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CAPITOL TAX PARTNERS

2024 Tax Legislative, Regulatory, and Global Outlook

Passage of a "laddered" continuing resolution (CR) delayed the inevitable spending battles into this year and set up a robust legislative agenda during the first quarter of 2024 ahead of a seemingly inevitable November rematch between President Joe Biden and former President Donald Trump.

The first quarter of the year will be driven by the complex and unsettled interaction between various deadlines on "must-pass" legislation (such as bifurcated FY24 appropriations deadlines and Federal Aviation Act (FAA) reauthorization) and a broad desire to pass other important legislation (such as supplemental appropriations for Ukraine, Israel, Taiwan and border security, as well as tax) before the election season is in full swing. Congressional leaders already have announced an agreement on top-line spending numbers but must now negotiate and pass legislation to effectuate those agreed levels. The two laddered CRs were recently extended and now expire on March 1 and March 8.

On tax, though the prospect of a bill and its timing are uncertain, the dynamics are as follows:

- Senate Finance Committee Chairman Ron Wyden (D-OR) and House Ways and Means Chairman Jason Smith (R-MO) on January 16 announced an agreement on a $78 billion tax deal that includes child tax credit (CTC) expansions, 2017 Tax Cut and Jobs Act (TCJA) extenders, other business provisions, low-income housing tax credit expansion, disaster tax relief, and Taiwan double tax relief. The cost of the package is offset by a proposal limiting the continued availability of refund claims for the COVID-era employee retention tax credit (ERTC) program. The package passed the Ways and Means Committee by a 40-3 bipartisan vote on January 19 and may be voted on in the House the week of January 29; and
- The path for passing the legislation through the Senate is currently unclear. Some remaining questions include the extent to which Senate Republicans will seek amendments to the bill and how leadership will put the agreement on the floor for a vote. The possibilities in the Senate include a stand-alone tax bill or attaching it to other must-pass legislation in early March. Because it is an election year, the longer the bill remains unpassed, the more difficult it is for the package to become law.

President Biden is entering the last year of his term and thus his Administration has limited time to release tax guidance relating to the Inflation Reduction Act (IRA). Although significant IRA guidance has been released for the energy provisions, long-awaited proposed regulations on the corporate alternative minimum tax (CAMT) and stock buyback excise tax have not yet been released. The Treasury Department also reportedly wants to finalize most energy regulations before the end of the President's term.

Perhaps most significantly for readers, however, is the looming 2025 sunset of many provisions in the TCJA. Because many of these expiring provisions benefit individuals, Congress may want to act in 2025 on preventing some or all of these changes from going into effect. Extending the TCJA won't come cheap: the Congressional Budget Office (CBO) has estimated that extending the expiring provisions after 2026 will cost more than $3 trillion over ten years. With a renewed focus on reducing the Federal deficit by many members, Congress may be constrained on what it can accomplish and may look to additional revenue sources to reduce the cost. Tax writers on both sides of the aisle will spend time in 2024 further educating and positioning themselves for the 2025 tax negotiations. Stakeholders must do the same.

The following outlook provides background on last year's tax policy developments, a detailed overview of what to expect in 2024, and an overview of what Congress and stakeholders will confront in 2025.

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2023 Tax Review

Although we did not see tax legislation become law in 2023, there were several tax policy developments worth highlighting that continue to impact the tax outlook for 2024, and importantly (and as described later in this document), help set the stage for the 2025 outlook and negotiations.

One of the first items the new House Republican majority processed, following through on a promise by then-Speaker Kevin McCarthy (R-CA), was passing a $71.5 billion rescission of the IRA Internal Revenue Service (IRS) funding.[1] House Ways and Means Chairman Jason Smith (R-MO) said about the bill that "The IRS does not need a raise – it needs a reckoning."[2] President Biden and Congressional Democrats opposed the measure, with Senate Majority Leader Chuck Schumer (D-NY) calling the legislation a "giveaway to multimillionaires and big corporations."[3]

IRS funding rescission would continue to be a priority for the House majority throughout the remainder of the year. For example, one of the House's first legislative items with new Speaker Mike Johnson (R-LA) was a $14.3 billion Israel funding bill that used IRS funding rescission as the stated offset.[4]

Debt Limit

Faced with an impending debt limit deadline and little progress on negotiations with the Senate and White House, House Republicans passed the Limit, Save, Grow Act of 2023 (LSGA), which extended the debt limit until 2024 and included several deficit reduction items, such as rescinding unobligated IRA IRS funding, repealing most of the IRA energy credits, and rescinding unobligated COVID relief funds.[5] The bill was never seriously considered in the Senate but staked out the position for House Republicans in the debt limit negotiation.

A month after the House passed the LSGA, then-Speaker McCarthy and President Biden reached an agreement on what became the Fiscal Responsibility Act of 2023, which suspended the debt limit through January 1, 2025, established new discretionary spending caps enforceable by sequestration for fiscal years 2024 and 2025, including a one-percent spending reduction if full-year appropriations bills are not completed by April 30, 2024; rescinded $1.4 billion of IRS

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[1] Family and Small Business Taxpayer Protection Act, H.R. 23. This bill was passed on a party-line vote and would cut $71.5 billion of the almost $80 billion allocated to the IRS in the IRA. The CBO estimated that the IRS spending reduction would reduce revenues by $185 billion for a net budgetary effect of increasing the deficit by $114 billion. See CBO, Estimated Budgetary Effects of H.R. 23, January 9, 2023, https://www.cbo.gov/publication/58894.
[2] Press Release, Chairman Jason Smith, Smith: "The IRS does not need a raise; It needs a reckoning." (January 10, 2023), https://jasonsmith.house.gov/newsroom/documentsingle.aspx?DocumentID=4802.
[3] New York Times, Emily Cochrane and Alan Rappeport, "House Republicans Vote to Rescind I.R.S. Funding," January 9, 2023, https://www.nytimes.com/2023/01/09/us/politics/house-republicans-irs-funding.html.
[4] H.R. 6126, "The Israel Security Supplemental Appropriations Act, 2024," passed the House on November 2, 2023 by a 226-196 vote with 12 Democrats joining all Republicans but two in favor of the bill.
[5] H.R. 2811, Passed the House on April 26, 2023, by a 217-215 vote with four Republicans opposing. The Rules Committee approved a House Budget Chairman Jodey Arrington (R-TX) manager's amendment that in part removed the repeal of certain fuels-based IRA energy credits, such as those for carbon oxide sequestration, renewable diesel, alternative fuels, and second-generation biofuels.

funding provided in the IRA; ended the student loan COVID moratorium; and made other reforms to TANF, SNAP, and the Federal permitting process for certain energy projects.[6] As part of that agreement, the Biden Administration also agreed with House leadership to rescind an additional $10 billion in IRS funding in both FY2024 and FY2025.[7]

While discretionary spending caps are not new, the one-percent sequestration mechanism if full-year appropriations bills are not enacted by a date certain was a novel approach. Without Congressional action, some agencies and programs funded by discretionary spending could see significant cuts.[8] With that backdrop, Congressional leaders and appropriators are working to meet the new March 1 and March 8 deadlines enacted in the most recent CR.

Tax Bill Negotiations

After getting past the debt limit hurdle, Congress's attention shifted to FY24 appropriations and other upcoming legislative deadlines, such as the Farm bill, FAA reauthorization, National Defense Authorization Act, and Foreign Intelligence Surveillance Act reauthorization. With must-pass legislation, and thus potential legislative vehicles, on the horizon, efforts grew to negotiate a tax package centered around the three expired TCJA provisions and expansion of the CTC.

In June, the Ways and Means Committee marked up a package of tax legislation (the "Ways and Means economic package") that outlined Republican priorities for a tax bill this Congress.

The Ways and Means economic package included a variety of business and individual tax changes that would:[9]

- Rename the standard deduction to "guaranteed deduction" and increase the amount of the deduction by $2,000 for unmarried individuals, $3,000 for head of households, and $4,000 for married individuals through 2025;
- Increase the information reporting threshold under sections 6041 and 6041A for persons engaged in a trade or business to $5,000;
- Repeal the American Rescue Plan Act (ARPA) reporting provision under section 6050W for third party settlement organizations;

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6 P.L. 118-5, June 3, 2023.
7 The recent agreement by the White House and Congressional leadership to set overall spending caps would accelerate the $10 billion in rescission for FY2025 one year earlier into FY2024.
8 The spending caps for FY2024 total $1.59 trillion - $886 billion for defense (up from $858 in FY2023) and $704 billion for nondefense (down from $767 billion in FY2023). For more information, see OMB, "Memorandum for the Heads of Executive Departments and Agencies, Frequently Asked Questions Related to Fiscal Year 2024 Discretionary Spending Limits," December 22, 2023, https://www.whitehouse.gov/wp-content/uploads/2023/12/OMB-Memo-to-Agencies-Frequently-Asked-Questions-Related-to-Fiscal-Year-2024-Discretionary-Spending-Limits-1.pdf. See also, CBO letter to House Budget Committee Chairman and Ranking Member Jodey Arrington and Brendan Boyle (D-PA), "Implementing the Statutory Limits on Discretionary Funding for Fiscal Year 2024," January 4, 2023.
9 H.R. 3936, "Tax Cuts for Working Families Act;" H.R. 3937, "Small Business Jobs Act;" H.R. 3938, "Build It In America Act."

- Make modifications to section 1202 for qualified small business stock that would shorten the holding period required to exclude gain, provide a holding period rule for convertible stock, and allow gain exclusion with respect to S corporation stock;
- Increase the maximum amount a small business taxpayer may expense under section 179;
- Establish a qualified rural opportunity zone and require information reporting from opportunity funds and businesses;
- Allow research and development expenses to continue to be deducted immediately (rather than capitalized and amortized) under section 174 for taxable years beginning before 2026;
- Extend the use of the EBITDA interest deduction limitation under section 163(j) for taxable years beginning before 2026;
- Extend 100-percent bonus depreciation for property placed in service before January 1, 2026 (and retain the 20-percent bonus depreciation deduction for property placed in service in 2026);
- Repeal the Hazardous Substance Superfund financing rate and terminate the ability for the Superfund Trust Fund to borrow from the General Fund;
- Allow elections to apply pre-2022 foreign tax credit regulations for taxes paid to Western Hemisphere countries; and
- Apply a 60-percent tax on the sales price of agriculture interests purchased by certain persons from or related to a foreign entity of concern.

The Ways and Means Committee economic package also included several revenue raisers repealing energy credits made available in the IRA, including provisions that would:

- Repeal the section 45Y technology neutral electricity production tax credit;
- Repeal the section 48E technology neutral clean electricity investment tax credit;
- Revert the section 30D electric vehicle credit to pre-IRA law while keeping the adjusted gross income and critical mineral sourcing requirements under the IRA;
- Repeal the section 25E previously-owned clean vehicle credit; and
- Repeal the section 45W qualified commercial clean vehicle credit.

