November 22, 2021

Capitol Tax Partners Summary of Selected Individual and Business Tax Provisions in House-Passed Build Back Better Act, Rules 11/18 Print

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Modification of Limitation on Deduction for State and Local Taxes	§137601 of the bill and §164 of the Code In general: The state and local tax (SALT) deduction limitation would be increased to $80,000 for single and married taxpayers ($40,000 in the case of an estate, trust, or individual filing a separate return). Effective date: The increase in the SALT deduction limitation is effective for tax years beginning after December 31, 2020 and before January 1, 2031. The $10,000 ($5,000 in the case of an estate, trust, or married individual filing separately) limitation would return for tax year 2031, but the deduction would not be subject to any limitation in tax years beginning after December 31, 2031.
Corporate Alternative Minimum Tax	§138101 of the bill and §55 and new §56A of the Code In general. A new corporate alternative minimum tax (AMT) based on book earnings would apply. A tentative minimum tax would be calculated as 15% of an applicable corporation's adjusted financial statement income (AFSI) for the taxable year, reduced by the AMT foreign tax credit. AMT liability is the excess of the tentative minimum tax over the sum of regular tax liability (before general business credits) and BEAT. General business credits would be allowed to reduce AMT liability up to $25,000 plus 75% of total income tax liability (regular tax + AMT + BEAT) that exceeds $25,000. AMT credit carryforwards reduce future regular tax liability (but not below AMT). Applicable corporation. Any corporation (other than an S-corporation, RIC, or REIT) that meets an average annual AFSI test for one or more taxable years which are prior to the current taxable year and end after December 31, 2021. The AFSI test is generally satisfied if a corporation's 3-taxable-year average AFSI exceeds $1 billion. Special rules apply for corporations in existence for less than three years, short tax years and predecessor corporations. Section 52 aggregation rules (as amended to remove the exclusion of foreign corporations) apply for purposes of determining whether a corporation is an applicable corporation. • *Foreign parented corporations*. Under a special rule for foreign parented corporations, the $1 billion AFSI test is applied by reference to the AFSI of the international financial reporting group (as defined in new section163(n)(3)), including all foreign members of such group. If an international financial reporting group (IFRG) meets the $1 billion test, the corporation that is a member of the IFRG is an applicable corporation only if its 3-year average AFSI is $100 million or more, taking into account only the AFSI of the US group, AFSI of foreign group members that would be effectively connected income (see section 882) and a pro-rata share of AFSI of controlled foreign corporations. • *Exception*. If a corporation has an ownership change or has a specified number of consecutive years (to be determined by Treasury) that it does not meet the average annual AFSI test, it will not be an applicable corporation if Treasury determines

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	it would not be appropriate to continue treating it as an applicable corporation. This exception would end in any year that such corporation subsequently satisfies the average annual AFSI test.
	• *Regulatory authority*. Treasury to issue regulations or other guidance (i) providing a simplified method for determining applicable corporation status, and (ii) addressing application to corporations that experience an ownership change.
	
	<u>Adjusted financial statement income (AFSI)</u>. Net income or loss set forth on the taxpayer's applicable financial statement, with specified adjustments generally intended to match the categories of income reflected on an applicable corporation's tax return (but measured under financial accounting principles).
	• *Applicable financial statement*. Defined by cross-reference to section 451(b)(3) (generally referring to financial statements prepared in accordance with GAAP or IFRS) or as specified by Treasury in regulations or other guidance.
	• *Adjustments*.
	  o <u>Different year</u>. Adjustments where the applicable financial statement covers a period other than the taxable year.
	  o <u>Related entities</u>.
	    ▪ *Consolidated financial statements*. If the taxpayer's financial results are included in the applicable financial statement for a group of entities, rules similar to the rules of section 451(b)(5) apply (i.e., the group statement is treated as the applicable financial statement of the taxpayer).
	    ▪ *Consolidated returns*. Except as provided by Treasury, AFSI takes into account items on the taxpayer's applicable financial statement which are properly allocable to members of the consolidated group.
	    ▪ *Dividends and other amounts*. Earnings of a corporation not included in the consolidated return are taken into account only to the extent of dividends and other amounts required to be included in gross income (other than subpart F income and GILTI) in respect of such corporation's earnings.
	    ▪ *Groups including partnerships*. Under Treasury provided rules, a partnership's earnings are taken into account in determining AFSI in the same proportion as the taxpayer's distributive share of the partnership's items required to be included in gross income.
	  o <u>Foreign income</u>. AFSI of a US shareholder of one or more CFCs is adjusted to take into account the taxpayer's pro-rata share (determined under rules similar to the rules of section 951(a)(2)) of CFC items taken into account in computing net income or loss in the applicable financial statement. If the aggregate amount is negative, no adjustment is made in the current year, but the negative amount is carried forward to the succeeding taxable year.
	  o <u>Effectively connected income</u>. The principles of section 882 would apply to determine the AFSI of a foreign corporation.
	  o <u>Taxes</u>. Appropriate adjustments would be made to disregard any Federal income taxes or foreign income taxes (within the meaning of section 901) taken into account on the taxpayer's applicable financial statement. To the

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	extent provided by Treasury, adjustments would not be made if the taxpayer does not choose to claim a foreign tax credit. Treasury to provide for the proper treatment of current and deferred taxes. o Disregarded entities. AFSI is adjusted to take into account AFSI of a disregarded entity owned by the taxpayer. o Cooperatives. AFSI is reduced by amounts referred to in section 1382(b) (relating to patronage dividends and per-unit retain allocations) to the extent such amounts were not otherwise taken into account in determining AFSI. o Rules for Alaska native corporations. AFSI adjusted to allow (i) cost recovery and depletion attributable to property the basis of which is determined under section 21(c) of the Alaska Native Claims Settlement Act, and (ii) deductions for amounts payable pursuant to section 7(i) or (j) of such Act at such time as the deductions are allowed for tax purposes. o Direct pay for certain tax credits. AFSI is adjusted to disregard amounts received as a refund of taxes attributable to an election under new section 6417, which allows certain energy tax credits to be treated as payments of tax. o Consistent treatment of mortgage servicing income of taxpayer other than a RIC. AFSI adjusted to not include income in connection with a mortgage servicing contract any earlier than when included in gross income for tax purposes. Treasury regulations to prevent avoidance of tax with respect to amounts not representing reasonable compensation with respect to a mortgage servicing contract. o Treasury authority. Treasury is to issue regulations or other guidance to make adjustments to AFSI as necessary to carry out the purposes of the AMT, including adjustments to: (i) prevent omission or duplication of any item; (ii) take into account ownership of a group member by a non-group member corporation or partnership; and (iii) carry out the principles of the parts of the Code relating to corporate liquidations, organizations/reorganizations, and partnership contributions and distributions. • *Financial statement net operating loss deduction*. AFSI is reduced by the lesser of (i) aggregate amount of financial statement NOL carryovers to the year, or (ii) 80% of AFSI (computed without regard to the NOL deduction). o Financial statement NOL carryover. A financial statement NOL for any taxable year is a financial statement NOL carryover to each subsequent year to the extent of the amount of loss remaining after application of the above annual NOL deduction limitation. o Financial statement NOL. The amount of any net loss set forth on the applicable financial statement (determined after application of the adjustments) for taxable years ending after December 31, 2019. • *Regulatory authority*. Treasury to issue regulations and other guidance necessary to carry out the purposes of this section, including rules relating to the effect of this section on partnerships with income taken into account by an applicable corporation.

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	Corporate AMT foreign tax credit. Taxpayers that claim a foreign tax credit for regular tax purposes can claim an AMT foreign tax credit.
	• *Amount of credit*. AMT foreign tax credit is the sum of –
	  o CFC foreign taxes. Aggregate pro-rata share of the foreign income taxes (see section 901) taken into account on the applicable financial statement of each CFC and paid or accrued (for Federal income tax purposes) by each such CFC, subject to a limitation of 15% multiplied by the amount of the CFC foreign earnings adjustment, and
	  o Direct foreign taxes. Foreign income taxes taken into account on the applicable corporation's applicable financial statement and paid or accrued by the applicable corporation.
	• *Excess FTC carryover*. Excess CFC foreign taxes can be carried forward for 5 years.
	• *Regulatory authority*. Treasury is to provide regulations or other guidance necessary to carry out the purposes of the AMT foreign tax credit.
	
