Bill" impacts the so-called Base Erosion and Anti-Abuse Tax (BEAT) rule.

This regulation was originally introduced within the framework of the 2017 US Tax Reform to prevent tax-driven profit shifting from the US to foreign companies of corporate groups through intra-group payments such as interest, license fees or service fees.

In the original draft of the law the BEAT was to be significantly expanded and tightened:

- The lowering of the application threshold was discussed, which meant it would also have applied to medium-sized corporate groups with a US presence. The OBBB retains the current revenue threshold of about USD 500 million with no change.
- It was discussed to raise the effective BEAT rate from presently 10 % up to 15 %, possibly with a gradual increase in subsequent years. The OBBB permanently set the BEAT rate at 10.5% for tax years commencing after the 31st of December 2025.

Changes in the regulations for GILTI und FDII
Within the framework of the "One Big Beautiful Bill", the US tax regulations for taxing controlled foreign companies (CFCs), in particularly on Global Intangible Low-taxed Income (GILTI) and Foreign-derived Intangible Income (FDII), were comprehensively reformed and renamed.

The current GILTI regulation will henceforth be called "Net CFC Tested Income" (NCTI), while the

present FDII regulation has been renamed to "Foreign-Derived Deduction Eligible Income" (FDDEI). Both systems have been standardised and tightened in terms of content.

The NCTI deduction formerly allowed, as stated in Section 250, has been permanently lowered from 50 % to 40 %. This increases the effect on taxing such foreign income to around 14 %.

A positive effect is that "deemed paid" foreign tax credits, i.e. foreign taxes paid, which can be offset, are now recognised at 90% (instead of at 80 % as previously).

The FDII regulation has also been adjusted. The tax deduction was reduced from 37.5% to 33.34 %, resulting in an effective tax burden of around 14 % as well.

Changes in deemed intangible income (DII)
Within the framework of the "One Big Beautiful Bill", the regulations on the so-called deemed intangible income (DII) were fundamentally reformed. Until now both the GILTI and the FDII systems were based on the assumption that a part of foreign income was generated by returns from tangible assets. This component – the so-called "tangible income return" – was excluded from the tax base on a flat-rate basis. In practice, companies using the GILTI calculation could deduct an amount equivalent to 10% of their qualified business asset investment (QBAI). Therefore, only income exceeding this amount—i.e., supposedly "intangible" income—remained subject to taxation.

This logic was completely abolished under the new law. Not only the "net deemed tangible income return" (NDTIR) in the GILTI context but also the corresponding deduction (DTIR) in the FDII area fell away. This also eliminates the distinction between tangible and intangible income based on qualified business asset income (QBAI). In the future the entire net income generated abroad is subject to minimum taxation – there is no longer any blanket relief based on physical investments.

Further protectionist tendencies
This legislative package contains numerous measures aimed at a protectionist reorientation of the US market.

This includes stricter "Buy American" requirements in public procurement, targeted tax incentives for producing domestically, stricter export controls as well as an expanded mandatory review of foreign investments – particularly in security-related sectors.

For German midsized companies with US connections, there are not only new legal hurdles but also considerable uncertainties in making decisions on where to locate businesses, in making investments and in planning global business models.

What companies should do now
With the One Big Beautiful Bill Act (OBBBA), the U.S. government is pursuing a fiscal and economic policy strongly influenced by protectionism. Even without Section 899, new tax risks have arisen, particularly concerning the tightening of the base erosion and anti-abuse tax.

German companies should review their structures with foresight. We recommend companies operating internationally to consider the following measures:

- **Risk assessment of the U.S. business**
  Analyze your current activities in the US. Where are there direct or indirect tax dependencies, joint ventures, licensing relationships, or digital revenues? Review whether your corporate structure would be exposed to any possible retaliatory measures.
- **Adjusting tax structures**
  Prepare alternative scenarios – e.g. to restructure licence streams or to strengthen assets in the USA – in order to be able to respond to any fiscal countermeasures in a timely manner.

- **Securing digital business models**
  Companies rendering digital services in the US should review with great care if new US requirements or tax burdens are coming their way, particularly in connection with the platform economy, with e-commerce and with data-based services.

Conclusion
We recommend your reviewing your US exposure strategically and to take any precautionary measures needed. We are glad to be at your disposal to assist you in estimating where your company stands and to guide you on issues concerning structures and taxes.

Do you have any questions on this topic?

Do you need support? Please contact our customs and transfer pricing experts Henning Straeter

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