The Ways and Means Committee economic package was never brought to the House floor. Complicating House passage was the legislative schedule, which included an ambitious plan to attempt to pass 12 appropriations bills through the House before September 30, and opposition by some high-tax state Republicans demanding state and local tax (SALT) deduction limitation relief in any tax legislation that was brought to the floor.[10]

Over the last several months of the year, the tax committees had many conversations to negotiate a tax package with the goal of having an agreement that could pass on any available legislative vehicle. The current dynamics of those negotiations are discussed in greater detail below in the "2024 Outlook" section.

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[10] See Roll Call, Laura Weiss, "'SALT' shakes up House GOP tax package discussions," (July 20, 2023) https://rollcall.com/2023/07/20/salt-shakes-up-house-gop-tax-package-discussions/.

JCT Bluebook

On December 21, the staff of the Joint Committee on Taxation (JCT) released the long-awaited Bluebook for the 117th Congress.[11] The Bluebook provides a technical explanation of eight separate bills enacted in the 117th Congress, including the IRA, ARPA, and SECURE 2.0. This is particularly relevant with respect to the IRA, which had very limited legislative history (mostly in the form of floor colloquies) for several important provisions. In addition to providing an indication of legislative intent for tax bills, the Bluebook highlights areas in which technical corrections may be warranted.

2024 Outlook

Overview and Important Dates

Congress is faced with a series of challenging must-pass items in the first quarter of 2024. These items include two appropriations continuing resolution deadlines (March 1 and March 8) and FAA reauthorization (March 8). In addition, the Administration and Senate leadership want to pass a supplemental appropriations deal that includes Ukraine funding, border security funding and potential policy changes, Israel funding, and Taiwan funding. Striking these deals on their own will be difficult, but passage is complicated by the political dynamics in the Senate and the House, which has a narrow Republican majority[12] that has recently been unable to pass party-line legislation and a one-member motion to vacate the Speaker.

Although it is unclear how Speaker Johnson will proceed on all of these items, the Senate will continue working on bipartisan deals to try and meet the 60-vote threshold. How Speaker Johnson navigates those items among his own conference will be important to closely follow.

The November elections further complicate matters this year for tax and other significant legislation. The Presidential election appears likely to be a rematch of the 2020 bout. The House is a tossup due to tight margins, redistricting, and general political environment. And, in the Senate, Democrats hold 23 of the 34 total seats up this cycle, with eight of those being rated as competitive. All 11 races in which a Republican currently holds the seat are being defended in states where President Trump won in 2020. The prospects for passage of significant legislation, including tax, decrease as the year wears on.

The following is a list of important dates during 2024 that may impact the legislative agenda and schedule (*italicized* dates are not legislative deadlines, but rather key dates for the year):

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[11] JCS-1-23, "General Explanation of Tax Legislation Enacted in the 117th Congress," December 21, 2023, https://www.jct.gov/publications/2023/jcs-1-23/.

[12] The current Republican majority is 219-213 with three unfilled seats. Majority Leader Steve Scalise (R-LA) is undergoing medical treatment and will be away from Washington until February. During that period the Republican majority will be two votes by a 218-213 margin. Rep. Brian Higgins (D-NY) will resign in February. The special election to fill former Rep. George Santos (R-NY) seat will be held on February 13, 2024.

February 7, 2024	*CBO will release updated economic and budget projections, "The Budget and Economic Outlook: 2024 to 2034"*[13]
February 7-9, 2024	*House Democratic annual retreat (Lansdowne Resort, Leesburg, VA)*
March 1, 2024	Continuing resolution funding the Agriculture, Energy-Water, Military Construction-VA, and Transportation-HUD programs expires; Certain Medicaid cuts begin; Certain Medicare extenders expire
March 5, 2024	*Super Tuesday*
March 7, 2024	*President Joe Biden scheduled to deliver the State of the Union address*
March 8, 2024	Continuing resolution funding the Commerce-Justice-Science, Defense, Financial Services-General Government, Homeland Security, Interior-Environment, Labor-HHS-Education, Legislative Branch, and State-Foreign Operations programs expires; National Flood Insurance Program authorization expires; TANF block grant authorization expires; Federal Aviation Administration authorization expires[14]
March 13-15, 2024	*House Republican annual retreat (Greenbrier Resort, West Virginia)*
March 2023	*Administration's FY 2025 budget and Treasury Greenbook*[15] *release (Treasury Secretary Yellen is expected to testify at the tax-writing committees after the Administration releases its budget)*
April 19, 2024	Section 702 of the Foreign Intelligence Surveillance Act (FISA) Expires

[13] CBO, "CBO to Release Budget and Economic Outlook on February 7," January 18, 2024, https://www.cbo.gov/publication/59898.
[14] Note that due to certain revenue and tax items required for FAA reauthorization, an extension at this time will be a revenue vehicle that could carry tax, though it is uncertain whether tax would be included in any such extension.
[15] The Treasury Greenbook, which contains an explanation of the Administration's tax legislative proposals, generally accompanies the President's budget proposal. For last year's Greenbook, see Treasury Department, "General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals," March 9, 2023, https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf.

April 30, 2024	OMB required to produce one percent discretionary spending sequestration report within 15 days, as required by the Fiscal Responsibility Act[16]
July 15-18, 2024	*Republican National Convention*
August 18-22	*Democratic National Convention*
September 30, 2024	FY2024 appropriations expiration; Farm bill expiration
November 5, 2024	*Election Day*
January 1, 2025	Debt limit expiration
January 2025	Statutory PAYGO - OMB must provide a report within 14 working days after the end of the congressional session, which would trigger sequestration of certain non-exempt mandatory spending programs

Tax Bill

On January 16, Ways and Means Committee Chairman Smith and Finance Committee Chairman Wyden announced they had reached an agreement on tax legislation centered around the CTC-for-TCJA business extenders trade described above.[17]

The tentative agreement contains several enhancements to the CTC, including an increase in the maximum allowable refundable credit, determination of the refundable CTC on a per-child (rather than per family) basis, a one-year earnings lookback election for 2024 and 2025, and indexation of the CTC for inflation in 2024 and 2025 (the refundable portion of the CTC is indexed solely in 2025).

The business items in the agreement consist of the following: [18]

- Delay the requirement under section 174 that domestic research and experimental costs be capitalized and amortized over five years until taxable years beginning after December 31, 2025. Taxpayers would have the ability to elect to deduct unamortized domestic

[16] Note that the one percent sequestration could be avoided if Congress passes full-year appropriations by April 30, 2024 that waives or otherwise circumvents the sequestration provision.
[17] For the press releases relating to the announcement, see https://waysandmeans.house.gov/smith-wyden-announce-agreement-on-tax-framework-to-help-families-and-main-street-businesses/ and https://www.finance.senate.gov/chairmans-news/wyden-smith-announce-agreement-on-tax-framework-to-help-families-and-main-street-businesses.
[18] H.R. 7024, "Tax Relief for American Families and Workers Act of 2024." For a section-by-section technical summary, see https://waysandmeans.house.gov/wp-content/uploads/2024/01/The-Tax-Relief-for-American-Families-and-Workers-Act-of-2024-Technical-Summary.pdf. Note that the TCJA extensions apply retroactively from 2022 through 2025. See also, JCT, "Description of H.R. 7024, The 'Tax Relief for American Families and Workers Act of 2024,'" JCX-2-24, January 17, 2024, https://www.jct.gov/publications/2024/jcx-2-24/.

research expenses from their 2022 tax year either on their 2023 return or pro rata on their 2023 and 2024 returns (rather than file an amended return). Various other transition rules are provided.

- Extend the determination of the business interest limitation under section 163(j) without regard to any allowance for depreciation, amortization, or depletion (i.e., EBITDA) prospectively for tax years beginning after 2023 through tax years beginning before 2026. Taxpayers would have the ability to elect such treatment retroactively for tax years 2022 and 2023. For tax years beginning after 2025, the business interest limitation would be based on EBIT.
- Extend 100 percent business expensing under section 168(k) for qualified property placed in service through 2025 (and through 2026 for certain longer production period property) and retain 20 percent bonus depreciation for property placed in service in 2026 (2027 for longer production period property).
- Increase the threshold for information reporting on Forms 1099-NEC and 1099-MISC under sections 6041(a) and 6041A(a) from $600 to $1,000 for payments to persons in a trade or business and payments for services, and reduce the threshold from $5,000 to $1,000 under section 6041A(a) for direct sales. These new thresholds would apply to payments made after 2023 and be adjusted for inflation after 2024.
- Increase the section 179 deduction for small business to a maximum of $1.29 million (up from $1.16 million), reduced by the amount that qualifying property exceeds $3.22 million (up from $2.89 million) for property placed in service in taxable years beginning after 2023. The increased amounts are indexed for inflation after 2024.
- Provide disaster tax relief for individuals impacted by certain recent disasters;
- Include the United States-Taiwan Expedited Double-Tax Relief Act,[19] which provides treaty-like benefits with respect to cross-border investment between Taiwan and the United States; and
- Enhance the section 42 low-income housing tax credit by restoring the 12.5 percent increase to the nine percent ceiling for calendar years 2023 through 2025 and lowering the bond financing requirement for buildings placed in service after 2023.

The bill also includes as a revenue offset various changes with respect to the ERTC. The proposal would increase promoter penalties for aiding and abetting the understatement of a tax liability as a result of the ERTC to the greater of $200,000 ($10,000 for natural persons) or 75 percent of the gross income with respect to such promotion of ERTC claims. The provision also accelerates the time that ERTC refund claims must be made (generally from April 15, 2025) to January 31, 2024.[20] The proposal also would increase due diligence requirements and extend the statute of limitations for assessment relating to the ERTC.

The Ways and Means Committee approved the tax bill by a 40-3 vote on January 19 with Reps. Lloyd Doggett (D-TX), Linda Sanchez (D-CA), and Gwen Moore (D-WI) voting no over concerns with the CTC not providing enough relief for low-income families.

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[19] See H.R. 5988, which was unanimously approved by the Ways and Means Committee on November 30, 2023.

[20] According to the Committee Report, the filing of a protective claim on or before January 31, 2024 does not preserve the right to claim a refund after that date.

The bill was recently listed for potential consideration under suspension of the House rules during the week of January 29. A suspension bill requires the votes of two-thirds of voting members and does not allow for floor amendments. Some Members on both sides of the aisle in the House are likely to oppose the legislation, with Democrats concerned about the CTC not being impactful enough on poverty and some Republicans being concerned about the changes to the CTC, the size of the corporate tax cuts, and the lack of any relief with respect to the SALT deduction limitation.