	General business credits. General business credits (including carryovers) would be allowed up to $25,000 plus 75% of total income tax liability (regular tax + AMT + BEAT) that exceeds $25,000.
	
	AMT credit carryover. If AMT liability exceeds regular tax liability (plus BEAT), the excess may be carried forward for an unlimited period as a credit in subsequent years against regular tax liability (plus BEAT) to the extent it exceeds AMT liability.
	
	Effective date. Taxable years beginning after December 31, 2022.

Excise Tax on Repurchase of Stock	§138102 of the bill, new §4501 A "covered corporation" would be subject to a non-deductible excise tax equal to one percent of the fair market value (FMV) of any stock that is "repurchased" by it (or a "specified affiliate") during the taxable year. If stock is issued by the covered corporation during the taxable year (including stock issued to employees of the covered corporation or any specified affiliate), the excise tax only applies to the amount by which the FMV of the stock repurchased exceeds the FMV of the stock issued. For this purpose, a repurchase is defined as (i) a redemption within the meaning of section 317(b)[1], or (ii) any economically similar transaction as determined by the Secretary.

[1] IRC Section 317(b) provides that "stock shall be treated as redeemed by a corporation if the corporation acquires its stock from a shareholder in exchange for property, whether or not the stock so acquired is cancelled, retired or held as treasury stock."

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	A covered corporation generally is defined as any domestic corporation which is traded on an established securities market (within the meaning of section 7704(b)(1)). Special rules would also apply the excise tax to repurchases of stock of a covered surrogate foreign corporation by such corporation or its specified affiliate. The definition of a covered surrogate foreign corporation generally has the same meaning as a surrogate foreign corporation in section 7874(a)(2)(B), but only if the corporation expatriated after September 20, 2021. A specified affiliate, with respect to any corporation, is (i) any corporation the stock of which is more than 50-percent owned (by vote or value) by such corporation, and (ii) any partnership the capital or profits interests of which are more than 50-percent owned by such corporation. Several exceptions are provided to the application of the excise tax, including: (1) the buyback is part of a reorganization and no gain or loss is recognized on the repurchase; (2) the repurchased stock (or an equivalent amount) is contributed to an employer-sponsored retirement plan, employee stock ownership plan (ESOP) or similar plan; (3) the value of all of the stock repurchased during the taxable year does not exceed $1 million; (4) under regulations, the repurchase is by a dealer in securities in the ordinary course of its business; (5) the repurchase is by a RIC or REIT; and (6) to the extent that the repurchase is treated as a dividend for income tax purposes. Treasury is provided authority to issue regulations, including regulations to prevent abuse, address special classes of stock and preferred stock, and the application of the excise tax with respect to certain foreign corporations. <u>Effective date</u>: The provision would apply to any repurchase of stock after December 31, 2021.
International Limitation on Deductible Net Interest Expense	<u>§138111 of the bill, §163(j) of the Code (applicable to pass-throughs) and new §163(n) of the Code</u> <u>In general</u>: Disallow a deduction for the amount of a specified domestic corporation's net interest expense that exceeds 110% of its allocable share of net interest expense of an international financial reporting group (IFRG) of which it is a member. The specified domestic corporation's allocable share of the group's net interest expense is based on its EBITDA relative to the group's overall EBITDA. Group net interest expense and EBITDA are based on GAAP or IFRS consolidated financial statements. For example, if the US corporation's share of global EBITDA is 50%, its net interest expense deduction would be limited to 55% (110% of 50%) of the worldwide group's consolidated net interest expense (i.e., net interest on third party debt).

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	Treasury guidance: Treasury is provided authority to issue regulations or other guidance to: (i) treat CFC interest income that is subpart F income, and related interest expense, as interest income and interest expense of a specified domestic corporation; (ii) prevent omission, inclusion or duplication of any item or amount of interest income or interest expense; and (iii) provide rules that apply to domestic corporations that own (directly or indirectly) an interest in a fiscally transparent entity. Interaction with general limit on net interest expense: This limitation applies in addition to the general limitation on net interest expense under section 163(j), rather than as a safe harbor as proposed in OECD BEPS Action 4. The amount disallowed is the greater of the amounts determined under this provision and section 163(j). International financial reporting group: Defined as a group of entities that includes: (i) at least one foreign corporation engaged in a US trade or business; or (ii) at least one domestic corporation and one foreign corporation, and such group is included in the same applicable financial statement (as defined in section 451). To the extent provided in regulations, an election can be made to treat eligible corporations (i.e., certain 20%-owned entities) as members of the IFRG. Treasury would have authority to include or exclude any corporation as a member of an IFRG. Carryforward: Disallowed interest expense under sections 163(j) or 163(n) can be carried forward indefinitely. Specified domestic corporation: This rule applies to any domestic corporation other than (i) a corporation whose average net interest expense over a three-year period has not exceeded $12 million, (ii) certain small businesses exempt under section 163(j)(3), and (iii) any S corporation, RIC or REIT. For purposes of (i), all domestic corporations that are part of an IFRG are treated as one corporation. Foreign corporations conducting a trade or business in the US will be treated as a domestic corporation with respect to earnings, interest income and interest expense effectively connected with such business. Application of section 163(j) to partnerships and S corporations: In the case of any partnership or S corporation, section 163(j) has been modified to apply at the partner or shareholder level, rather than the partnership level. Effective date: Taxable years beginning after December 31, 2022.
Foreign Intangible Income Deduction	§138121 of the bill and §250 of the Code In general: 50% deduction for GILTI reduced to 28.5%, and 37.5% deduction for FDII reduced to 24.8%, permanently. The benefit of combined GILTI and FDII deductions is limited to taxable income in a given year, but excess can now be carried over as an NOL.

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	Note: As under current law, the effective tax rates on GILTI and FDII are linked – the proposed effective tax rate on GILTI would be 15%, and the proposed effective tax rate on FDII would be 15.8%, creating approximate parity after taking into account the proposed 5% GILTI FTC haircut, described below (15%/95% = 15.8%). <u>Other technical modifications</u>. Provisions similar to technical corrections proposed by former Ways and Means Chairman Brady (would apply prospectively effective for taxable years beginning after date of enactment). • Deduction eligible income excludes (1) any income described in section 904(d)(2)(B)(i) or (ii) (passive income), and (2) except as otherwise provided by the Secretary, any income and gain from the sale or other disposition (including the deemed sale or other deemed disposition) of property giving rise to rents or royalties derived in the active conduct of a trade or business. • Deduction eligible income excludes any amount included in gross income with respect to any transaction if any amount could be excluded from gross income as a result of the benefit for extraterritorial income (under AJCA 2004 transition rules), unless the taxpayer elects out of ETI benefits for the tax year of the election and all succeeding tax years. • Taxable income limitation under section 613A(d) (oil and gas depletion) is calculated without regard to the section 250 deduction. <u>Effective date</u>: Applies generally to taxable years beginning after December 31, 2022. <u>Fiscal years</u>: The percentage deduction for GILTI and FDII would be pro-rated for fiscal years that include December 31, 2022, such that the portion attributable to the post-2022 period would be subject to the decreased percentages set forth above.
Repeal Deferral for Taxable Year of Specified Foreign Corporations	<u>§138122 of the bill and §898(c) of the Code</u> <u>In general</u>: Under current law, a specified foreign corporation must use the same taxable year as its majority US shareholder. However, an election is currently allowed under section 898(c)(2) to use a taxable year beginning one month earlier than the majority US shareholder taxable year. The bill would repeal this election generally effective for taxable years of specified foreign corporations beginning after November 30, 2022, with special transition rules for the first taxable year to which it applies. <u>Transition rule</u>: Treasury would be required to issue guidance for allocating foreign taxes accruing in the short taxable year created by the change between such short taxable year and the prior taxable year, including such adjustments as determined necessary or appropriate to carry out the purposes of this section.

