

**Recommendations for Guidance on Policy
Issues in PL 119-21**

Alliance for Competitive Taxation

September 24, 2025

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I. Introduction

The Alliance for Competitive Taxation (“ACT”) is a coalition of leading American companies from a wide range of industries that supports a globally competitive corporate tax system. A list of ACT member companies is included in Section XI of this submission.

The One Big Beautiful Bill Act (“the Act”), enacted on July 4, 2025, introduced several significant changes to the U.S. tax code, particularly with respect to the U.S. international tax rules. While many of the statutory changes represent important modernizations and rationalizations of the pre-existing statutory framework, some of these changes nevertheless raise interpretive questions regarding their intended scope. Guidance from Treasury is thus necessary to ensure that the rules operate in a manner consistent with Congressional intent and President Trump's goals of encouraging U.S. economic growth and job creation.

This submission makes recommendations to Treasury on some of the key interpretive questions raised by the Act. ACT member companies look forward to working with Treasury and the IRS to ensure that the Act’s intended economic benefits are fully realized.

Thank you for your consideration of these issues. ACT representatives would be happy to discuss any of the items described herein at your convenience.

II. NCTI Expense Allocation (General)

OB3 Provision:

- The Act in §70311(a)(5)(C) amends §904(b) to reduce "net CFC tested income" ("NCTI"), solely for purposes of the §904(a) limitation on the foreign tax credit in the NCTI basket, by only "directly allocable" expenses.

Issues:

- The statute does not define a standard for expenses that are "directly allocable" to NCTI.
- Absent a clear standard, taxpayers and the IRS may take inconsistent positions regarding the allocation of expenses against tested income, leading to uncertainty and controversy.

Recommendations:

- Guidance should define "directly allocable" for NCTI purposes as only the NCTI portion of the section 250 deduction and taxes (e.g., state and local taxes) related to NCTI. Any amounts that would have been apportioned to GILTI/NCTI under prior law but are not directly allocable to NCTI should instead be allocated to U.S. source income.
- In particular, stewardship expenses, which current Treasury regulations describe as "definitely related and allocable to dividends received or amounts included..." under section 951A, should not be treated as "directly allocable" to NCTI.
- In addition, consistent with the statutory text, the statutory changes to §904(b) should apply "solely" for purposes of determining the foreign tax credit (FTC) limitation for the NCTI category. Accordingly, expenses that are allocated to pursuant to this provision should not create or increase a taxpayer's overall domestic loss ("ODL") for purposes of the limitation applicable to other FTC categories.*

* Expenses that would have been apportioned to NCTI should, consistent with the statutory revisions, be apportioned to domestic income. To the extent that this apportionment creates or increases an ODL, however, the ODL should not affect the other section 904(d) categories, because Congress mandated that the revisions are intended to apply "solely" for purposes of determining the taxpayer's FTC limitation in the NCTI category.

III. NCTI Expense Allocation (ODLs and §986(c))

OB3 Provision:

- The Act did not amend the §904(g) overall domestic loss (ODL) rules or the §986(c) currency loss rules applicable to distributions of PTEP. However, for purposes of applying section 904 to the NCTI basket, the Act in §70311(a)(5)(C) provides that deductions should only be allocated and apportioned against NCTI to the extent they are "directly allocable" to NCTI.

Issue:

- Current Treasury regulations generally provide that ODLs are apportioned to (and thus reduce) the separate limitation categories ("baskets"), including NCTI, on a proportionate basis.
- Treasury regulations also provide that §986(c) currency losses will be allocated to NCTI if the prior income inclusion was attributable to NCTI. Congress requires losses to have the same *source* as the associated income inclusion, but §986(c) does not require losses to be in the same foreign tax credit basket as the associated income inclusion.
- Neither ODLs nor §986(c) currency losses are "directly allocable" to NCTI, and current regulations thus fail to reflect Congressional intent as reflected in OB3.

Recommendations:

- Consistent with Congressional intent in limiting the deductions allocable to NCTI for foreign tax credit (FTC) limitation purposes to only "directly allocable" deductions, guidance should provide taxpayers with an election* to permit ODLs to be allocated against NCTI only to the extent that the taxpayer has insufficient income in the other foreign tax credit baskets to "absorb" the ODL. Further, regulations should provide that §986(c) losses are only allocated against NCTI to the extent the taxpayer has insufficient foreign source income in the other baskets to absorb the §986(c) loss.