While the agreement is the byproduct of months of negotiation between the two Chairs of the tax-writing committees, the legislative path forward at this moment is unclear. Neither Ranking Member initially indicated support for the agreement, though Ways and Means Committee Ranking Member Richard Neal (D-MA) voted for the package at the Ways and Means mark-up. Senate Finance Committee Ranking Member Mike Crapo (R-ID) called the agreement on which the bill is based "a thoughtful starting point for the House to begin the process" and noted "[w]ith the filing season approaching, there is a short timeline to advance tax legislation that can pass both the House and Senate."[21] Senate Democrats generally appear to be supportive, as indicated by public statements by Senators Sherrod Brown (D-OH)[22] and Michael Bennet (D-CO),[23] as well as remarks on the Senate floor by Majority Leader Schumer, in which he said he supports the legislation "because it will provide much-needed relief for low-income families and keep American businesses competitive against the Chinese Communist Party."[24]

If the bill passes the House, the path in the Senate is less clear. It could move as a stand-alone bill or be attached to other legislation. Under either approach, some Senators may seek amendments. To pass as a stand-alone bill, which recently has been rarely done with tax bills outside of reconciliation but is the approach that would allow movement before the delayed government spending deadlines, Majority Leader Schumer and Minority Leader McConnell would need to reach an agreement on floor time and amendments. As noted above, Majority Leader Schumer is supportive of the agreement, citing the increased CTC and LIHTC changes as good policy worth passing into law. Minority Leader McConnell has yet to indicate support for the agreement.

Further complicating matters is the impact of the bill on the 2023 tax filing season. With the individual filing season set to begin on January 29, taxpayers who would receive a benefit under the increased CTC would receive increased refund amounts (and possibly an additional refund check) from the IRS in addition to their normal refunds for the 2023 taxable year. Some

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[21] X, Laura Weiss, @LauraEWeiss16, January 16, 2024, 10:24 AM, https://twitter.com/LauraEWeiss16/status/1747278572471878073.

[22] See, Sen. Brown January 17, 2024 press release, https://www.brown.senate.gov/newsroom/press/release/brown-calls-for-passage-of-bipartisan-tax-cut-deal.

[23] See Sen. Bennet January 16, 2024 press release, https://www.bennet.senate.gov/public/index.cfm/press-releases?id=E7D99558-B907-4B6E-933F-2F6873204319.

[24] "Majority Leader Schumer Floor Remarks In Support of the Bipartisan, Bicameral Tax Framework That Would Expand the Child Tax Credit and the Low Income Housing Credit," January 17, 2024, https://www.democrats.senate.gov/newsroom/press-releases/majority-leader-schumer-floor-remarks-in-support-of-the-bipartisan-bicameral-tax-framework-that-would-expand-the-child-tax-credit-and-the-low-income-housing-tax-credit.

Republicans are considering the impact of notices that would be sent to taxpayers explaining the additional refund and/or checks during an election year.

While some Senate Finance Committee Republicans said on January 16 that they would like to mark up the bill before considering it in the Senate, Chairman Wyden agreeing to hold a markup seems to be unlikely at the moment.

As the House Ways and Means Committee bill moves through Congress, it is possible that it could be amended. Amendments could be limitations or expansions of items included in the legislation or new items that have broad Congressional support.

Some items that were left out of the agreement include (but are not limited to) the following:

- **Non-TCJA extenders. –** Several non-TCJA items are expired, or are expiring, and may be extended in legislation. Some possibilities include: (1) section 45G short-line railroad 50-percent rate; (2) full deduction for business meals; (3) rum excise tax cover-over; and (4) mortgage insurance premiums treated as qualified residence interest.[25]
- **SECURE 2.0 technical corrections. –** In December, House Ways and Means and Senate Finance Committee Chairs and Ranking Members (and House Education and Workforce Committee and Senate HELP Committee Chairs and Ranking Members) released a SECURE 2.0 technical corrections discussion draft soliciting stakeholder feedback. It is possible that due to the bipartisan work on the technical corrections package that it could move on any upcoming tax vehicle.
- **1099-K. -** There are legislative efforts to repeal or amend the ARPA legislation that requires third party settlement organizations to report aggregate annual payments over $600 on a Form 1099-K (previously, reporting was only required if someone received greater than $20,000 from at least 200 transactions).[26] Because Treasury delayed the effective date of the reporting threshold so that forms will not need to be provided until 2025 (at which point there will be a transition to a $5,000 threshold for one year), it became less likely that a fix will be included on a tax package, though Republicans will look to continue highlighting the provision and concerns with Treasury's delay of its enactment.
- **Other technical corrections.** – Congress has not acted on potential technical corrections related to other prior tax legislation (e.g., modifications to the "downward attribution" rules of the TCJA).

[25] See, JCX-1-23, List of Expiring Federal Tax Provisions 2022-2034, https://www.jct.gov/publications/2023/jcx-1-23/.

[26] Several bills have been introduced by members of both parties that would either repeal the ARPA provision or increase the threshold to an amount greater than $600. See H.R. 3530, "Cut Red Tape for Online Sales Act," Rep. Pappas; H.R. 190, "Saving Gig Economy Taxpayers Act," Rep. Carol Miller (R-WV); H.R. 488, S. 26, "SNOOP Act," Rep. Michelle Steel (R-CA) and Sen. Bill Hagerty (R-TN); S. 1761, "Red Tape Reduction Act of 2023," Sen. Sherrod Brown (D-OH).

Senate Outlook

Senate Democrats will likely use the Finance Committee to highlight key accomplishments since 2020, amplify political messages, and position Democrats for the tax debates coming in 2025.

During the first quarter, Democrats are expected to explore the implementation of the IRA and CHIPS Act, with a particular focus on job creation in the manufacturing sector, in addition to the traditional hearings on the tax filing season and on the President's Budget. Democrats are also likely to highlight other aspects of their legislative successes, particularly on priorities that may be of interest to members of the Committee who are up for re-election in 2024. Later in the year, hearings may be added to explore the impacts of the TCJA and to bolster the case for policies that Democrats support, including increased taxes on wealthy individuals, improved supports for working families (including new ideas like Child Savings Accounts), and changes that Democrats consider to be closing "tax loopholes." Chairman Wyden continues to view legislation he has introduced, such as the "Billionaires Income Tax Act," as fruitful ground to help raise revenue in 2025 to address deficit issues and continue tax breaks for working families.

The Committee is also expected to continue oversight projects related to private-placement life insurance and other issues, largely to help build the case for potential changes in these spaces in 2025. Though not directly an oversight project, the Committee will likely continue its work on the taxation of digital assets, including cryptocurrency, perhaps advancing toward a hearing to help educate members on these issues and familiarize them with policy options.

Finally, the Committee will address nominations as needed. The Committee is expected to process the nomination of Marjorie Rollinson to be the IRS Chief Counsel and a Treasury Assistant General Counsel in the near term now that her nomination has been re-sent to the Senate. Additional nominations to Treasury Department positions may also be added to the schedule given high-profile departures from the staff, including Treasury Assistant Secretary for Tax Policy Lily Batchelder's expected exit in February.

Ranking Member Crapo is expected to continue supporting the policies of the TCJA and building consensus among his members to position Senate Republicans for 2025. He is also likely to continue leading Committee Republicans in expressing concerns with the OECD's Pillar 2 and evaluating the implications of Pillar 1 while opposing DSTs (discussed in detail in the Global Tax Outlook below).

Several Democratic Finance members have announced they are not running for reelection:

- Sen. Debbie Stabenow (D-MI);
- Sen. Thomas Carper (D-DE); and
- Sen. Ben Cardin (D-MD).

There also are several Senate Finance Committee members who are running for reelection in 2024:

- Sen. Maria Cantwell (D-WA);

- Sen. Robert Menendez (D-NJ);[27]
- Sen. Sherrod Brown;
- Sen. Bob Casey (D-PA);
- Sen. Sheldon Whitehouse (D-RI);
- Sen. Elizabeth Warren (D-MA);
- Sen. John Barrasso (R-WY); and
- Sen. Marsha Blackburn (R-TN).

House Outlook

Despite pressure from the far right, House Speaker Johnson is standing by the budget deal he struck recently with Senate Democrats and the Biden Administration to set top-line numbers. Johnson said the agreement "includes hard-won concessions to cut more billions … from the IRS giveaway and the COVID-era slush funds, it replaces accounting gimmicks from the prior agreement, and it brings Congress much closer to regular order, which is our big commitment here."[28] As a result of the deal, House Leadership hopes to have the FY24 appropriations completed by early March. In the Spring, they expect to shift to moving FY25 appropriations through the committee and ultimately through the House ahead of negotiations with the Senate on government funding for 2025. Speaker Johnson also wants to establish a bipartisan, bicameral fiscal commission that would explore options for reducing the deficit and said that he would expect the commission's work to be done early in 2025 with an opportunity to implement those proposals in 2025.[29]

While Chairman Smith has not publicly outlined an agenda for 2024, getting a tax bill passed will be his first priority. At the same time and throughout the year, the Ways and Means Committee expects to work on developing policies for purposes of a 2025 tax bill and continue educating members, both on and off the committee, about the impact of the TCJA and various options for 2025. The Committee could continue doing field hearings across the country to develop these policies as well as roundtable and other education sessions in Washington. It is possible that the Ways and Means Committee could produce white papers or legislation in advance of the 2025 tax negotiations during 2024.

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[27] Sen. Menendez has a criminal trial beginning May 6, 2024. See ABC News, Aaron Katersky, "Judge rejects Sen. Bob Menendez request to delay criminal trial," December 28, 2023, https://abcnews.go.com/Politics/judge-rejects-sen-bob-menendez-request-delay-criminal/story?id=105977949.

[28] Spectrum News NY1, Justin Tasolides, "Johnson stands by spending deal with Democrats amid far-right push to back out," January 12, 2024, https://ny1.com/nyc/all-boroughs/news/2024/01/12/johnson-stands-by-spending-deal-with-democrats-amid-far-right-push-to-back-out#:~:text=By%20Justin%20Tasolides%20Washington%2C%20D.C.&text=Speaking%20to%20reporters%20briefly%20Friday,back%20away%20from%20the%20agreement.

[29] Speaker Johnson December 11, 2023, discussion with the WSJ, https://www.wsj.com/video/events/the-2024-legislative-agenda/EF947837-2B12-48DB-962E-08EDACC80A68.html. On January 18, the House Budget Committee approved three bills that would create a bipartisan fiscal commission. Chairman Jodey Arrington said he wants to include the legislation in a future spending bill. While the legislation received some Democratic support in the committee mark up, Ranking Member Brendan Boyle and other committee Democrats opposed the legislation. Senate companion legislation is sponsored by Senators Joe Manchin (D-WV) and Mitt Romney (R-UT).