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Foreign Tax Credits – Dual Capacity Taxpayers	§138123 of the bill and new §901(n) of the Code In the case of a dual capacity taxpayer, the proposal would limit the amount of a levy that would qualify as a creditable foreign tax to the amount of tax that the dual capacity taxpayer would have paid to the foreign government if it were a non-dual capacity taxpayer. For this purpose, a dual capacity taxpayer is a taxpayer that is subject to a foreign levy and also receives a specific economic benefit (e.g., a concession for developing the jurisdiction's natural resources) from the levying government (or any political subdivision, agency or instrumentality thereof). This proposal effectively requires taxpayers to use the safe harbor rule included in the current Treasury regulations for determining the portion of the levy that is paid in exchange for a specific economic benefit and makes it the sole method for determining the creditable portion of the levy. Treaty override: Unlike the similar Treasury proposal, the House bill would not expressly protect any treaty obligation that explicitly allows a credit for taxes paid or accrued on such oil or gas income. Effective date: Amounts paid or accrued after December 31, 2021.
Modifications to Foreign Tax Credit Limitation	§138124 of the bill and §904 of the Code Foreign branch basket eliminated. The foreign branch basket would be repealed, leaving only the general, passive, and GILTI baskets (but foreign branch income remains excluded from FDII deduction eligible income). Regulatory authority provided for transition rules related to FTC carryovers from branch basket. Per-country application of FTC limitation to all FTC baskets. Sections 904, 907, and 960 would be applied separately with respect to each country by taking into account the aggregate income attributable or otherwise allocable to a taxable unit of the taxpayer which is a resident of such country. Taxable units include: • General taxable unit – the taxpayer. • CFCs – each CFC with respect to which the taxpayer is a US shareholder. • Interests in pass-throughs – each interest held (directly or indirectly) by the taxpayer or any CFC in a pass-through entity that is resident of a country other than the taxpayer's/CFC's country.

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	• Branches – each branch the activities of which are directly or indirectly carried on by the taxpayer or any CFC which give rise to a taxable presence in a country other than the taxpayer's/CFC's country. Treatment of US possessions. Each possession would be treated as a separate country. Regulatory authority. Secretary shall issue regulations or other guidance providing: (i) application to entities, arrangements, and branches that are otherwise considered a resident of more than one country or no country; (ii) application to hybrid entities or hybrid transactions (per §267A), passthrough entities, PFICs, trusts, and other entities or arrangements not otherwise described; and (iii) assignment of any item (including foreign taxes and deductions) to taxable units including in the case of amounts not otherwise taken into account in determining taxable income. OFL recapture. New definition of "income category" for purposes of section 904(f)(5)(E) – "each category of income with respect to which [section 904] is required to be applied separately by reason of any provision of this title." Since this would include section 904(e) (country-by-country application), the result is that overall foreign loss recapture is applied separately with respect to each country. SLL application with respect to GILTI. • *Allocation of losses*: To the extent of an aggregate SLL in any non-GILTI category, such SLL is allocated to SLI in any other non-GILTI category on a proportionate basis (without regard to GILTI). Only to the extent the aggregate amount of non-GILTI category SLLs exceeds the aggregate amount of non-GILTI category SLIs does an SLL reduce GILTI SLI. • *SLI defined*: SLI means with respect to any income category the amount by which the gross income from non-US sources exceeds the sum of the properly allocated/apportioned deductions. Treatment of tax base differences. Treasury authority to issue guidance assigning foreign taxes imposed on amounts not constituting taxable income under US tax principles to the proper category. FTC carryover. One-year carryback repealed; 10-year carryover retained for general and passive baskets. GILTI FTC carryforwards limited to 5 years for taxable years beginning after December 31, 2022 and before January 1, 2031, after which GILTI FTC carryforwards limited to 10 years. Effective for taxes paid or accrued in taxable years beginning after December 31, 2022. Regulatory authority: To provide for the application of section 904(d), (e) (country-by-country), (f) and (g) (OFLs and ODLs) with respect to pre-effective date attributes, and also with respect to pre-effective date branch basket items.

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	Treatment of section 245A dividends. Section 904(b)(4) repealed, and section 245A added to section 864(e)(3) (tax-exempt assets not taken into account). Expense allocation. For purposes of section 904, no domestic expenses are allocable to GILTI; only the section 250(a)(2)(B) deduction (GILTI and section 78 gross-up) is allocated to GILTI. Other expenses allocated to GILTI if Treasury determines they are directly allocable to GILTI. Expenses that would otherwise have been allocated to GILTI are only allocated to US source income (not other foreign source baskets). Treatment of certain asset acquisitions. Principles of section 338(h)(16) apply to any covered asset disposition for purposes of determining source and character of the income. A covered asset disposition is a transaction treated as a disposition of assets for US tax purposes but as a disposition of stock of a corporation (or is disregarded) for purposes of the relevant foreign country tax laws. Effective for transactions after date of enactment, with relief for any transaction pursuant to a written binding contract in effect on September 13, 2021, which is not modified in any material respect thereafter. Redetermination of foreign taxes and related claims. Amends section 905(c) to add the following circumstances requiring a notification to the Secretary: (i) the taxpayer makes a timely change in its choice to claim foreign taxes as a credit or deduction; or (ii) there is any other change in the amount, or treatment, of taxes, which affects the taxpayer's tax liability. Effective for changes that occur on or after the date which is 60 days after date of enactment. • Also changes the time period to make an election to claim a deduction or credit for foreign taxes to the general period for refunds under section 6511. Effective for taxes paid or accrued in taxable years beginning after December 31, 2021. • Foreign taxes not paid within 2 years of the close of the tax year to which they relate are taken into account in the taxable year to which they relate, except as otherwise provided by Secretary. Effective for taxes paid or accrued in taxable years beginning after December 31, 2021. Effective date. Unless otherwise stated above, generally effective for tax years beginning after December 31, 2022.
Definition of Foreign Oil and Gas Extraction Income (FOGEI) and Foreign Oil Related Income (FORI)	§138125 of the bill and §907(c) of the Code Definition of FOGEI and FORI. The definition of FOGEI and FORI would be amended to include income derived from shale oil and tar sands activity. Effective date: Taxable years beginning after December 31, 2021.

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Global Intangible Low-taxed Income (GILTI)	§138126 of the bill and §951A of the Code. Per-country application of GILTI. US shareholder's GILTI inclusion is determined on a country-by-country basis by aggregating the amounts of GILTI determined separately for each country with respect to which any CFC taxable unit is a tax resident. Components of GILTI determined separately for each country – net CFC tested income, NDTIR, QBAI, interest expense, and other amounts as determined by the Secretary. • CFC taxable unit – cross reference to section 904(e), above (other than the references to the taxpayer). Other rules in section 904(e) apply, except as provided by the Secretary. • GILTI allocation under section 951A(f)(2) applied separately with respect to each CFC taxable unit. Regulatory authority. Effective for taxable years beginning after date of enactment, anti-avoidance authority would be provided, including for: (i) the treatment of property that is transferred or held temporarily; (ii) appropriate basis adjustments to reflect tested losses; (iii) rules similar to the regulations/guidance under section 904(e)(4); (iv) other appropriate basis adjustments; (v) appropriate adjustments, tax attributes, and records to be maintained separately with respect to CFC taxable units; (vi) treatment of property if avoidance of the purposes of section 951A is a factor in the transfer or holding of such property; and (vii) appropriate adjustments in determining the tested income or tested loss if property is transferred between related parties or amounts are paid or accrued between related parties. Carryover of net CFC tested loss. A net CFC tested loss is carried forward indefinitely (on a per-country basis) to reduce future GILTI inclusions. Adjustments made to the allocation of GILTI to CFC taxable units under section 951A(f)(2)(B). Reduction of NDTIR. QBAI reduced from 10% to 5%, except for assets located in US possessions, which remains at 10%. FOGEI included in tested income. Eliminates current law exclusion of foreign oil and gas extraction income from tested income. Coordination with other provisions. Unless otherwise provided by the Secretary, references to sections 951 or 951(a) in sections 959, 961, 962, and other sections the Secretary may identify, include references to sections 951A or 951A(a), respectively. *Note:* This is consistent with a technical correction proposed by former Chairman Brady. Effective date. Generally applies to taxable years of foreign corporations beginning after December 31, 2022, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end.