* Allocating ODLs to NCTI "last" will be beneficial to many taxpayers and aligned with Congressional intent. For taxpayers with excess limit in the NCTI basket and excess credits in other baskets, however, this allocation methodology could be punitive. Accordingly, ACT recommends an elective approach, with appropriate safeguards to prevent abuse.

IV. FDDEI

a. Expense Allocation

OB3 Provision:

- In § 70321, the Act amends §250 to include a new rule that specifically excludes research and experimentation (“R&E”) and interest expense from being allocated against foreign-derived deduction eligible income (“FDDEI”). The statute provides that other “properly allocable expenses” are allocable against deduction eligible income (“DEI”) (and thus against FDDEI).

Issue:

- It is unclear whether stewardship, selling, general, and administrative (“SG&A”), and other expenses not directly allocable to DEI and FDDEI are “properly allocable” to such income or should be treated as non-allocable/residual amounts. Absent clear rules, taxpayers will face uncertainty, potentially producing disparate FDDEI outcomes across similarly situated taxpayers.

Recommendations:

- Guidance should define “properly allocable” for §250 purposes. Such guidance should align with Congressional intent to increase the incentive for taxpayers to own valuable business assets that relate to foreign markets in the United States. Accordingly, the allocation of domestic expenses against FDDEI should be limited.
- Examples of costs that should be considered as not “properly allocable” to DEI should include costs that relate to periods prior to the development or production of the property or performance of the services that results in deduction eligible income, including pension costs, environmental remediation costs, litigation settlements and similar items.

IV. FDDEI

b. “Of a Type” DEI Carve-Out

OB3 Provision:

- The ACT in § 70322 amends §250(b)(3)(A)(i)(VII) to exclude from Deduction Eligible Income (DEI) any income or gain from the sale or other disposition of (1) intangible property (§367(d)(4)) and (2) other property “of a type” that is subject to depreciation, amortization, or depletion by the seller.

Issue:

- A narrow “of a type ... by the seller” reading could deny FDII on inventory where the seller also depreciates any similar assets (e.g., property of a similar type that is leased or used by the taxpayer in its business operations) —creating inconsistent outcomes and market distortions absent prompt guidance.

Recommendations:

- Guidance should clarify that §250(b)(3)(A)(i)(VII)(bb) applies on an asset-by-asset basis where a taxpayer holds inventory for sale to customers but also uses similar property in its trade or business or holds such property for lease. Such guidance could distinguish inventory from other trade or business property based on the taxpayer’s majority use under principles similar to Treas. Reg. § 1.954-2(a)(3).

V. FTC - §960(d)(4) Effective Date — Inclusion vs. Distribution

OB3 Provision:

- The ACT in §70312 adds §960(d)(4), which disallows a credit for foreign income taxes with respect to distributions of previously taxed NCTI. The provision applies to taxes “paid or accrued... with respect to any amount excluded from gross income under §959(a) by reason of an inclusion under §951A(a) after June 28, 2025.”

Issue:

- A Senate Finance Committee report issued after enactment of the Act suggests that the disallowance of a foreign tax credit should apply to distributions occurring after June 28, 2025, without regard to the timing of the §951A inclusion that gives rise to the previously taxed earnings. This reading would sweep in pre–June 28, 2025, GILTI/NCTI PTEP distributed after June 28, creating uncertainty and outcomes at odds with the statutory text.

Recommendations:

- Guidance should confirm that §960(d)(4)’s effective date is inclusion-based (timing determined by when the §951A inclusion occurs), not distribution-based. Accordingly, distributions attributable to pre–June 28, 2025, §951A inclusions should not be within the scope of the new provision. Such guidance could also provide a simple ordering/attribution rule for multi-year PTEP pools, as well as documentation standards applicable to the determination of whether a distribution is within the scope of the provision.

VI. §904(b)(6) "Attributable to" a Foreign Office or Fixed Place of Business

OB3 Provision:

- The Act in §70313 adds §904(b)(6), which generally provides that a portion of a taxpayer's income from the sale of inventory property produced in the United States and sold outside the United States shall be treated as foreign source income if the taxpayer maintains an office or fixed place of business outside the United States to which the income from the sale is attributable. The provision is "capped" at 50% of the taxpayer's income from the sale of inventory produced in the U.S. and sold outside the U.S.