House Republicans, led in part by Chairman Smith, will continue to proceed on their impeachment efforts against President Biden.[30] The Ways and Means Committee also likely will continue oversight work on tax items such as IRA implementation, both as it relates to energy credits and IRS funding, other tax administration matters such as 1099-K implementation delay, tax-exempt entities, and the OECD's two-pillar plan (see Global Tax Outlook, below). Ways and Means Republicans have requested that IRS Commissioner Daniel Werfel testify before the committee on IRS implementation of enacted legislation.

Ranking Member Neal is expected this year to focus on preparing the Democratic members of the Committee for the 2025 tax debate, since some were not on the Committee during the TCJA. He is likely to look for opportunities to bolster the clean energy provisions of the IRA and extend provisions of the child tax credit and other priority items for the Democratic caucus, which are due to expire in coming years. While he has long been a leader in retirement savings provisions, with SECURE 2.0 just being enacted, we do not expect other action this year in that area.

Several Ways and Means members have announced they are not running for reelection:

- Rep. Earl Blumenauer (D-OR);
- Rep. Brad Wenstrup (R-OH);
- Rep. Drew Ferguson (R-GA);
- Rep. Brian Higgins (D-NY);[31] and
- Rep. Dan Kildee (D-MI).

If the House flips to Democratic control in November, Democrats will add several members to the Committee (with a priority towards those who had to leave the Committee last year, including Reps. Brendan Boyle (D-PA), Jimmy Gomez (D-CA),[32] Steven Horsford (D-NV), and Stacey Plaskett (D-VI)), and it is possible that Republicans could lose members. This all depends on the agreed ratios for the 119th Congress, which will happen after the election. If the Republicans win, due to the already announced retirements, it is likely that both parties will add some members to the committee.

Retirement

Tax incentives for retirement savings have benefitted from bipartisan support in recent years and that support continues. Following passage of the bipartisan SECURE 2.0 Act in December 2022 (Consolidated Appropriations Act, 2023, Pub. L. 117-328), a list of technical corrections started to form. One drafting error with respect to catch-up contributions in particular became urgent to fix: In drafting a provision that would require all catch-up contributions to be Roth contributions (after-tax) for certain high-income workers, Congress inadvertently deleted language permitting

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30 For background and materials on the Ways and Means activity on impeachment, see https://waysandmeans.house.gov/the-impeachment-inquiry-timeline/#:~:text=The%20Committee%20on%20Ways%20and%20Means%20and%20the%20Committee%20on,Hunter%20Biden%20for%20tax%20crimes..

31 Note that Rep. Higgins is planning to leave Congress in early February.

32 Rep. Gomez may join the Committee upon Rep. Higgins' retirement in February.

any catch-up contributions at all. Upon recognizing the error, leaders of the Senate Finance Committee and Ways and Means Committee announced an intention to fix it via legislation. But as the year progressed without action, and with an effective date of January 1, 2024, employers and plan administrators agitated for some administrative relief.

On August 25, 2023, the IRS announced an "administrative transition period" to postpone this effective date until January 1, 2026 (Notice 2023-62). The notice also clarified that catch-up contributions would continue for all income levels. Recently, the Treasury Department and the IRS issued guidance in the form of questions and answers under SECURE 2.0 (Notice 2024-2) to assist with implementation of the new provisions and noted that further guidance was anticipated.

On December 6, 2023, the bipartisan leaders from Senate Finance and Senate HELP Committees, along with the bipartisan leaders from House Ways and Means and House Education and Workforce Committees, released a discussion draft containing technical corrections to SECURE 2.0 and requested comments. While there was no specified deadline for these comments, we understand the Committees would like to move this package of technical corrections at the earliest opportunity. Text of the discussion draft can be found on the Ways and Means or Finance Committee websites.[33]

Energy

Enacted in 2022, the IRA drastically changed the landscape of energy tax incentives. Since enactment, Treasury and the IRS have issued a plethora of guidance on numerous IRA provisions. For example, in 2023, proposed guidance was promulgated on a range of issues, including the section 30D New Clean Vehicle Credit, the section 48C Advanced Energy Manufacturing Credit, section 6417 Direct Pay, section 6418 Transferability, the section 40B Sustainable Aviation Fuel (SAF) credit, the section 45X Advanced Manufacturing Production Credit, the section 48 Investment Tax Credit (ITC) (updating eligible energy properties), and the section 45V Hydrogen Production Tax Credit (PTC). Guidance also was issued on bonus credits and prevailing wage and apprenticeship requirements that are applicable across multiple energy incentives. In developing this guidance on issues that are outside traditional tax expertise, Treasury has relied on other agencies, such as the Department of Energy, the Environmental Protection Agency, and the Department of Labor.

While we have yet to see an outline of Phase Three guidance priorities,[34] we expect Treasury will work this year to finalize proposed rules in the above areas and issue guidance on the remaining IRA provisions, including the section 45Y Clean Energy PTC, section 48E Clean Energy ITC, section 45Z Clean Fuel PTC, section 45U Zero-emission Nuclear Power PTC, and the domestic content bonus and requirement for tax-exempt entities electing direct pay. Initial guidance also is needed on certain clean vehicle credits including on the previously owned clean vehicle credit and commercial electric vehicle (EV) credit. Section 45Q also may require updated regulatory guidance.

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[33] See, e.g., https://gop-waysandmeans.house.gov/wp-content/uploads/2023/12/OTT23197.pdf
[34] Lily Batchelder, the Assistant Secretary for Tax Policy, previously has put out blog posts highlighting IRA implementation guidance priorities in both Phase One and Phase Two.

Treasury is motivated to finalize these rules before the 2025 post-election transition where a potential change in party control could impact regulatory work.

U.S. v. Moore

Last year, the U.S. Supreme Court heard the *U.S. v. Moore* case, which challenged the constitutionality of the 2017 mandatory repatriation tax that taxed undistributed profits from controlled foreign corporations.[35] The Court's decision in the case has the potential to disrupt more than just the repatriation tax, as a core argument by the petitioners was that the tax was unconstitutional because the taxpayer did not have a realization event. If the Court adopts a broad holding in favor of the taxpayers, it could implicate other areas of the tax code, such as subchapter K applying to partnerships, current inclusion regimes in international tax such as subpart F and global intangible low-taxed income (GILTI), and mark-to-market provisions for financial products and financial institutions.

The potentially wide-ranging impact of the Court's decision has the tax policy community's attention. Various tax policy experts submitted amicus briefs taking different positions on the issue. Congress also is closely monitoring as the case could impact design decisions for future policy, and if it is a broad holding, could require immediate changes to the tax code to prevent revenue loss and make it compliant with the decision.

The decision will be released before the end of the current Supreme Court session, which ends in June. During the oral arguments, the questioning of several Justices focused on the broader implications of the case, with some Justices apparently concerned about invalidating other long established tax regimes and other Justices apparently concerned about validating the adoption of wealth taxes.

Digital Assets

Over the last year, Congress has shown increasing interest in tax issues related to digital assets and will continue work on these issues in an effort to develop holistic approaches to taxing digital assets. For example, Chairman Wyden and Ranking Member Crapo released a request for comments on a wide range of issues impacting digital assets in July and are using those comments and subsequent conversations with stakeholders to work in a bipartisan manner to develop digital asset tax priorities.[36] Proposed legislation or white papers on digital asset taxation are not expected to be released by the Finance Committee or its members until later in the year to tee up issues for possible passage in 2025. The issues raised in the request for comments include: marking-to-market for traders and dealers under section 475; the trading safe harbor under

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[35] For documents relating to the proceedings at the U.S. Supreme Court, see https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22-800.html.

[36] See, "Wyden, Crapo Solicit Policy Input on Taxation of Digital Assets," July 11, 2023, https://www.finance.senate.gov/chairmans-news/wyden-crapo-solicit-policy-input-on-taxation-of-digital-assets. See also, JCT, "Selected Issues Regarding the Taxation of Digital Assets," June 2023, https://www.finance.senate.gov/imo/media/doc/jct_report_on_digital_assets.pdf. The JCT document was released by the Finance Committee in conjunction with the request for comments.

section 864(b)(2); treatment of loans under section 1058; wash sales under section 1091; constructive sales under section 1259; timing and source of income from various digital asset transactions; rules relating to the use of digital assets as nonfunctional currency; foreign financial account reporting; and valuation and substantiation.

Some of the issues were included in recent Treasury Greenbook proposals, such as wash sales, digital asset loans, mark-to-market for dealers and traders, and foreign account reporting. The House-passed Build Back Better Act included proposals to expand the wash sale and constructive sale rules to digital assets, among other changes to those provisions impacting a broader range of stakeholders. Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) reintroduced updated legislation that, among broader digital asset reforms, would provide rules for digital asset taxation on many of the issues addressed in the Wyden/Crapo request for comments and Treasury Greenbook.[37]

A challenge for policymakers developing broad digital asset taxation proposals and enacting them will be the broad range of viewpoints on the role of digital assets in the economy. While some Members are supportive of the industry and seek to create a regulatory environment that nurtures its development, others are more skeptical of digital assets' impact on unsuspecting investors and opportunities for tax avoidance or other criminal activities. Congress will have to balance these two diverse viewpoints.

In addition to the legislative work, the Treasury Department will continue its work implementing the digital asset broker reporting regulations under section 6045, which were issued as proposed regulations in August.[38] The broker reporting rules are effective after the regulations are finalized, so there will be pressure to complete them before the end of 2024. Some Members have been vocal in their desire to accelerate the effective date, while others have expressed concerns relating to the broad scope of the definitions[39] and whether stakeholders have enough time to properly implement the regulations. In addition to changes under section 6045, the enacting legislation also expanded sections 6045A (broker-to-broker reporting) and 6050I (cash transactions reporting) to cover digital assets. Substantive guidance has not been released on those changes, although Treasury delayed the effective date of section 6050I for digital assets until guidance is released (the statute requires reporting for all transactions after December 31, 2023).

Treasury will also continue its work with the Organisation for Co-operation and Economic Development (OECD) on the Crypto-Asset Reporting Framework (CARF), which provides digital asset reporting rules across the OECD countries through the new proposal and changes to the Common Reporting Standard. This work will include reviewing and possibly updating existing guidance to ensure domestic compliance with the CARF provisions.

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[37] S. 2281, "Lummis-Gillibrand Responsible Financial Innovation Act," Introduced July 12, 2023.
[38] The digital asset broker reporting legislative changes were enacted in 2021 as part of the Infrastructure Investment and Jobs Act (P.L. 117-58). In addition to
[39] Note that in October 2023 an IRS official said that the Service expects to receive an additional eight billion information returns as a result of the digital asset broker reporting rules. Tax Notes, Jonathan Curry, "IRS Prepping for at Least 8 Billion Crypto Information Returns," October 26, 2023.

2025 Landscape

Numerous provisions in the TCJA either sunset or take effect in 2025. This has the potential to drastically alter the tax code and increase taxes on many individuals, small businesses, and larger multinational businesses. Given their ramifications, Congress will likely want to revisit those tax increases before they come into effect.