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GILTI Foreign Tax Credits	<u>§138127 of the bill and §§960(d) and 904 of the Code</u> <u>Reduce FTC haircut</u>. 95% (instead of 80%) of tested foreign income taxes would be creditable (i.e., 20% haircut reduced to 5%). 100% of such taxes paid to US possessions would be creditable (i.e., no haircut). <u>Taxes attributable to tested loss</u>. Tested foreign income taxes include taxes properly attributable to amounts taken into account in determining tested income or tested loss. <u>Taxes paid by foreign parent</u>. Treasury would have authority to allow taxes paid by foreign parent (with ownership of 80% or more) of domestic corporation creditable to the extent (i) properly attributable to CFC tested income or loss, and (ii) not creditable in any foreign jurisdiction. <u>FTC limitation applied to section 78 gross-up</u>. Section 78 gross-up treated as income in the same basket as the related foreign taxes deemed paid. This is consistent with a technical correction proposed by former Chairman Brady. Effective for taxable years beginning after date of enactment, with no inference language for prior years. <u>Taxes attributable to GILTI PTEP distributions</u>. The 5% foreign tax credit disallowance applies to foreign income taxes paid or accrued (or treated as paid or accrued) with respect to GILTI PTEP distributions. This is consistent with a technical correction proposed by former Chairman Brady. Effective for taxable years beginning after date of enactment, with no inference language for prior years. <u>Effective date</u>. Generally, applies to taxable years of foreign corporations beginning after December 31, 2022, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end.
Deduction for Foreign Source Portion of Dividends	<u>§138128 of the bill, §245A, new §951B, §957 and §958(b) of the Code</u> <u>CFC Dividends:</u> The deduction for foreign-source dividends under section 245A would be limited to dividends received from a CFC. <u>Election to be a CFC.</u> All US shareholders of a foreign corporation which is not a CFC may elect, along with the foreign corporation, generally to treat the foreign corporation as a CFC. The election does not apply with respect to any foreign corporation for purposes of any provision of the Code if the Secretary determines that CFC treatment would be inconsistent with the purposes of subchapter A (income taxes). The election is binding until revoked with consent of the Secretary. <u>Downward attribution</u>. Section 958(b)(4) (which had been repealed by TCJA) is restored generally to preclude downward attribution of stock from a foreign person to a U.S. person under section 318(c)(3). However, a new section 951B would allow for such downward attribution to treat a foreign controlled U.S. shareholder (FCUSS) as a US shareholder and a foreign controlled

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	foreign corporation (FCFC) to be treated as a CFC. This is consistent with a technical correction proposed by former Chairman Brady. Regulatory authority. Authority is provided for regulations or other guidance to carry out the purposes of section 245A, including denial of all or a portion of the DRD: (i) with respect to dividends out of earnings and profits arising from non-ordinary course transactions with related parties occurring after January 1, 2018 during a taxable year to which section 951A did not apply; and (ii) where a transfer or issuance of stock on or after January 1, 2018 results in a reduction in the US shareholder's pro rata share of a CFC's subpart F income or tested income. Effective for distributions made after date of enactment, with no inference language for prior periods. Effective date: Generally, applies to distributions made after the date of enactment. The changes to restore former section 958(b)(4) and to enact new section 951B are effective for taxable years of foreign corporations beginning after date of enactment and taxable years of U.S. persons in (with) which such taxable years of foreign corporations end, with no inference language for prior periods.
Limitation on Foreign Base Company Sales and Services Income (FBCSSI); Modifications to Basis Adjustment and Gain Recognition Rules Related to CFCs	§138129 of the bill, §954, §961(c) §951(a), §951A(e), §953(c), and §78 of the Code Foreign base company sales and services income: Modifies the section 954(d) definition of "related person" to not include any person unless such person (i) is a taxable unit which is a US tax resident, or (ii) subject to US income tax because of such person's US activities. Thus, arrangements that would otherwise give rise to FBCSSI, but for the fact that such arrangements do not involve a related US person, are outside the scope of the FBCSSI rules and instead are subject to GILTI. Regulatory authority is provided to treat a pass-through entity or branch as a wholly owned subsidiary of a CFC in certain situations. Effective date. Generally, applies to taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end. Basis adjustments and gain recognition rules related to CFCs. Modifies basis adjustment rules under section 961(c) to apply in determining the basis of stock and certain property and the recognition of gain for all purposes of the Code. The result of the modification is that a distribution of previously taxed earnings and profits (PTEP) from a lower-tier CFC to an upper-tier CFC may trigger gain recognition by reason of section 961(b) and (c) if the amount of the distribution exceeds the upper-tier CFC's basis in the stock of the lower-tier CFC. This modification is consistent with a technical correction proposed by former Chairman Brady

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	and is effective for taxable years of foreign corporations beginning after December 31, 2021, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end. • Adds new section 959(g) directing Treasury to issue guidance to carry out the purposes of section 959, as well as amends section 961(b) to require Treasury to prescribe other reductions to basis as are necessary or appropriate to carry out the purposes of section 961. • Retains language in 961(c) that it applies "only for purposes of determining the amount included under section 951…" Note, however, that new section 951A(f)(1)(C) provides: "Except as otherwise provided by the Secretary, references to section 951 or section 951(a) in sections 959, 961, 962, and such other provisions as the Secretary may identify shall include references to section 951A or section 951A(a), respectively." <u>Other modifications.</u> According to JCT description, the below modifications are "conforming amendments ... included that are integral to the prospective application of the proposal." These modifications are consistent with technical corrections proposed by former Chairman Brady and are effective for taxable years of foreign corporations beginning after December 31, 2021, and taxable years of US shareholders in which or with which such taxable years of foreign corporations end, with no inference language with respect to prior periods. • Allocates section 951(a) items to a US shareholder to the extent such US shareholder received a distribution of current earnings and profits that: (i) would give rise to a deduction under section 245A(a), or (ii) in the case of a dividend paid directly or indirectly to a CFC with respect to stock owned by the shareholder, would not result in subpart F income to the CFC by reason of section 954(b)(4), (c)(3), or (c)(6). Consistent with current law, the provision allocates the remaining section 951(a) items to US shareholders in proportion to their ownership on the last day, in the foreign corporation's taxable year, on which the foreign corporation is a CFC. Related amendments are made to section 951A(e)(1) and section 953(c)(5)(A). • Amends section 78 to clarify that foreign tax credits taken by reason of withholding tax imposed on a distribution of PTEP do not result in an additional section 78 gross up.
Modifications to Base Erosion Anti-Abuse Tax	<u>§138131 of the bill and §59A of the Code</u> The bill would make several modifications to the determination of the base erosion and anti-abuse tax ("BEAT"), including: • *Increased rates*: Tax rate applied to modified taxable income increased to 12.5% for taxable years beginning after December 31, 2022, 15% for taxable years beginning after December 31, 2023, and 18% for taxable years beginning after December 31, 2024. In addition, the increased rate for banks and securities dealers does not apply to taxable years beginning after December 31, 2024. • *Applicable taxpayer*:

Provision	Description of House Bill
	◦ Repeal of exemption for taxpayers with low base erosion percentage: Current law provision exempting taxpayers with a base erosion percentage of less than 3% (2% in case of certain banks and securities dealers) is eliminated, applicable to taxable years beginning on or after January 1, 2024. ◦ 10-year lock-in: If a taxpayer is an applicable taxpayer for any taxable year beginning after December 31, 2021, such taxpayer (and any successor) shall be an applicable taxpayer for each of the 10 succeeding taxable years. • *Definition of banks and securities dealers*: The definition of banks and securities dealers is amended to add certain foreign banks described in section 585(a)(2). • *All credits allowed to offset BEAT*: The base erosion minimum tax amount calculation is modified by striking the provision that required adding back certain credits to the regular tax liability before determining the BEAT. As a result, like the current treatment of the research credit, all general business credits and foreign tax credits are taken into account in determining BEAT liability. • *Modifications to the definition of modified taxable income:* The definition of MTI is modified, most notably by: (i) expanding it to include base erosion basis adjustments with respect to cost of goods sold; and (ii) determining net operating losses without regard to any deduction which is a base erosion tax benefit. ◦ Base erosion basis adjustments with respect to COGS. Determined by treating certain payments with respect to inventory as base erosion payments (new category under section 59A(d)), including both: ▪ *Indirect costs included in inventory under section 263A*. Amounts paid to a foreign related party that are required to be capitalized in inventory under section 263A. ▪ *Certain costs of foreign related parties*. Amounts paid to a foreign related party for inventory which exceed the sum of: (i) direct costs of the property in the hands of the foreign related party; and (ii) so much of the indirect costs (as described in section 263A(2)(B)) of the foreign related party that are demonstrated to satisfaction of Secretary are attributable to amounts (I) paid by the foreign related party to a US person or an unrelated person or (II) otherwise subject to US tax. Rules similar to the rules that apply for purposes of the exception for payments subject to US tax (see below) apply for purposes of determining whether any amount is treated as subject to US tax. • *Direct costs of foreign related parties*. Direct costs of foreign related parties paid to another foreign related party are taken into account only to the extent the taxpayer demonstrates such costs are attributable to amounts paid to an unrelated US person or an unrelated person. • *Safe harbor with respect to indirect costs of foreign related parties*. In lieu of calculating the indirect costs of a foreign related party, a taxpayer may elect to treat as *not* a base erosion payment 20% of the amount paid to the foreign related party for the acquisition of inventory.

Provision	Description of House Bill
	◦ <u>Net operating losses</u>. The net operating losses for which a deduction is permitted under section 172 is taken into account in determining MTI, but is determined without regard to any deduction which is a base erosion tax benefit. • *Expansion, and clarification, of exceptions from base erosion payments:* ◦ <u>Inventory and COGS (see above)</u>. ◦ <u>Payments with respect to depreciable property</u>. Section 59A(d)(2) amended to include payments for depreciable/amortizable property if amounts are required to be capitalized under §263A, including payments in respect of indebtedness or services. ◦ <u>Exception for payments subject to US tax or a sufficient foreign tax.</u> An amount will not be treated as a base erosion payment if ▪ (i) such amount is subject to US income tax (e.g., GILTI), determined using principles similar to those in pre-TCJA section 163(j)(5); or • US tax treated as imposed without regard to any deduction allowed under part VIII of subchapter B (e.g., GILTI deduction and DRDs). • Exception applies to payments if tax is (or was at the time of payment or accrual) imposed. ▪ (ii) the taxpayer can establish that the amount was subject to an effective foreign income tax rate (as defined in section 904(d)(2)(f)) not less than the lesser of (A) 15% or (B) the applicable BEAT tax rate for such taxable year. The effective tax rate may be established using applicable financial statements (as defined in section 451(b)(3)). • To extent provided in regulations, amount paid to a foreign related party shall be treated as paid to another foreign related party if the second foreign related party fails the ETR test, to the extent the amount paid directly or indirectly funds a payment to such second foreign related party. ◦ <u>Clarification of payments for certain services.</u> Clarifies that amounts paid for services are not treated as base erosion payments to the extent that such amount does not exceed the total services cost of such services, provided that such services are eligible for services cost method under section 482 (determined without regard to the requirement that services not contribute significantly to fundamental risks of business success or failure). <u>Effective date</u>: Taxable years beginning after December 31, 2021.

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Credit for Clinical Testing of Orphan Drugs Limited to First Use or Indication	§138141 of the bill and §45C of the Code First use or indication: Human clinical testing expenses may be taken into account for purposes of the orphan drug credit only to the extent related to the "first use or indication" under section 526 of the Federal Food, Drug and Cosmetic Act. Before marketing approval: Human clinical testing expenses are only taken into account for purposes of the credit if they are incurred before the drug has received a marketing approval for any use or indication. Biological product: Testing on drugs that are biological products is treated as clinical testing that may be eligible for the credit. Effective date: Taxable years beginning after December 31, 2021.
Modifications to Treatment of Certain Losses	§138142 of the bill and §§165 and 267 of the Code Worthless partnership interests: Loss from a worthless partnership interest will generally be considered as a loss from the sale or exchange of the partnership interest at the time of the identifiable event establishing worthlessness. Thus, the loss is generally capital in nature (subject to the rules of section 751 relating to unrealized receivables and inventory items). Worthless securities: The timing of a loss from a worthless security is accelerated by treating the loss as occurring from a sale or exchange at the time of the identifiable event establishing worthlessness (rather than the last day of the tax year). The rules relating to worthless securities (section 165(g)) are expanded to include certain securities issued by partnerships. Abandonment is treated as an identifiable event establishing that a security is worthless. Complete liquidation: In case of specified controlled group liquidation, no loss is recognized by any member of the controlled group until all members of the controlled group which received property in connection with the liquidation have transferred all such property to unrelated persons. A specified controlled group liquidation means one or more distributions in complete liquidation of such corporation, any other transfer of property of the corporation if any stock or security of such corporation becomes worthless in connection with such transfer, and any issuance of debt by such corporation to a related person if any stock or security of such corporation becomes worthless in connection with such issuance. Effective date: Generally, losses arising in taxable years beginning after December 31, 2021. In the case of complete liquidations, the proposal applies to liquidations on or after the date of enactment.

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Provision	Description of House Bill
Adjusted Basis Limitation for Divisive Reorganizations	<u>§138143 of the bill and §361 of the Code</u> The proposal amends section 361 nonrecognition rules to provide that a distributing corporation generally recognizes gain in a "divisive" reorganization under sections 368(a)(1)(D) and 355 to the extent that the sum of: (i) the total amount of the distributing corporation's liabilities assumed by the controlled corporation, (ii) the total amount of money and the fair market value of other property transferred to the creditors, and (iii) the FMV of non-qualified preferred stock and the amount of the controlled corporation's debt securities received by the distributing corporation and transferred to its creditors in connection with the reorganization, exceeds the aggregate adjusted basis of the assets transferred by the distributing corporation to the controlled corporation. <u>Effective date</u>: Generally, reorganizations occurring on or after the date of enactment. Transition relief is provided so that the provision does not apply if the exchange was: (i) pursuant to a binding written agreement in effect as of the date of enactment (and at all times thereafter), (ii) described in an IRS ruling request submitted on or prior to such date, or (iii) described in a public announcement or SEC filing on or prior to such date.
Rents from Prison Facilities Not Treated as Qualified Income for Purposes of REIT Income Tests	<u>§138144 of the bill and §856 of the Code</u> Rents from real property for purposes of meeting the 95 percent gross income test in section 856(c)(2) would not include any amount received or accrued, directly or indirectly, with respect to real or personal property primarily used in connection with a correctional, detention, or penal facility. <u>Effective date</u>: Applies to taxable years beginning after December 31, 2021.
Modifications to Exemption for Portfolio Interest	<u>§138145 of the bill and §871 of the Code</u> The portfolio interest exemption generally excepts from withholding tax U.S. source interest received by certain foreign persons. The exemption does not apply to interest received by a 10 percent shareholder, currently defined as any person owning 10 percent or more of the total combined voting power of the corporation issuing the debt. The House bill would add a second category to the definition of a 10 percent shareholder for this purpose to also include any person who owns 10 percent or more of the total value of the stock. <u>Effective date</u>: Applies to obligations issued after date of enactment.

