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INSIGHTS

Keeping Up the BEAT: Offset Outlook Beyond 2025

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One of the more pronounced quirks of the Tax Cuts and Jobs Act (TCJA) is the law's deliberately staggered schedule. Within five to eight years a broad range of provisions are slated to expire, phase down, or ramp up in ways that are generally bad news for the taxpayer and good for the Treasury Department. Among others, the base erosion and anti-abuse tax (BEAT) is poised to climb from 10% to 12.5% beginning in 2026, while taxpayers lose the ability to offset any portion of BEAT liability with research and development, low-income housing, or renewable energy-related tax credits. This was not imposed as a policy choice so much as a means of structuring the bill so that the revenue arithmetic worked—curtailing costly corporate and individual benefits while dialing up new international levies in the later years. While Congress no doubt would have preferred these provisions remain permanent, GOP leaders found themselves handcuffed by reconciliation instructions laid out in the FY2018 budget resolution, which limited Congressional tax-writers to $1.5 trillion in deficit addition within the 10-year fiscal window.

The idea is simple: introduce as much tax relief as possible on the front end, while putting the onus on future Congresses to extend—in essence, daring them to let it expire. While this gambit provides little in the way of certainty, as a political calculation it would seem to have history on its side. The last time Republicans passed large scale tax cuts via budget reconciliation, employing a similar sunset mechanism, the ensuing "fiscal cliff" was resolved by a Democratic President signing legislation to make the vast majority of the cuts permanent. It would be foolish to speculate what Congress might look like in 2025, let alone what they'll choose to do at that time, but there will clearly be political pressure to preempt many of the more onerous changes scheduled under current law.

The good news for taxpayers who might otherwise find themselves exposed to a beefed up BEAT tax is that there is political strength in numbers. Not only does the BEAT's IP-focused counterpart, the global intangible low-taxed income (GILTI) tax, pack a bigger punch beginning in 2026, both international provisions happen to be synced with the broader expiration of the Act's individual title, which would amount to a $300 billion net tax increase for individuals, families, and unincorporated businesses. If undermining the value of R&D, ITC, and PTC credits would be politically untenable, allowing an across-the-board rate hike would be unthinkable. Whatever the makeup of the 118th Congress, it will have little choice but to act—and for international companies facing the BEAT, that can only be good news.