The outcome of the November election will be the primary factor determining the makeup of 2025 tax legislation, including impacting whether a tax bill could move as a reconciliation vehicle, what policies are prioritized, and the extent to which and how the bill is offset. Consequently, the following discussion will not attempt to predict how 2025 will progress, but instead will outline the facts facing policymakers as they try to navigate and prepare for the coming legislation.

Congressional Preparation

Regardless of the uncertainty due to not knowing who will control Washington, this year will be important for Members and stakeholders to develop their priorities and strategies for enactment. As discussed above in the 2024 Outlook, the tax-writing committees will use this year to educate members on the TCJA and other tax issues as well as develop legislative options for 2025.

Last year's work by the tax committees and expected work this year provide insight into what Democratic and Republican priorities may be in 2025 for tax legislation.

For Democrats, the work in 2023 mostly focused on their support for child and family-centered tax proposals, such as expanding the CTC and EITC, and increasing taxes on wealthy individuals and businesses. In a November hearing, many Finance Committee Democrats expressed concern about high-income individuals not paying enough in taxes through planning strategies, such as the newly branded by Chairman Wyden "Buy, Borrow, Die."[40] In response, some Democrats expressed support for policies such as mark-to-market that would require wealthy individuals to recognize income on increases in value of their assets, even if that income is not realized. Chairman Wyden said at that hearing that imposing mark-to-market on the very wealthy would "require billionaires to pay tax every year, just like everyone else."[41] Chairman Wyden subsequently released legislation supporting this objective by reproposing his "Billionaires Income Tax" bill, with 15 other Democratic co-sponsors.

The Biden Administration's Treasury Department has released Greenbooks, which provide many proposals that may be options for 2025 legislation if Biden is re-elected or Democrats control the House or Senate.[42] Some key examples include business tax reform proposals, such as raising the corporate tax rate and increasing the stock buyback excise tax; international tax proposals

[40] Wyden Statement at Finance Committee Hearing Examining Tax Dodging Schemes Used by Ultra-Wealthy Americans, November 9, 2023, https://www.finance.senate.gov/chairmans-news/wyden-statement-at-finance-committee-hearing-examining-tax-dodging-schemes-used-by-ultra-wealthy-americans.
[41] Id.
[42] See "General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals," Department of Treasury, March 9, 2023, https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf.

revising GILTI and the foreign-derived intangible income (FDII) deduction; individual tax increases, such as applying the 3.8 percent net investment income tax to all active business income, increasing the capital gains rate for high earners, and imposing a minimum tax based on unrealized gains for high-net worth individuals; and expanding social welfare provisions, such as housing credits, the CTC, and health care related tax credits.

In 2025, Democrats also may view tax legislation as a means to accomplish larger policy priorities that weren't accomplished during the 117th Congress, such as policies included in the House-passed "Build Back Better Act" (e.g., paid family leave, universal pre-kindergarten, home health care). These are more likely if Democrats have full control of Washington in 2025. Republicans could also use a 2025 tax bill as a vehicle to move policy priorities.

Republicans will be mostly focused on the extension of the TCJA, the impact of the legislation on the economy, whether and how to respond to the OECD's Two-Pillar project, and the state of the Federal fiscal trajectory. On the fiscal trajectory, some members of the Ways and Means Committee are considering alternative revenue streams that would help offset an extension of the TCJA, which given the increased emphasis on the fiscal situation, may be important to mitigate the cost of the bill. Republicans will also focus on the impact of any corporate or multinational changes on the U.S. economy and small businesses. It is not a given that Republicans will consider the corporate tax rate untouchable if revenue is needed or if there are changes to individual and passthrough business provisions (e.g., section 199A) that would increase the tax burden on those businesses without comparable changes impacting corporations. Other policy areas are likely to be considered, too. For example, Republicans also are deeply concerned about the IRA's impact on American competitiveness and whether the credits are flowing to or otherwise supporting Chinese interests, and are likely to explore the tax-exempt sector and whether reforms are needed there.

Another Congressional dynamic to consider, and one that is particularly important if Republicans hold either chamber, is that there are not many Members on the tax writing committees that were on those committees when TCJA passed in 2017. Only six Republicans who were on the Finance Committee in 2017 are still on the committee, and 16 Republican Senators who voted for the TCJA are no longer in the Senate. Only five Republicans currently on the Ways and Means Committee were on the committee in 2017. This dynamic applies to the broader conference, as well. Member education will be important throughout this process and Members may not feel a sense of ownership over various TCJA provisions.

TCJA scheduled changes in 2025

To meet revenue targets and comply with reconciliation limitations on increasing the deficit beyond the bill's budget window, many of the TCJA provisions either revert to pre-TCJA policy or are subject to other changes after 2025.

The following are the key changes to business provisions currently scheduled to take effect after 2025:

- Sunset of Section 199A qualified business income deduction;

- Decrease in deduction percentage for FDII;
- Decrease in deduction percentage for GILTI;
- Increase in the rate of tax and reduction of the use of tax credits for the base erosion minimum tax of section 59A (BEAT); and
- Sunset of deductibility of employer de minimis meals and related eating facility, and meals for the convenience of the employer.

The following are among the key changes to individual provisions currently scheduled to take effect after 2025:

- Increase in income tax rates back to pre-TCJA levels;
- Decrease in CTC back to pre-TCJA levels and sunset of Social Security number requirement for the CTC;
- Decrease in alternative minimum tax exemption amounts and phaseout thresholds to pre-TCJA levels;
- Sunset of TCJA changes to itemized deductions, including the $10,000 limitation on SALT itemized deductions;
- Reinstatement of miscellaneous itemized deductions;
- Reinstatement of the overall limitation on itemized deductions;
- Reinstatement of the exclusion for employer-provided moving expenses;
- Reinstatement of the deduction for personal exemptions;
- Reinstatement of the full deduction for home mortgage interest expenses;
- Reinstatement of the deduction for moving expenses;
- Expiration of the Opportunity Zones program for new investments; and
- Reduction to pre-TCJA levels of the estate, gift, and generation skipping tax exemption amounts.

TCJA Extension Cost

While the exact cost of extending the TCJA is uncertain, several government and non-government organizations have conducted analyses estimating the cost of extension. According to these different studies, it is safe to assume that a 10-year extension of the TCJA, including revenue raisers, would reduce revenues by over $3 trillion.

In May 2023, the CBO estimated[43] that extending the TCJA individual provisions would decrease revenues by almost $2.5 trillion from 2024-2033.[44] This estimate includes extending items that serve as revenue raisers, such as the SALT cap, repeal of personal exemptions, and limitation on primary residence interest deduction. Extending the individual provisions in the CBO estimate would reduce revenues by $2.4 trillion; this amount includes extending the section 199A deduction, which would reduce revenues by $548 billion. The CBO further estimated that extending the increased estate tax limitation would reduce revenues by $126 billion. Extending

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[43] See CBO, "Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues," May 16, 2023, https://www.cbo.gov/publication/59154#data.

[44] Note that in 2025 the budget window would extend through 2035 and increase the overall cost of extending these provisions.

the various business provisions, such as the lower GILTI rate, higher FDII deduction, and BEAT rate would decrease revenues by $150 billion.

In total, extending the TCJA would cost an estimated $3 trillion according to the CBO's 2024-2033 estimate. Note that in 2025, the ten-year budget window will extend through 2035, adding three years and more cost to the CBO estimate.

More recently, the Committee for a Responsible Federal Budget conducted an analysis relying in part on the 2022 CBO report where it estimated the cost of extending the TCJA provisions through 2035 (three years longer than the CBO estimate) would be $3.4 trillion.[45]

Other Expiring Items

There are several other significant legislative cliffs in 2025 that Congress will have to address.

Perhaps the most significant issue will be the debt limit, which was extended through January 1, 2025 in last summer's debt limit deal. It is unclear when extraordinary measures will be exhausted, but Congress will have to raise the debt ceiling or suspend it relatively early during 2025. Also in the debt limit deal, Congress enacted two years of discretionary spending caps, which expire after fiscal year 2025, meaning that FY26, which begins October 1, 2025, will not be subject to spending limitations if another caps deal is not reached.

In ARPA, certain Affordable Care Act (ACA) subsidies were increased, such as the premium tax credit for buying health insurance from state-based marketplaces, and will expire at the end of 2025, which aligns with the TCJA expiration. CBO has estimated that extending the premium tax credit expansion would reduce revenues by $271 billion through 2033.

In the IRA, some technologies (e.g., biogas property, linear generation, and dynamic glass) will lose their credit-eligibility beginning in 2026 if their provisions aren't extended. Stakeholders and Members will likely seek a pathway to extending those credits that expire. The technology-neutral energy generation and fuel credits are effective beginning in 2025 and depending on how Treasury interprets those provisions there may be an effort to make legislative changes.

Fiscal Picture

With an increasing focus on the U.S. fiscal situation, it is important to consider the broader Federal budget dynamics when considering potential outcomes for 2025.

In 2022, revenue as a percentage of gross domestic product (GDP) rose to 19.6 percent, which is above the 20-year average of 17.2 percent from 1993 through 2022.[46] Of the 2022 revenues, 10.5

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[45] Committee for a Responsible Federal Budget, "TCJA Expansions Could Balloon Cost of Extensions," November 10, 2023, https://www.crfb.org/blogs/tcja-expansions-could-balloon-cost-extensions.

[46] CBO, "The 2023 Long-Term Budget Outlook," June 2023, https://www.cbo.gov/publication/59331. The CBO data referenced in this section refers to this report unless otherwise stated. CBO makes these projects under a baseline assuming current law, which includes the expiration of the TCJA.

percent of GDP is attributable to individual income taxes (including passthrough businesses), 5.9 percent is attributable to payroll taxes, and 1.7 percent is attributable to corporate income taxes.

CBO projects that revenues will drop to 18.4 percent of GDP in 2023, 18.1 percent of GDP in 2033, and 19.1 percent of GDP in 2053.

Outlays in 2022 were 24.8 percent of GDP, resulting in a total deficit of 5.2 percent including interest expense, which was 1.9 percent of GDP. CBO predicts that the deficit will reach 5.8 percent of GDP in 2023 and increase to 6.4 percent of GDP by 2033 with interest expense making up a projected 3.6 percent of GDP. CBO projects that in 2053 the deficit will be 10 percent of GDP.

On outlay projections, CBO similarly projects an upward trajectory with spending as a percentage of GDP rising from 24 percent of GDP in 2023 to 29 percent of GDP in 2053. According to CBO, rising interest rates and mounting debt cause net outlays for interest to increase from 2.5 percent of GDP in 2023 to 6.7 percent in 2053; outlays for the major health care programs rise from 5.8 percent of GDP to 8.6 percent as the average age of the population increases and health care costs grow; and the aging of the population also pushes up outlays for Social Security, which increase from 5.1 percent of GDP to 6.2 percent.