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Payments Equivalent to Publicly-Traded Partnership Income Payments	§138146 of the bill and §871 of the Code In general: Payments made pursuant to a specified notional principal contract that is contingent upon, or determined by reference to, income or gain with respect to an interest in a specified partnership (and any substantially similar payment determined by the Treasury) would be treated as a dividend equivalent for purposes of imposition of withholding tax under section 871(m). Treasury may exclude contracts or transactions that do not have tax avoidance potential. Treasury is given authority to issue regulations: (i) not to apply this rule to any such payment which would be, if earned by a non-resident alien or a foreign corporation, exempt from tax or from non-U.S. sources and not effectively connected with a US trade or business; (ii) to apply this rule to sale-repurchase agreements or securities lending transactions with respect to partnership interests; (iii) to determine the amount of a distribution by a partnership consistent with section 1441(g); and (iv) to require information reporting by specified partnerships. Specified partnership: A specified partnership is a publicly traded partnership as defined in section 7704(b) and not treated as a corporation. Treasury has authority to issue regulations to add other partnerships to the specified partnership definition. Effective date: Applies to payments made after December 31, 2022.
Adjustments to Earnings and Profits of Controlled Foreign Corporations	§138147 of the bill and §312(n) and §952(c)(3) of the Code Current law section 952(c)(3) provides a special rule that, in determining E&P of a CFC for subpart F purposes, the following three types of adjustments to E&P otherwise allowed under section 312(n) are not taken into account: (1) LIFO inventory; (2) installment sales; and (3) the completed contract method of accounting. The location of this rule in section 952(a)(3) (subpart F) can result in E&P for purposes of subpart F that is different than E&P for purposes of paying dividends which may be eligible for the section 245A DRD. The proposal would make the special rule generally applicable for purposes of determining E&P of a CFC by relocating the special rule to section 312(n). Thus, for all purposes, the E&P of a CFC would be determined without regard to the three enumerated adjustments listed above (relating to LIFO, installment sales, and the completed contract method of accounting). Effective date: Applies to taxable years of foreign corporations beginning after the date of enactment, and to taxable years of US shareholders in which or with which such taxable years of foreign corporations end.

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Certain Dividends from Controlled Foreign Corporations to United States Shareholders Treated as Extraordinary Dividends	<u>§138148 of the bill and §1059 of the Code</u> The proposal amends section 1059 to provide that any disqualified CFC dividend received from a CFC by a taxpayer which is a US shareholder of that foreign corporation would be treated as an extraordinary dividend without regard to the period the taxpayer held the stock to which such dividend relates. For purposes of this proposal, a disqualified CFC dividend means any dividend paid by a CFC to a taxpayer that is a US shareholder of that foreign corporation that is attributable to E&P which: (i) were earned during a period that the foreign corporation was not a CFC; or (ii) are attributable to disqualified CFC dividends received from another CFC. If the CFC is not wholly owned by US shareholders at the time E&P is earned, the portion of E&P properly attributable to stock not owned by US shareholders would be treated as earned during a period that the corporation was not a CFC. For this purpose, a domestic partnership (and, to the extent provided by regulations or other guidance, a trust) would not be treated as a US shareholder. In the case of the last taxable year beginning after January 1, 2018, and thereafter, a CFC would not be treated as a CFC for purposes of this provision if it would not be treated as a CFC had the rules relating to constructive ownership under prior section 958(b)(4) not been repealed. The proposal also directs Treasury to prescribe rules coordinating the application of section 1059 with other provisions of the Code, including §1248. <u>Effective date</u>: Dividends paid (or amounts treated as dividends) after the date of enactment.
Limitation on Certain Special Rules for Section 1202 Gains	<u>§138149 of the bill and §1202 of the Code</u> For sales or exchanges of qualified small business stock (QSBS) after September 13, 2021, the 75 percent and 100 percent exclusion on gains from QSBS would not apply to taxpayers earning $400,000 or more, or to a trust or estate. <u>Effective date</u>: Sales and exchanges after September 13, 2021, but the provision does not apply to a sale or exchange made pursuant to a written binding contract in effect on September 13, 2021 and not materially modified thereafter.

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Constructive Sales	§138150 of the bill and §1259 of the Code Section 1259 requires a taxpayer to recognize gain on a constructive sale of an "appreciated financial position" as if the position were actually sold at FMV on the date of the constructive sale. The House bill would add digital assets to the definition of appreciated financial position for purposes of the constructive sale rules. The definition of a constructive sale would also be expanded to include, not only when a taxpayer acquires substantially similar or the same property (with respect to an appreciated short sale, notional principal contract, forward contract, or futures contract), but also when he or she *enters into a contract to acquire* such property. Effective date: The expansion of the definition of appreciated financial position to include digital assets would apply to constructive sales entered into after date of enactment. The expansion of the constructive sale definition would apply to contracts entered into after the date of enactment.
Rules Relating to Common Control	§138151 of the bill and §52 of the Code The proposal would clarify that section 52(a) requires aggregation of all component members of a controlled group of corporations, defined using a more than 50 percent control test, without regard to whether the member is an excluded member (under section 1563(b)(2)), and without regard to sections 1563(a)(4) and (e)(3)(C). Current section 52(b) provides that, as prescribed by the Secretary in regulations, all employees of businesses which are under "common control" are treated as a single employer and aggregated for various purposes under the tax code. Under the House bill, these aggregation rules for common control would be extended to a taxpayer engaged in (i) any activity involving research and experimentation, and (ii) any activity in connection with a trade or business or an activity for the production of income (within the meaning of section 212), because each of these activities would be treated as a "trade or business." Effective date: Applies to taxable years beginning after December 31, 2021.
Wash Sales	§13152 of the bill and §1091 of the Code The section 1091 wash sale rules generally defer recognition of losses for taxpayers that sell, or otherwise dispose, shares of stock or securities at a loss and acquire, or enter into a contract or option to acquire, a substantially similar security.

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	Related party: The House bill would expand the wash sale rules to cover acquisitions by related parties. For purposes of the wash sale proposal, a related party would mean: (1) the taxpayer's spouse; (2) the taxpayer's dependent, or a taxpayer to whom the taxpayer is a dependent; (3) any individual, corporation, partnership, trust, or estate which controls or is controlled by the taxpayer (or a spouse, dependent, or person to whom the taxpayer is a dependent); (4) to the extent provided in regulations, any individual related to the taxpayer as described in section 267(b); (5) any individual retirement plan or HSA of the taxpayer or a related person; (6) any section 529 plan or Coverdell account if the taxpayer or a related person is the designated beneficiary or has the right to make investment decisions; and (7) certain retirement plans if the taxpayer has the right to make a decision with respect to the investment of the account. The relationship is determined at the time of the purchase or exchange of the specified security, except that certain related persons will be deemed related if there was a relationship during the taxable year. Treasury would be authorized to issue regulations or other guidance to prevent the avoidance of the wash sale rules through treating persons as related parties if such persons are formed or availed of to avoid the related party rules. Covered transactions: The House proposal would expand the rule to cover losses sustained from sales, dispositions, or terminations of the specified asset. The proposal would also expand the wash sale rule to cover taxpayers entering into long notional principal contracts in respect of substantially identical specified assets. Specified assets: Current wash sale rules only cover stock or securities. The proposal would expand the rules to cover: (i) foreign currencies; (ii) actively traded commodities and derivatives, notional principal contract, or other evidence of an interest in an actively traded commodity; (iii) certain digital assets; or (iv) except as provided in regulations, contracts or options to acquire or sell, or notional principal contracts in respect of, any specified assets. The House bill would exclude from wash sale consideration any sale or other disposition of a foreign currency or commodity that is either directly related to the business needs of a trade or business of the taxpayer (other than the trade or business of trading those assets) or part of a section 1221(b)(2) hedging transaction. The business needs and hedging exception does not apply to digital assets. Basis adjustment: If the taxpayer or the taxpayer's spouse acquires or enters into substantially identical specified assets during the period which begins 30 days before the disposition with respect to which the loss deduction was disallowed and ends with the close of the taxpayer's first taxable year which begins after such disposition, the basis of the asset shall be increased by the amount of the deduction so disallowed (reduced by any amount of such deduction taken into account under the basis adjustment rule to increase