Issue:

- The statutory text provides that the relevant income shall be treated as foreign source income to the extent attributable to a foreign office or fixed place of business, "determined under rules similar to the rules of section 864(c)(5)"; however, it is not entirely clear how to apply the principles of section 864(c)(5) in this context. In addition, while the statute provides that a portion of the income is foreign source, it is silent with respect to the basketing of such income, and existing Treasury regulations are unclear as to the appropriate basketing of such income.

Recommendations:

- Issue regulations confirming: (1) if a foreign office materially participates in the sale of inventory that is produced in the United States and sold outside the United States, all of the taxpayer's income from the sale of that inventory is attributable to the foreign office (consistent with the principles of section 864(c)(5)); (2) the 50% "cap," consistent with the statutory text, is based on *all* of the taxpayer's income from the sale of inventory that is produced in the U.S. and sold outside the U.S. (including inventory that is not sold through a foreign office or fixed place of business); and (3) the income from the sale of inventory that is treated as foreign source under §904(b)(6) is assigned to the foreign branch basket to the extent it is recorded on the books of the foreign office, with any residual being assigned to the general basket.

VII. Section 174/Section 174A

a. "Double Capitalization" Issues

OB3 Provision:

- In §70302, the Act created §174A, which allows a current deduction for domestic research or experimental (R&E) expenditures, while retaining §174 amortization (15 years) for foreign R&E expenditures.

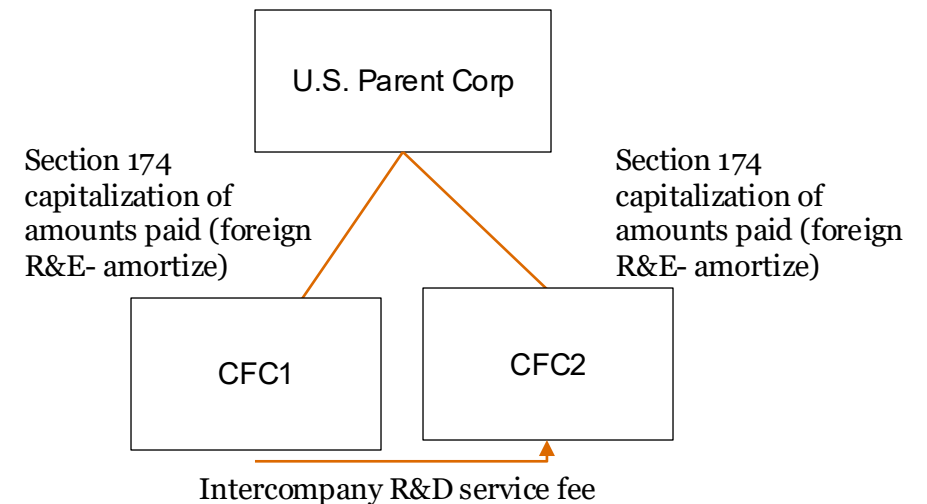
Issues:

- In certain fact patterns (see example), taxpayers within the same controlled group may face the potential for "double capitalization" of foreign-performed R&E activities.

Recommendations:

- Guidance should provide that the same R&E cost is not capitalized by more than one member of a controlled group.
- Guidance should further provide/clarify that the elimination of the double capitalization issue is not intended to change the prior-law treatment of expenses as R&E expenses for other purposes of the Code (e.g., sections 41 and 59(e)).

Example:



If CFC1 owns rights to develop and exploit intangible property in EMEA and pays a non-US R&E lab ("CFC2") to perform R&E, then both CFC1's payment and CFC2's expenses could be subject to capitalization under Section 174.

VII. Section 174A

b. Transition Rule Coordination: CAMT

The OB3 Provision:

- The Act added Section 174A(f)(2), which allows a "catch-up deduction" to accelerate the unamortized amounts of specified research or experimental expenditures ("SRE") capitalized during 2022-2024 tax years.

Issues:

- The Corporate Alternative Minimum Tax ("CAMT") relies on generally accepted accounting principles ("GAAP" or "book") amortization for determining Adjusted Financial Statement Income ("AFSI"), which creates a disconnect between taxable income and AFSI. Taxpayers that claim the "catch-up deduction" in 2025 will have artificially lower taxable income that could result in unintended CAMT liability or diminished tax benefits, especially for R&E-intensive businesses.
- In addition, even for taxpayers who don't claim the catch-up deduction, the amortization of prior research combined with the immediate deductibility of current research for 2025 and later years will also result in a disconnect that increases exposure to the CAMT.
- Without clarification, these discrepancies will undermine the incentive Congress intended to restore for domestic innovation and investment.