Medicare and Social Security also are operating at a deficit with costs expected to rise over CBO's projection window. By 2053, mandatory spending is projected to equal 16.9 percent of GDP with the increase being primarily driven by growth in the mandatory healthcare programs. The Social Security Old-Age, Survivors, and Disability Insurance (OASDI) trust funds will be exhausted in 2033. Because the Social Security program is funded by revenues from payroll, once the trust fund is exhausted benefits will generally be reduced to equal receipts. CBO estimates that in 2034 benefits would be reduced by 25 percent to match revenues.

On Medicare, the Hospital Insurance (HI) trust fund, which is used to pay benefits under Medicare Part A for inpatient hospital services, skilled nursing facilities, home health care, and hospice care, is scheduled to be exhausted in 2035.

IRA Modifications

Because the IRA was passed on a partisan basis, does not align with Republican energy policy priorities, and had a significant cost overrun,[47] Republicans will likely try to repeal or amend significant portions of the IRA in 2025. As described above, House Republicans attempted to repeal parts of the IRA last year, including in the Ways and Means Economic Package and the LSGA. Democrats opposed these efforts.

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[47] JCT originally estimated the 10-year budgetary cost of the IRA to be approximately $300 billion. Subsequent JCT re-estimates suggest a significantly higher revenue cost.t See JCX-7-23, "Estimated Revenue Effects of Division A, Title III of H.R. 2811, The "Limit, Save, Grow Act of 2023," April 26, 2023, https://www.jct.gov/publications/2023/jcx-7-23/. See also JCT, "Factors Considered When Estimating the Revenue Effects of the Energy Provisions of Public Law 117-169 and Subsequent Developments," May 2023,

Perhaps the most opposed provisions by Republicans in the IRA are the incentives for electric vehicles (EVs). Some Democrats, most notably Sen. Joe Manchin (D-WV),[48] also have noted drafting and interpretive issues with the EV and other tax provisions. As a result of these concerns, there have been several legislative proposals to tighten provisions related to the EV and manufacturing credits from the IRA.[49] For example, some Republicans have noted that while there are domestic sourcing and foreign entity of concern requirements for the clean vehicle credit, those requirements do not extend to the commercial vehicle credit or the advanced manufacturing production credit.[50]

Widespread changes to the IRA energy tax provisions most likely will occur only if the Republicans sweep Congress and the White House. In such an event, repeal or modification of selected IRA provisions by Republicans will likely be used as revenue raisers to offset the costs of extending the TCJA (as described above). Full repeal of the IRA energy provisions is unlikely given the support of some Republican constituencies for some of the IRA provisions. For example, the clean energy generation credits have been law for decades and often extended on a bipartisan basis. And many of the other provisions, such as the manufacturing production credit under section 45X, will support projects and jobs in Republican districts and states.

Even if Republicans do not sweep Washington, it is likely they will continue to push for modifications of the IRA energy credits in bipartisan negotiations relating to extending the TCJA.

If Congress were to repeal or modify IRA energy tax provisions, it likely will do so on a prospective basis. Congress generally provides transition relief for projects already under construction. Transition relief can take different forms, however, and it is unclear how transition relief would be applied in this scenario. Note the initial House-passed version of the TCJA would have eliminated the inflation adjustment on the section 45 production tax credits on a prospective basis and would have codified continuous construction requirements without the existing safe harbors. This provision received some pushback from Republicans, however, and was not included in the final legislation.

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[48] Note that Sen. Manchin announced he is not running for reelection in 2024.
[49] Most notably impacting sections 30D, 45W, and 45X.
[50] For example, see "Protecting American Advanced Manufacturing Act," Introduced by Sen. Marco Rubio (R-FL) and Rep. Carol Miller (R-WV), which would prevent the ability to claim section 45X credits if the taxpayer is owned by or related to certain foreign adversaries (like the foreign entity of concern limitation in the section 30D clean vehicle credit).

Congressional Review Act and Regulatory Changes

The Congressional Review Act (CRA) allows Congress to overturn certain administrative actions.[51] The CRA has certain limitations and special processes but, in general, it is implemented as any other legislation.[52] That is, a resolution of disapproval of an applicable administrative rule must be passed by each congressional body and can be signed or vetoed by the President. Supermajority votes can override the veto.

The CRA is most impactful if a single party controls Congress and the White House, but in that case the President could change any regulations that would be subject to the CRA. Similarly, a Republican Congress and White House could make legislative changes, which would address concerns relating to the underlying credits. Given this backdrop, substantive CRA changes to tax regulations are unlikely in 2025. A supermajority in Congress is unlikely so a Republican Congress would not likely be able to override a Presidential veto.

<u>Roll back of administrative guidance under a Republican Presidency.</u> As discussed above, repealing all or parts of the IRA or using the CRA effectively requires the Republicans to sweep the 2024 elections. However, the Republicans only need to control the White House to affect administrative guidance.

Most of the IRA guidance issued to date is in proposed form; some guidance has yet to be issued at all. The Biden Administration is expected to issue a significant amount of IRA guidance in 2024, [53] but it will be difficult to finalize everything. There could be a significant amount of proposed guidance that an incoming Republican Administration could finalize to their liking.

In addition, even finalized guidance is not immune to change by an incoming Administration. Final rules can be withdrawn if such withdrawal follows the requirements of the Administrative Procedures Act (APA) (generally, providing an opportunity for notice and comments). Withdrawn regulations can be re-written and reproposed to be more consistent with the views of the new Administration. The new Administration may simply not issue new rules. This could effectively turn IRA provisions that can only become operative with the issuance of guidance into deadwood.

Each new incoming Administration issues an order for agencies to review regulations that were issued toward the end of the prior Administration. Despite this review, incoming Administrations

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[51] For a more in depth discussion of the CRA, see Congressional Research Service, "The Congressional Review Act (CRA): Frequently Asked Questions," November 21, 2021, https://crsreports.congress.gov/product/pdf/R/R43992#:~:text=Under%20the%20CRA%2C%20before%20a,effective%20date%20of%20the%20rule. Since 1996 there have been over 200 disapproval resolutions filed and only 20 have resulted in overturning an administrative rule with none being tax rules.

[52] Under the CRA, Congress generally has 60 legislative days to act on a rule submitted to it for review. However, if the term of the Congress ends before this review period is over, the process starts over with the new Congress (i.e., there is a "lookback" period). Thus, if the Republicans were to sweep the 2024 election, the new Congress can use the CRA to disapprove guidance issued late in the Biden Administration. CRS estimated that the new Democratically controlled 117th Congress had until mid-May 2021 to disapprove Trump Administration rules issued after August 21, 2020. See, https://crsreports.congress.gov/product/pdf/R/R46690.

[53] For a description of guidance that Treasury and the IRS plan to issue through June 30, 2024, see https://www.irs.gov/pub/irs-utl/2023-2024-priority-guidance-plan-initial-version.pdf.

rarely withdraw regulations issued by the prior Administration. New Administrations generally are more interested in moving forward with their own agendas and programs. One of the top agenda items for an incoming Republican Administration in 2025 will be the extension of the expiring TCJA provisions. This may distract from addressing prior guidance.

These precedents may not be necessarily relevant because a second Trump presidency is not a typical "new" Administration. Further, much of the IRA guidance represents policy choices that are more legislative in nature and may be a more tempting target for withdrawal. On the other hand, in 2016, some clean energy proponents expressed concerns that the first Trump Administration would revoke favorable "start of construction" guidance issued during the Obama Administration. In fact, the Trump Administration liberalized and extended the guidance.[54]

Treasury Outlook

The Treasury Department will continue to be active in 2024, focusing on implementing and securing the legacy of the IRA, advancing other regulatory projects, and moving tax negotiations at the OECD forward.

With respect to IRA implementation, 2024 will be a critical year for Treasury to finalize regulations in the renewable energy space, and to release proposed regulations pursuant to other parts of the IRA (including the CAMT and the stock buybacks excise tax), ensuring full implementation of what the Department considers to be a legacy item for President Biden. During the first quarter of 2024, we expect to see the proposed regulations implementing the stock buybacks excise tax, followed by proposed regulations implementing the CAMT – which has now been in effect for over a year. Treasury will also be seeking to finalize a number of regulations in the renewable energy space, including on domestic content, prevailing wage, and electric vehicles.

At the same time, we expect Treasury to continue its work on long-running regulatory projects, such as the regulations related to sourcing of income from cloud computing, previously-taxed earnings and profits (PTEP), information reporting on digital asset transactions and the implementation of the OECD's Crypto-Asset Reporting Framework (CARF), and addressing the creditability of certain foreign taxes.

Additionally, as part of the continued work of the OECD's Inclusive Framework on Base Erosion and Profit Shifting,[55] Treasury staff will be working to conclude negotiations on Pillar One, which currently has an intended timeline of finalizing the multilateral convention (MLC) that will implement Pillar One's Amount A by the end of March and holding a signing ceremony for the MLC in June. While several countries have already passed legislation implementing all or part of the Pillar Two global minimum tax proposal and part of such regime is officially in effect as of January 1 in many jurisdictions, Treasury staff will also be continuing to work through negotiations on administrative guidance refining Pillar Two. At the same time, Treasury will need to continue work on the creditability of Pillar Two taxes, including taxes levied under the

[54] See, IRS Notices 2021-05 and 2021-41.
[55] See discussion below in the Global Tax Outlook section of this document.

Under-taxed Profits Rule, which will take effect at the beginning of 2025. Treasury negotiators will also continue to work on an inter-agency basis to alleviate the burden of digital services taxes on U.S. companies and to address other problematic tax measures being implemented by other countries.

All of these projects will be complicated by high-profile departures from Treasury, including Assistant Secretary for Tax Policy Lily Batchelder's expected exit in February, and the departures of Tom West (DAS for Tax Policy), a linchpin in numerous regulatory projects, and Michael Plowgian (DAS for International Tax Affairs), the lead U.S. negotiator on the OECD's two-pillar project who has been replaced by Scott Levine.

Global Tax Outlook

2023 Review

2023 proved to be another eventful year for progress on Pillars 1 and 2 at the OECD. The year was marked by further technical work on both Pillars, continued movement toward implementation of Pillar 2 by countries across the globe, reactions to the developments by Congress, and a change in leadership for the tax function at the OECD, with former Treasury official Manal Corwin assuming the lead role. In addition, digital services taxes (DSTs) have remained an active topic to monitor, with the looming expiration of the agreed-upon standstill that had kept new DSTs on hold, Canada moving toward implementing a new DST, the U.S. agreements to terminate Section 301 actions against countries that had begun collecting DSTs expiring at the end of 2023, and countries like Argentina contemplating additional relevant similar measures.