Provision	Description of House Bill
	the basis of assets previously acquired). These basis adjustment rules do not apply to such acquisitions by related parties other than the taxpayer's spouse. Effective date: Applies to sales and other dispositions after December 31, 2021. No inference: The House bill would make no inference regarding the treatment of related parties under section 1091 with respect to sales, dispositions, and terminations before January 1, 2022.
Research and Experimental Expenditures	§138153 of the bill and §174 of the Code The TCJA previously would have required R&E expenses to be capitalized and amortized over five years for amounts paid or incurred in tax years beginning after December 31, 2021. The House bill would delay implementation of the capitalization rule for four years, so that R&E expenses may continue to be deducted if paid or incurred in a tax year beginning on or before December 31, 2025.
Expansion of Net Investment Income Tax	§138201 of the bill and §1411 of the Code For certain high-income taxpayers, the House bill generally would expand the 3.8 percent net investment income tax (NIIT) to apply to active business income to which the SECA and FICA taxes do not apply (i.e., regardless of whether the taxpayer materially participates or not). Applies to taxable income greater than $400,000 for a single filer, $500,000 for joint filers, and trusts and estates. Income inclusions under subpart F and GILTI, and from PFICs generally would also be subject to the NIIT. Effective Date: This provision applies to taxable years beginning after December 31, 2021.
Limitation on Excess Business Losses	§138202 of the bill and §461(l) of the Code The TCJA added section 461(l) to disallow immediate deduction of certain "excess business losses" of noncorporate taxpayers if the amount of the loss is in excess of $250,000 ($500,000 for a joint return). The disallowed amount is carried forward as a net operating loss (NOL) to the following tax year subject to current limitations on NOL use; thus, in most cases, use of the losses are deferred, rather than denied. Section 461(l) is scheduled to sunset after December 31, 2025.

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	The House bill would make two principal changes to section 461(l). First, it would eliminate the sunset and make the limitation on excess business losses permanent. Second, instead of the current treatment of any excess business loss as an NOL in the following year, an excess loss would be treated as an additional excess business loss under section 461(l), subject to retesting with respect to the threshold. A conforming change would be made to repeal the separate provision applicable to excess farm losses. Effective Date: This provision applies to taxable years beginning after December 31, 2020.
Surtax on High-Income Individuals	§138203 of the bill and §1A of the Code Rate: Imposes a 5 percent surtax on individuals to the extent their modified adjusted gross income exceeds $10 million (married filing jointly or single filer), $5 million (married filing separately), or $200,000 (estate or trust). Imposes an additional 3 percent surtax on individuals to the extent their modified adjusted gross income exceeds $25 million (married filing jointly or single filer), $12.5 million (married filing separately), or $500,000 (estate or trust). Charitable trusts are generally excluded from application of the surtax. Modified Adjusted Gross Income: Defined as adjusted gross income (AGI) reduced by any deduction (not taken into account in determining AGI) allowed for investment interest (as defined in section 163(d)) or business interest (as defined in section 163(j)). For nonresident aliens, only amounts connected with a U.S. business under section 871(b) will be considered for purposes of determining MAGI. Special rules apply to citizens and residents living abroad relating to application of the section 911 exclusion. The surtax is not treated as an income tax for purposes of determining any income tax credits (other than FTCs) or credits under the AMT. Effective date: Effective for taxable years beginning after December 31, 2021.
Contribution Limit for Individual Retirement Plans of High-Income	§138301 of the bill and new §409B of the Code The proposal prevents certain high-income taxpayers ("applicable taxpayers") from making contributions to applicable retirement plan accounts, to the extent the additions exceed the excess of the applicable dollar amount over the aggregate retirement plan balances to the credit of the taxpayer (whether as a participant, owner or beneficiary). Contributions to SEP and SIMPLE plans and

Provision	Description of House Bill
Taxpayers with Large Account Balances	rollover contributions under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16) are not treated as an annual addition. Also, amounts received by death of another individual or divorce or separation are not treated as annual additions. Impacts taxpayers (applicable taxpayers) with more than $10 million in aggregate vested account balances (retirement accounts) and modified adjusted gross income more than $450,000 for married filing jointly, $425,000 head of household, and $400,000 individual. The thresholds are indexed to inflation. The vested account balance is determined at the close of the preceding taxable year. Prohibited annual additions would generally be subject to the section 4973 six percent excise tax, with adjustments. Plan administrators must report to the IRS information relating to retirement accounts with vested account balances of at least $2.5 million, determined at the end of the year. The vested account balance threshold is indexed for inflation. <u>Effective date</u>: Generally effective for taxable years beginning after December 31, 2028. The plan reporting requirements are effective for plan years beginning after December 31, 2028.
Increase in Minimum Required Distributions for High-Income Taxpayers with Large Retirement Account Balances	<u>§138302 of the bill and §4974 of the Code</u> The bill would increase minimum required distributions (MRD) for applicable taxpayers (defined in bill section 138301 above, generally taxpayers with MAGI above $450,000 for married filing jointly) with aggregate retirement account balances exceeding $10 million. The increase in the MRD is generally: (A) the excess of (i) 50 percent of the amount the aggregate account balance exceeds $10 million in the prior taxable year, plus (ii) the lesser of the amount that the aggregate account balance of the taxpayer exceeds $20 million or the aggregate balance in Roth IRA and designated Roth accounts, over (B) the otherwise required MRD. The increases in the MRD are not subject to the 10% early distribution tax. <u>Effective date</u>: Generally effective for taxable years beginning after December 31, 2028.
Tax Treatment of Rollovers to Roth IRAs and Accounts	<u>§138311 of the bill and §408A of the Code</u> The House bill would eliminate Roth IRA conversions and rollovers for married taxpayers earning more than $450,000, heads of household earning more than $425,000, and single taxpayers earning more than $400,000. Further, for all taxpayers, the proposal

Provision	Description of House Bill
	would prohibit conversions from employer-sponsored retirement plans or traditional IRAs if any portion of the conversion is after-tax dollars. Effective date: Effective for distributions, transfers, and contributions by applicable taxpayers in taxable years beginning after December 31, 2031. The employer-sponsored prohibition on after-tax contributions for all taxpayers is effective for distributions, transfers, and contributions made after December 31, 2021.
Statute of Limitations with Respect to IRA Noncompliance	§138312 of the bill and §6501 of the Code Would extend the statute of limitations from three to six years after the date the return was filed with respect to prohibited transactions and for substantial errors (willful or otherwise) in reporting information relating to the valuation of investment assets with respect to an individual retirement plan. Effective date: Effective for taxes to which the current three-year statute of limitations period ends after December 31, 2021.
IRA Owners Treated as Disqualified Persons for Purposes of Prohibited Transactions Rules	§138313 of the bill and §4975 of the Code For purposes of applying the prohibited transaction rules with respect to IRAs, the proposal would modify the definition of a disqualified person to clarify that the IRA owner is always a disqualified person with respect to the IRA. In addition, family members, certain controlled entities and certain business partners of the IRA owner would also be treated as disqualified persons with respect to the IRA. Effective date: Effective for transactions occurring after December 31, 2021.
Funding the Internal Revenue Service	§138401 of the bill Appropriates almost $80 billion to the IRS for the fiscal year ending September 30, 2022, to generally remain available through September 30, 2031, for tax enforcement activities, increasing voluntary compliance, expanding audits and other enforcement activities, and modernizing information technology. The funds may not be used to increase taxes on any taxpayer with less than $400,000 in income. The enforcement funding will, in part, be used to provide digital asset monitoring and compliance activities. The House proposal would require the IRS to deliver a report to Congress within nine months of date of enactment exploring various design mechanisms and costs associated with a free direct e-file tax return system.