Recommendations:

- Treasury should use its broad regulatory authority under the CAMT statute to issue guidance that aligns the CAMT treatment of the catch-up deduction with the tax treatment under Section 174A. Specifically, taxpayers should reduce AFSI by the amount of the catch-up deduction amount claimed by the taxpayer.
- To prevent duplicative deductions, taxpayers should (1) certify that they would not have been subject to CAMT liability in prior years even with the added AFSI from the catch-up amount, or (2) reduce the current year AFSI deduction by the portion already deducted for FSI purposes in a prior year to the extent it reduced CAMT liability in that prior year. This would implement policy intent, ensure tax neutrality, and place taxpayers in the same position they would have been had the deductions been allowed when originally incurred.
- In addition, taxpayers that do not claim the catch-up deduction should be permitted to adjust AFSI for the effects of the remaining amortization for research performed in the 2022-24 period, with similar limitations to prevent taxpayers from claiming duplicative deductions in determining their CAMT liability.

VII. Section 174A

c. Transition Rule Coordination: Section 904

OB3 Provision:

- Section 70302 of the Act added §174A to the code that allows a deduction for any domestic research or experimental expenditures ("DRE") that are paid or incurred by the taxpayer during the taxable year.

Issues:

- The transition to immediate deductibility for DRE in 2025, with catch-up deductions for amounts capitalized in 2022-2024 under §70302(f)(2), creates a one-time spike in deductions. This spike can distort the application of §904 expense allocation and apportionment.

Recommendations:

- Guidance should limit, to the extent possible, the §904 apportionment of research expense to amounts incurred in the current year, excluding the catch-up deductions permitted in §174A(f)(2) as well as any remaining amortization of domestic research expenditures that had previously been capitalized pursuant to §174. This approach, consistent with Congressional intent, will minimize the extent to which taxpayers face distortions in their expense allocation computations as a result of the (now repealed) requirement to capitalize and amortize domestic research expenditures.

VII. Section 174A

d. Transition Rule Coordination: BEAT

OB3 Provision:

The Act added Section 174A(f)(2), which allows a "catch-up deduction" to accelerate the unamortized amounts of specified research or experimental expenditures ("SRE") capitalized during 2022-2024 tax years. The Act did not make a coordinating amendment to §59A ("BEAT").

Issues:

Because BEAT is an alternative minimum tax that compares the taxpayer's tax liability determined under the BEAT with the taxpayer's regular tax liability (with certain adjustments), reductions in the taxpayer's regular tax liability can increase the taxpayer's potential BEAT exposure. To the extent a portion of the §174A(f)(2) catch-up deduction reduces the taxpayer's regular tax liability for BEAT purposes but does not reduce the taxpayer's BEAT computation to the same extent, the taxpayer's exposure to the BEAT will be increased, thereby undermining the Congressionally intended benefit from accelerating R&E cost recovery.

Recommendations:

Guidance should provide that the §174A(f)(2) catch-up deduction is disregarded in computing a taxpayer's potential BEAT liability. Such guidance could provide that taxpayers allocate the catch-up deduction to the years the costs were originally incurred for purposes of BEAT testing.

VII. Section 174A

e. Amortization Commencement and Election

OB3 Provision:

The final OB3 text (new §174A(c)(1)(B)) provides an amortization election for certain domestic research or experimental (SRE) expenditures, with the amortization period beginning in the month the taxpayer first realizes benefits from the expenditures (default 60 months).

Issues:

- The “benefits-realized” start date (amortization begins in the month the taxpayer first realizes benefits) creates administrative complexity for applying the election and is disadvantageous for long-cycle R&D industries where benefits can arise many years after costs are incurred—often longer than the default 60-month period.

Recommendations:

- Guidance should provide that the election is applied in a manner similar to §59(e), permitting taxpayers to elect a fixed amortization period of 5–9 years (analogous to the optional 10-year amortization concept of §59(e)) that is not based on when the taxpayer first realizes benefits from the expenditures.

VIII. Section 898 Year End Changes

OB3 Provision:

- Section 70352 of the Act repealed the "one-month deferral" election allowed under section 898 by aligning the taxable years of specified foreign corporations ("SFCs") with their majority US shareholder. A transition rule provides that a specified foreign corporation's first taxable year beginning after November 30, 2025, shall end with the first required year and directs Treasury to issue guidance to allocate foreign taxes paid or accrued in the first and succeeding taxable years across those years as appropriate.