Continued work during 2023 further refined Pillar 2 and spoke to several issues related to the Pillar 2 Global Anti-Base Erosion Model Rules (GloBE rules) rules that are relevant to U.S. interests, including providing temporary administrative guidance for how GILTI taxes are allocated and permanent guidance on the treatment of transferable credits and credits monetized through tax equity structures. Additionally, administrative guidance created several safe harbors relevant to U.S. companies, including a temporary undertaxed profits rule (UTPR) safe harbor to prevent UTPRs from applying to domestic income of U.S. companies through 2025 and a qualified domestic minimum top-up tax (QDMTT) safe harbor that allows for countries with conforming QDMTTs to be exempted from GloBE top-up tax calculations.[56]

In the final days of 2023, Treasury released a notice[57] outlining its intent to provide guidance that QDMTTs will generally be creditable foreign income taxes, as will foreign Income Inclusion Rules (IIRs) that do not create circularity with U.S. tax liability calculations. IIRs that do create

[56] Pillar 2 developments in 2023 also include the July 2023 release of a multilateral instrument implementing the Subject-to-Tax Rule.

[57] Notice 2023-80 (Dec. 11, 2023). This notice also extended temporary relief from the applicability of the 2022 foreign tax credit regulations previously provided in Notice 2023-55 (July 21, 2023) for taxable years beginning after 2021 and ending on or before December 31, 2023. The relief was extended to tax years ending before the date that a notice or other guidance withdrawing or modifying the temporary relief is issued (or any later date specified in such notice or other guidance).

circularity would not be creditable nor deductible, and the section 78 gross-up would apply. Treasury has not yet specifically spoken to the creditability of UTPRs.[58]

Technical work on Pillar 1 also advanced throughout 2023, culminating in release of an "Outcome Statement" in July that included a consultation on Amount B, an agreement to release a multilateral convention implementing Amount A (MLC), and an agreement to extend the standstill on implementation of new DSTs and relevant similar measures through the end of 2024 (or the point at which the MLC enters into force, whichever is sooner) if a sufficient number of countries (including the United States) signed the MLC by the end of 2023. That agreement was not joined by Belarus, Canada, Pakistan, Russia, or Sri Lanka, with Canada planning to implement a DST as early as January 1, 2024. The MLC encountered delays, but a draft eventually was released for public review in October. At the same time, Treasury also opened a public consultation seeking comments from the business community as to whether the MLC is "fit for purpose" in terms of stabilizing the international tax system and preventing the proliferation of DSTs, and whether there are technical issues that need to be addressed, particularly any that have come to light as a result of the MLC finally being made available in its entirety. That comment period closed on December 11, 2023; Treasury received 22 comment letters.[59]

With Pillar 2 intended to begin taking effect globally in 2024, a number of countries have moved ahead with implementing legislation. Globally, 24 jurisdictions have adopted legislation to implement the GloBE rules and another 12 have released draft legislation or announced an intent to implement the GloBE rules.[60] With some exceptions, IIRs and QDMTTs generally would apply beginning in 2024, and UTPRs generally would apply beginning in 2025 (subject to the transitional UTPR safe harbor noted above).

As implementation outside the U.S. has grown more widespread, Pillar 2 has attracted increased attention from Congress. When Treasury Secretary Janet Yellen testified before the Senate Finance and Ways and Means Committees in March, members raised concerns such as their perception that Treasury has failed to adequately consult with Congress in the process of negotiating the GloBE rules, how the rules treat U.S. incentives like the R&D tax credit (as compared with the treatment of refundable tax credits and grants), and the possibility that other countries will assert UTPRs against the U.S. income of U.S. multinationals. With concern about the application of UTPRs to the domestic income of U.S. companies escalating, Ways and Means Committee Republicans introduced legislation in May to retaliate against countries that assert extraterritorial or discriminatory taxes against U.S. companies by targeting their companies for punitive increases in income and withholding tax rates.[61] In July, Rep. Ron Estes (R-KS), along with Chairman Smith and nine other Ways and Means Committee Republicans,

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[58] UTPRs would appear to be subject to similar circularity issues and perhaps run afoul of other requirements under Treasury regulations. Treasury is expected to issue guidance on UTPRs in 2024.
[59] U.S. Department of the Treasury, "Public Input on Draft OECD/G20 Inclusive Framework Pilar One Multilateral Convention Text" (Dec. 19, 2023), available at https://home.treasury.gov/public-input-on-draft-oecdg20-inclusive-framework-pillar-one-multilateral-convention-text.
[60] Bloomberg Tax, "OECD Pillar Two GloBE Rules – Status and Effective Dates Roadmap (updated as of January 18, 2024).
[61] H.R. 3665, the "Defending American Jobs and Investment Act."

introduced additional legislation that would toughen the BEAT applicable to U.S. affiliates of foreign multinationals located in countries that impose UTPRs on U.S. companies.[62]

Concerns about the impact of Pillar 2 on the U.S. fisc were highlighted in June when the staff of the JCT published an analysis on how U.S. revenues would be affected by Pillar 2.[63] The analysis first estimates the upper and lower bounds of the potential impact on U.S. revenue resulting from Pillar 2 adoption by all countries that, as of the date of the JCT analysis, had enacted, introduced, or announced plans to introduce legislation to implement Pillar 2. Taking into account possible (and "highly uncertain") behavioral effects by multinationals, JCT estimated that, during the period 2023-2033, the U.S. would either gain as much as $224.2 billion, or lose as much as $174.5 billion. The analysis then looks at five scenarios that make different assumptions about adoption of Pillar 2 by the United States and other countries, as scored against a hypothetical baseline derived from its initial upper/lower bound estimate. In general, under all scenarios, JCT's estimates indicate that the United States would lose less revenue or gain revenue if the United States enacts Pillar 2. However, the range of possible outcomes under the JCT analysis is quite large. At one end of the range, JCT estimated that further implementation of Pillar 2 by the rest of the world would result in a loss of revenue of as much as $122 billion if the United States does not adopt. Conversely, U.S. adoption in 2025 would lead to a gain of revenue of as much as $236.5 billion if the rest of the world does not adopt.

In July, the Ways and Means Committee's Tax Subcommittee held a hearing on Pillar 2.[64] Michael Plowgian, then the Deputy Assistant Secretary for International Tax Affairs at Treasury, testified first, followed by a panel of international tax experts. Republican members of the Committee generally raised the same concerns they raised with Secretary Yellen earlier in the year (see above). Democrats' message centered around the downsides for the United States of walking away from Pillar 2 negotiations, though Democratic members also raised concerns about the treatment of the U.S. R&D credit, as well as the potential for Canada to move forward with a DST.

To follow up on the July hearing, Rep. Estes, along with 12 other Republican Ways and Means members, sent a letter to Secretary Yellen outlining objections to Pillars 1 and 2 and demanding Treasury to "engage in robust consultations with Congress, provide Congress with previously and repeatedly requested revenue and economic impact data, and reverse Treasury's many anti-U.S. business, anti-U.S. tax collection, and anti-U.S. economy concessions."[65]

In September, Republican members of the Ways and Means Committee led a congressional delegation to Paris and Berlin to raise their concerns with OECD and foreign government

[62] H.R. 4695, the "Unfair Tax Prevention Act."
[63] JCT, "Possible Effects of Adopting the OECD's Pillar Two Both Worldwide and in the United States" (June 30, 2023), available at: https://www.jct.gov/publications/2023/oecd-pillar-two-report-june-2023/.
[64] House Ways and Means Committee, Tax Subcommittee Hearing: "Biden's Global Tax Surrender Harms American Workers and Our Economy (July 19, 2023).
[65] Press Release, "Rep. Estes Leads Letter Demanding Answers and Accountability from Treasury Regarding OECD Tax Scheme," August 1, 2023, https://estes.house.gov/news/documentsingle.aspx?DocumentID=4095.

officials directly.[66] These members generally stuck to several messages that were largely aligned with concerns they had raised in the past: that the United States was the first mover by implementing GILTI and that their members are not amenable to revamping that regime; that other countries' subsidies and refundable credits (including China's) receive favorable treatment that allow for manipulating the Pillar 2 system; that UTPRs being levied against U.S. income of U.S. companies are not acceptable and will result in retaliation; and that discriminatory DSTs remain a serious problem, but that a Pillar 1 regime that disfavors the United States also is not acceptable.

All this activity has taken place against the backdrop of continued threat of DSTs. As discussed above, Canada did not sign onto the Inclusive Framework's July "Outcome Statement" and revived its previous DST proposal, this time moving forward more decisively. Ways and Means Committee members sent a bipartisan letter to Secretary Yellen and Ambassador Tai, as well as the Chargé d'Affaires ad interim at the OECD, outlining concerns about Canada's continued movement toward a DST. In early October, Chairman Wyden and Ranking Member Crapo followed with their own letter to United States Trade Ambassador Katherine Tai, encouraging Ambassador Tai to proceed with trade remedies against Canada if it implements a DST. All the while, time advanced toward the end of 2023, when the DST standstill in place pursuant to the Inclusive Framework's agreement to continue work on Pillar One would expire in the absence of U.S. signature on the multilateral convention, which has yet to be finalized. On December 18, the Inclusive Framework announced a new timeline for Pillar 1, which sets the goal of finalizing the MLC's text by March 2024, with a signing ceremony in June 2024, and suggests that DSTs will continue to be held in abeyance through the end of June. However, Canada has continued to press forward with their DST, requiring Treasury and United States Trade Representative (USTR) to attempt to negotiate some kind of accommodation to make their DST less problematic.

2024 Outlook

While it is unlikely that the United States will move ahead with implementing Pillar 2 in 2024, we expect other countries to continue to move forward with implementation of aspects of Pillar 2, including QDMTTs, IIRs, and UTPRs, though UTPRs do not begin taking effect until 2025 (or 2026 with respect to countries eligible for the transitional UTPR safe harbor). There is likely to continue to be variation in how countries implement Pillar 2, which will drive additional complexity for multinational companies. This includes some countries (e.g., Bermuda) with plans to implement a corporate income tax in response to Pillar 2 (but not actually a Pillar 2 top-up tax). Some countries also are considering the adoption of refundable tax credits to encourage continued investment.

Robust Congressional engagement on Pillar 2 is likely to continue as members contemplate looming tax code changes in 2025 and the threat of UTPRs. Ongoing Congressional engagement also may be driven by continuing administrative guidance from the OECD, which could address topics like the treatment of nonrefundable and refundable credits (including the U.S. R&D

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[66] Press release, "Ways and Means Members to European Officials: Americans Reject Biden's Global Tax Surrender (September 12, 2023), available at https://waysandmeans.house.gov/ways-and-means-members-to-european-officials-americans-reject-bidens-global-tax-surrender/.

credit) and whether new or improved incentives offered by countries implementing Pillar 2 run afoul of the framework's "no benefit requirement," which prohibits countries from offering incentives intended to offset additional top-up taxes under Pillar 2. The OECD also is expected to release more details on the peer review process for qualified rule status and dispute resolution.