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Application of Backup Withholding with Respect to Third Party Network Transactions	<u>§138402 of the bill and §3406 of the Code</u> Would require reportable third-party network transactions under section 6050W to be subject to backup withholding if the aggregate amount of payments exceeds $600 to the payee, or the third party settlement organization was required to file a return in the preceding year with respect to payments to the payee. <u>Effective date</u>: Effective for tax years beginning after December 31, 2021. For payments made in 2022, backup withholding would be required only if the number of such transactions settled by the organization to the payee exceeds 200.
Modification of Procedural Requirements Relating to Assessment of Penalties	<u>§138403 of the bill and §6751 of the Code</u> Would repeal the requirement under section 6751(b) that supervisory approval must be obtained before an IRS employee assesses any penalty. Instead, the bill would require IRS supervisors to submit a quarterly certification to the Commissioner that the penalty notices issued by their employees are in compliance with the statutory requirements. <u>Effective Date:</u> The repeal of supervisory approval is effective as if it was included in the IRS Restructuring and Reform Act of 1998, Pub. L. 105-206. The certification requirement would apply to penalty notices issued after the date of enactment.
Modifications to Limitation on Deduction of Excessive Employee Remuneration	<u>§138501 of the bill and §162 of the Code</u> The proposal would expand the definition of employee remuneration to include performance-based compensation, commissions, post-termination compensation, and beneficiary payments and also specifies that such payments need not be paid directly by the public corporation. The proposal also would add an aggregation rule to treat certain groups as a single employer. <u>Effective Date</u>: Applies to taxable years beginning after December 31, 2021.
Black Lung Disability Trust Fund	<u>§138502 of the bill and §4121 of the Code</u> The House proposal would extend to December 31, 2025, the increases to the section 4121 black lung disability trust fund tax on coal extracted from mines located in the U.S. and sold by the producer. The increased tax rates are $1.10 per ton for coal from an underground mine and $.55 per ton for coal from a surface mine. The increased limitation on the tax would also be extended such that the total amount of tax is not to exceed 4.4% of the price for which the ton of coal was sold. The increased taxes and limitation are currently scheduled to sunset at the end of this year.

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Provision	Description of House Bill
Prohibited Transactions Relating to Holding DISC or FSC in IRAs	§138503 of the bill and §4975 and 408 of the Code The House proposal would provide that investment by an IRA in a DISC or FSC that receives commissions or other payments from an entity owned by the individual for the benefit of an IRA is a prohibited transaction for purposes of section 4975, and such account would cease to be treated as an IRA as of the first day of the relevant taxable year. For purposes of determining ownership, the section 318 constructive ownership rules would apply by substituting 10 percent for 50 percent. Effective date: Would apply to stock and other interests acquired or held on or after December 31, 2021.
Clarification of Treatment of DISC Gains and Distributions of Certain Foreign Shareholders	§138504 of the bill and §996 of the Code The House proposal would clarify that gains from the sale or exchange of, and distributions by, a DISC or FSC to a foreign shareholder are treated as ECI through a permanent establishment *deemed to be had by* the shareholder in the U.S. Effective date: Would apply to gains and distributions after December 31, 2021.
Qualified Sound Recording Productions	§138505 of the bill and §181 and 168 of the Code The House proposal would expand section 181 (which currently allows expensing of qualified films and live theatrical productions) to provide for an election to expense and not charge to a capital account costs of qualified sound recording productions. The annual recording costs that could be expensed would be limited to $150,000. Qualified sound recording production means a sound recording (as defined in section 101 of title 17 of the U.S.C.) produced and recorded in the U.S. Expenses attributable to qualified sound recording productions would also qualify for bonus depreciation under section 168(k). For this purpose, a qualified sound recording production would be treated as placed in service at the time of the initial release or broadcast. Effective date: The proposal would apply to productions commencing in taxable years ending after date of enactment. The section 181 expensing proposal would not apply to qualified sound recording productions commencing after December 31, 2025 (This proposed sunset date is similar to the treatment of qualified films and live theatrical productions).

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Provision	Description of House Bill
Payment to Individuals who Dye Fuel	§138506 of the bill and new §6433 of the Code The bill would provide a new refund mechanism for excise taxes already paid with respect to indelibly-dyed diesel fuel and kerosene that has been removed for nontaxable purposes. Effective date: Applies to eligible indelibly dyed diesel fuel or kerosene removed on or after the date that is 180 days after date of enactment.
Financial Guaranty Insurance Companies as Qualifying Insurance Corporations under PFIC Rules	§138507 of the bill and §1297 of the Code In general: Would clarify the qualifying insurance corporation exception from the passive foreign investment company rules applicable to certain financial guaranty insurance companies by treating their unearned premium reserves as “applicable insurance liabilities” provided they meet certain conditions. Further, the proposal would require certain items to be reported separately and would provide Treasury authority to impose additional reporting requirements. Effective date: Generally effective as though the provision was included in the 2017 Tax Cuts and Jobs Act (P.L. 115-97). Reporting provisions would be effective after date of enactment.
Extension of Period of Limitation for Certain Legally Married Couples	§138508 of the bill In general: Would provide that couples in same-sex marriages who filed separate returns before September 16, 2013 may file amended returns to file as married filing jointly. The first legal same-sex marriages occurred in 2004. The amended return is only allowed for purposes of filing for a return of tax or claims for credit or refund relating to the change in marital status. Effective date: Applies as of the date of enactment. Amended returns would be required to be filed by the extended due date for tax returns for the year that includes date of enactment.

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Provision	Description of House Bill
Allowance of Deduction for Certain Expenses of the Trade or Business of Being an Employee	§138514 of the bill and §62 and §162 of the Code Would provide up to a $250 above-the-line deduction for payments of labor union dues, provided the taxpayer remains a member of the union at year-end. Effective date: Applies to taxable years beginning after December 31, 2021 and before January 1, 2026.
Temporary Increase in Employer-Provided Child Care Credit	§138515 of the bill and §45F of the Code Would temporarily increase the value of the tax credit for employer-provided child care up from 25 percent to 50 percent for qualified child care expenditures. The annual maximum credit limitation would be increased to $500,000 from $150,000 for the applicable years. Effective date: Applies to taxable years beginning after December 31, 2021 and before January 1, 2026.
Payroll Credit for Compensation of Local News Journalists	§138516 of the bill and new §3135 of the Code In general: Would provide a refundable credit against an employer's 1.45 percent hospital insurance tax liability for up to 50 percent of the first four calendar quarters and 30 percent thereafter of $12,500 per quarter for an eligible local news journalist employer's paid wages. Each local news journalist employer may receive credits for up to 1,500 local news journalists. An eligible local news journalist employer is an eligible local news organization or a qualifying broadcast station. Effective date: Applies to taxable years beginning after December 31, 2021 and before January 1, 2026.
Above-the-line Deduction for Employee Uniforms	§138517 of the bill and §62 of the Code Would provide up to a $250 above-the-line deduction for expenses incurred by employees for uniforms or other work clothing required to be worn as a condition of employment and not suitable for everyday wear. Effective date: Applies to taxable years beginning after December 31, 2021 and before January 1, 2025.

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Provision	Description of House Bill
Expenses in Contingency Fee Cases	§138518 of the bill and §162 of the Code Would allow trial attorneys to deduct litigation costs in the year the payment is made if repayment of the cost is contingent upon recovery by settlement or judgment. The deduction would be determined by disregarding the possibility that the amount could be repaid, and any income attributable to the related recovery would be determined without reduction by such amount. Current law defers the deduction until it is determined definitively that there will be no recovery when the litigation concludes. Effective date: Applies to amounts paid, incurred, or received in taxable years beginning after date of enactment.
Increase in Research Credit Against Payroll Tax for Small Business	§138519 of the bill and §41 of the Code A qualified small business with qualifying research expenses currently may elect to apply up to $250,000 of the available research credit against its payroll tax liability. The House bill would increase the amount allowable to be offset against payroll tax liability under section 41(h) by $250,000 to $500,000. Effective date: Applies to taxable years beginning after December 31, 2021.
Tax on Nicotine	§138520 of the bill and §5701 and 5702 of the Code The bill would impose a new excise tax on "taxable nicotine." The proposed tax is the greater of the excise tax on small cigarettes ($50.33 per thousand) or $50.33 per 1,810 milligrams of nicotine. An exception from the new tax is provided for products that have obtained certain types of approvals from the FDA. The excise tax is levied on nicotine manufactured or imported into the United States. "Taxable nicotine" is defined as "nicotine which has been extracted, concentrated, or synthesized." The taxation of tobacco products already meeting the definition of cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco would continue to remain the same as under current law. Effective date: The excise tax would apply to product removed in calendar quarters beginning after 180 days after date of enactment.

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Provision	Description of House Bill
Termination of Employer Credit for Paid Family and Medical Leave	§138521 of the bill and §45S of the Code The section 45S employer credit for paid family and medical leave would sunset two years earlier than under current law, i.e., moving from current expiration for taxable years beginning after December 31, 2025 to taxable years beginning after December 31, 2023.