Issue:

- Until coordinating guidance is issued, taxpayers face timing mismatches in the NCTI basket between income included in the U.S. shareholder's year and the foreign taxes attributable to that income, with potential § 905(c) redeterminations and increased risk of stranded foreign tax credits.

Recommendations:

- Guidance should describe how taxes will be allocated for the 1-month short tax year created by removing the §898 deferral rule. Such guidance should generally provide that foreign income taxes be allocated by days across the combined first short year and the succeeding year. In lieu of a pro rata allocation rule, taxpayers should be permitted to apply an elective "closing-of-the-books" method to allocate foreign income taxes between the §898 transition short year and the succeeding year
- Guidance should also allow a one-time, transition election (to be provided with the taxpayer's originally filed return for the first succeeding tax year), which would permit a taxpayer to allocate up to 50% of the succeeding year taxes to the next following CFC tax year. Such an election would alleviate any potential tax "bunching" which could result in stranded foreign tax credits and double taxation.

IX. Section 168(n) Allocation

OB3 Provision:

- New §168(n) allows immediate expensing for "qualified production property" ("QPP") for construction that begins after 1/19/2025 and before 1/1/2029, and that is placed in service before 1/1/2031.

Issue:

- QPP must be nonresidential real property used in the process of manufacturing, and does not include space used for offices, administrative services, research, sales, etc. The lack of clarity on acceptable methodologies for allocating property and related cost basis between QPP and non-QPP, as well as on how to determine the amount of recapture if a portion of the property is sold, could pose a significant administrative burden and create IRS exam controversy with respect to the incentive intended by Congress.
- Ambiguity exists as to whether a capitalized improvement is an addition to an existing building that is used in a qualified manufacturing activity is eligible for 100% expensing.

Recommendations:

- Allow taxpayer to use any reasonable method for determining the portion and cost basis of real property that qualifies for §168(n). A safe harbor based on easily obtainable information (e.g., square footage) should be considered to ensure the benefits intended by Congress are fully realized.
- Provide guidance that a new addition to an existing building that is used in a qualified manufacturing activity is eligible for 100% expensing.

X. Section 168(k) Bonus Depreciation

OB3 Provision:

- Section 70301(c) in the Act, restores 100% bonus depreciation for property acquired after January 19, 2025.

Issue:

- The January 19, 2025, effective date for the restoration of 100% bonus depreciation creates challenges for taxpayers that acquired qualifying property early in 2025. Taxpayers must track whether assets were placed in service on or before, or after, January 19 to determine whether bonus depreciation applies. This introduces significant complexity, especially for high-volume acquirers or businesses closing multiple transactions throughout the month.

Recommendations:

- Guidance should provide clear standards for applying the January 19, 2025, effective date. In particular, providing a safe harbor election that allows companies to prorate January acquisitions would be a meaningful administrative simplification for both taxpayers and the IRS. In addition, guidance should 1) provide that the rules regarding self-constructed property set forth in Treas. Reg. §1.168(k)-2(b)(5) and related guidance (regarding eligible property “acquired after September 27, 2017” for purposes of 100% bonus depreciation in TCJA) also apply for eligible property “acquired after January 19, 2025” under the Act and 2) confirm that any other historical §168(k) rules that are equally applicable continue to apply under present-day §168(k).

XI. ACT Member Companies

3M
Abbott Laboratories
ADP
American Express Company
Bank of America Corp.
The Boeing Company
Boston Scientific Corp.
Carrier Global Corp.
Caterpillar Inc.
Chevron Corporation
Cisco Systems, Inc.
The Coca-Cola Company
Corteva Inc.
Danaher Corporation
Dell Technologies, Inc.
The Dow Chemical Company

DuPont
Eli Lilly and Company
Emerson Electric Co.
Exxon Mobil Corporation
GE Aerospace
GE Vernova Inc.
General Mills Inc.
Google, Inc.
The Home Depot Inc.
Honeywell International Inc.
IBM Corporation
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kenvue Inc.
Kimberly-Clark

MasterCard Inc.
McCormick & Company, Inc.
Morgan Stanley
Oracle Corporation
Otis Worldwide Corp.
PepsiCo, Inc.
Procter & Gamble Co.
Prudential Financial Inc.
RTX Corporation
S&P Global Inc.
State Street Corporation
Texas Instruments, Inc.
United Parcel Service, Inc.
Verizon Communications Inc.
Walmart Inc.
The Walt Disney Company