With respect to Pillar 1, the current agreed-upon timeline by the Inclusive Framework is to resolve bracketed language in the MLC by the end of March 2024 and hold a signing ceremony for the MLC in June 2024.[67] This deadline has been pushed back several times so it is not clear whether it will be met this year. While a number of countries have suggested they are ready to sign onto the MLC now, time will tell whether there is hesitation once the MLC is actually finalized and available for signature, particularly if it is unclear whether the United States will sign. With the possibility of more countries moving forward with DSTs and/or other unilateral measures, we can expect continued Congressional engagement on Pillar 1, particularly as the impacts to U.S. businesses and the U.S. fisc become more clear.

Trade Outlook

Economic statecraft has been a key feature of "Bidenomics," shifting trade policy from opening markets to enhancing U.S. industrial competitiveness and building strategic supply chains that deepen U.S. national security. This trend will largely continue in 2024, as the Biden Administration and Congress focus economic policies on countering China, implementing the IRA and CHIPS for America Act, and improving existing trade programs.

Administration

In 2024, trade policy developments will come mostly from the Executive Branch as enforcement and negotiations.

Enforcement. - The Biden Administration has continued tariffs imposed on Chinese goods pursuant to a Section 301 investigation into unfair trade practices and, in December, extended exclusions to such tariffs and COVID-related tariff exclusions until May 31, 2024 to give the Administration additional time to complete a statutorily-required four year review of the 301 tariffs.[68] While such tariffs are expected to remain, given that there have been no changes in Chinese policy and China has failed to meet certain purchasing commitments made during previous negotiations, certain adjustments may occur. Some have suggested that tariffs could increase on tech goods, while possibly decreasing on consumer goods or certain inputs.

Further, USTR continues to negotiate with Europe and other partners, seeking to alleviate over production in the steel and aluminum industries and reduce carbon emissions, allowing for a

[67] The timeline for finalizing Amount B has also slipped into 2024. The goal had been to finalize by the end of 2023 and incorporate into the OECD Transfer Pricing Guidelines for 2024. Now, it appears Amount B would, at best, be optional for countries to apply in 2024.
[68] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2023/december/ustr-extends-exclusions-china-section-301-tariffs-allow-comments-review-exclusions-and-alignment#:~:text=WASHINGTON%20%E2%80%93%20The%20Office%20of%20the,expire%20on%20December%2031%2C%202023.

permanent resolution of Trump-era Section 232 tariffs for certain of our allies. Currently, steel and aluminum imported from the EU are subject to quotas, rather than tariffs, and that arrangement will remain in place until March 2025.[69] Without a deadline in 2024, finding an agreement this year seems unlikely.

Product-specific enforcement actions will also garner stakeholder attention in 2024. Of note will be tariffs on solar panels made with Chinese components coming from Malaysia, Vietnam, Cambodia, and Thailand. In 2022, President Biden waived an anti-dumping order, and a related circumvention finding, but these tariffs are scheduled to return in June 2024.[70] As companies move their production to the United States using IRA incentives, it is unclear whether the Administration again will waive the tariffs to encourage solar deployment or impose tariffs to protect the nascent domestic industry from unfair trade. In May 2023, Congress voted to overrule the Biden waiver, but the resolution was vetoed.[71]

Negotiations. - The Administration is expected to continue negotiation of trade pacts that improve supply chains and trade facilitation in 2024. In 2023, USTR sought agreements with key allies to ensure that their batteries would qualify for the section 30D EV tax credit, which was expanded in the IRA. Currently, the United States has signed critical minerals agreements with Japan and the EU and is negotiating a similar agreement with the United Kingdom. These agreements, structured as executive agreements that do not require Congressional approval, are substantially similar to each other, with commitments on the free trade of critical minerals and labor and environmental standards. Other countries, including participants in the Indo-Pacific Economic Framework for Prosperity ("IPEF"),[72] have requested agreements; an agreement with Indonesia may be forthcoming. However, USTR has not indicated that it is negotiating any additional agreements.

Separately, the Administration is seeking partnerships in the Indo-Pacific and Latin America designed to counter China's influence and reassure allies that the United States will remain engaged in the regions. Accordingly, negotiations of IPEF and the Americas Partnership for Economic Prosperity are expected to continue. In November 2023, the Commerce Department announced that IPEF members had signed an agreement on supply chain resiliency and had "substantially concluded" agreements on a clean economy and a fair economy—which will lead to cooperation and best practices on clean energy and anti-corruption. The trade portion of IPEF, which would not include new market access provisions, but would include binding commitments on trade facilitation, labor rules, and environmental disciplines, continues to be negotiated with challenges from countries who want tariff reductions in exchange for higher labor and

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[69] Reuters, Philip Blenkinsop, "EU, U.S. etend steel tariff détente until end-March 2025," December 19, 2023, https://www.reuters.com/markets/commodities/eu-us-extend-steel-tariff-detente-until-end-march-2025-2023-12-19/.

[70] Reuters, "Biden vetoes legislation to block solar panel tariffs waivers," May 16, 2023, https://www.reuters.com/world/us/biden-vetoes-legislation-block-solar-panel-tariffs-waivers-2023-05-16/.

[71] Politico, Kelsey Tamborrino, "House fails to override Biden veto of solar tariff resolution," May 24, 2023, https://www.politico.com/news/2023/05/24/biden-veto-solar-tariff-house-00098672.

[72] IPEF includes 14 partners – Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand, the United States, and Viet Nam, although not all partners have agreed to all parts of the IPEF negotiations, which include supply chain resiliency, clean energy, fair economy and trade pillars.

environmental standards[73] and from domestic stakeholders who view IPEF as not rigorous enough to match U.S. values.[74] Additionally, as part of the Administration's work to align partners' economies away from China, the Department of Commerce is reviewing Vietnam's status as a "nonmarket" economy, which has implications in dumping cases.[75]

As part of negotiations in multiple forums, digital trade is one area of negotiation that is expected to garner significant concerns from stakeholders. The Administration's current review of its approach to cross-border data flows and data localization in international agreements is designed to ensure compatibility with possible legislative and regulatory changes in the United States. However, the Administration's 2023 decision to withdraw its support for digital trade provisions at the World Trade Organization (WTO) and during negotiations of IPEF during the review drew criticism from some Members of Congress[76] and the business community.[77] Any changes in data policy could have significant implications for one of the U.S.'s largest exporting sectors and will need to be monitored.

The United States also is expected to continue discussions with the EU,[78] India,[79] and United Kingdom,[80] and other trading partners to reduce trade irritants and improve efficiency in trade.

Congressional Efforts

Since 2020, Congress has struggled to pass significant trade legislation, allowing the Generalized System of Preferences, Miscellaneous Tariff Bill, and Trade Adjustment Assistance to expire. Expirations of the African Growth and Opportunity Act and apparel preferences for Haiti in 2025 also put pressure on Congress to extend these programs this year. The Majority staffs on the

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[73] https://www.wita.org/blogs/ipef-tough-for-southeast-asia/.
[74] https://www.brown.senate.gov/newsroom/press/release/brown-successfully-pushes-biden-administration-to-remove-the-trade-pillar-from-the-indo-pacific-economic-framework.
[75] https://www.trade.gov/press-release/us-department-commerce-initiates-review-non-market-economy-status-vietnam.
[76] https://www.finance.senate.gov/chairmans-news/wyden-statement-on-ambassador-tais-decision-to-abandon-digital-trade-leadership-to-china-at-wto.
https://www.crapo.senate.gov/media/newsreleases/crapo-and-colleagues-condemn-biden-administrations-decision-to-cede-us-digital-leadership-to-china.
https://gop-waysandmeans.house.gov/chairman-smith-statement-on-biden-administrations-decision-to-surrender-to-china-on-digital-trade-rules/#:~:text=%E2%80%9CThe%20Biden%20Administration's%20decision%20to,abandons%20our%20closest%20trading%20partners.
https://lahood.house.gov/2023/10/lahood-delbene-statement-on-ustr-decision-to-abandon-digital-trade-leadership-at-the-wto.
Note, however, that some Congressional Democrats supported these efforts, https://schakowsky.house.gov/sites/evo-subsites/schakowsky.house.gov/files/evo-media-document/final-letter-to-biden-in-support-of-ustr-digital-trade-work.pdf.
[77] https://www.itic.org/news-events/news-releases/iti-by-ignoring-digital-trade-ustr-actions-will-weaken-u-s-competitiveness.
[78] https://www.bloomberg.com/news/articles/2023-11-23/eu-and-us-delay-key-trade-meeting-amid-deadlock-in-negotiations.
[79] https://www.business-standard.com/economy/news/india-us-trade-policy-forum-meeting-likely-to-be-held-next-month-123121000679_1.html.
[80] https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/08/the-atlantic-declaration-a-framework-for-a-twenty-first-century-u-s-uk-economic-partnership/.

Ways and Means and Finance Committees have suggested that their Chairmen would like to move a trade package in 2024 and a path to a bipartisan, bicameral bill may be achievable.[81] Another possible piece of legislation that could be added to this package is the reauthorization of the Customs and Border Protection (CBP) agency, which would allow Congress to re-examine trade facilitation and the enforcement of import restrictions. Congress also could revisit the *de minimis* provision, which allows shipments of less than $800 of merchandise to be imported into the United States without being subject to duties.[82]

Outside of the tax and trade committees, other legislation may be developed and moved to counter Chinese influence in U.S. supply chains or investment streams and human rights legislation that could impact imports. Chairman Mike Gallagher (R-WI) of the Select Committee on the Chinese Communist Party intends to bring a "big China bill" to the House Floor for a vote in 2024, based on the Committee's 150 wide-ranging policy recommendations that were released in December.[83] In the Senate, the Majority has put together a China Competition 2.0 bill, while Members also are looking at improving enforcement to address forced labor and fentanyl.[84]

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[81] https://www.law360.com/internationaltrade/articles/1777205.
[82] https://blumenauer.house.gov/media-center/press-releases/reps-blumenauer-dunn-sens-brown-rubio-introduce-legislation-to-strengthen-american-competitiveness-close-import-loophole.
[83] https://www.politico.com/news/2023/12/31/house-china-committee-2024-legislation-00133081.
[84] https://www.foreign.senate.gov/press/dem/release/menendez-schumer-launch-initiative-to-advance-national-security-and-create-china-competition-bill-20-schumer-directs-senate-chairs-to-craft-bipartisan-legislation-to-ensure-americas-global-leadership-in-the-21st-century-strengthen-us-manufacturing-create-american-jobs-and-build-on-game-changing-chips-and-science-act
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https://www.banking.senate.gov/imo/media/doc/fend_off_fentanyl_-_one_pager2.pdf