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The One Big Beautiful Bill: Initial Analysis of Key Provisions for the Real Estate Industry

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On May 22, 2025, the House of Representatives passed H.R. 1, the budget reconciliation bill known as the One Big Beautiful Bill Act (the Tax Bill). The Tax Bill proposes amendments to the Internal Revenue Code (the Code) that could have significant consequences for both individuals and businesses. Below is a summary of the key changes under the Tax Bill that would impact the real estate industry and real estate funds.

The Tax Bill has now moved to the Senate for consideration, where further modifications to the tax provisions discussed below may be made. We will continue to provide updates as the bill advances through the legislative process in Congress.

I. Qualified Business Income Deduction (Code Section 199A)

- Current Law – Code Section 199A allows certain individuals, trusts, and estates to deduct 20% of their qualified business income from pass-through entities, as well as qualified REIT dividends (generally any REIT dividend that is not a capital gain dividend or qualified dividend income, subject to holding periods) and publicly traded partnership income. If a taxpayer's income exceeds a certain threshold, the Code Section 199A deduction is subject to limitations based on W-2 wages and the unadjusted basis of qualified property, while income from specified service trades or businesses is generally disregarded. The Code Section 199A deduction is set to expire after 2025. The 20% deduction results in a federal effective tax rate of as low as 29.6%. This has been a significant benefit to certain real estate investment funds, particularly those that own interests in REITs.

- Tax Bill – The Tax Bill proposes to make the Code Section 199A deduction permanent and increase the deduction percentage from 20% to 23%, thereby resulting in a federal effective tax rate of as low as 28.49%. It also provides for more gradual mechanics for the phase-in of income threshold-based limitations. The Tax Bill expands Code Section 199A to allow a deduction for dividends from an "electing business development company" (*i.e.*, a business development company under the Investment Company Act of 1940 that has elected to be treated as a regulated investment company under Code Section 851 (a RIC)).

- *Troutman Take – The Tax Bill would offer permanent and uninterrupted tax reductions for investors holding real estate assets through pass-through and REIT fund structures. It also preserves the deduction for qualified REIT dividends while expanding the deduction to dividends from business developments companies that have elected to be taxed as RICs. This change would give fund managers and investors greater structuring flexibility by creating more parity between BDC and REIT structures in cases where the underlying asset portfolio could qualify for either, such as a portfolio of mortgage-backed securities.*

II. Deduction for Qualified Production Property

- Current Law – Nonresidential real property is generally depreciated over a 39-year period.

- Tax Bill – The Tax Bill provides an elective deduction for 100% of the cost of “qualified production property” in the year such property is placed in service. Qualified production property generally includes nonresidential real property that is otherwise depreciable and meets the following criteria: (i) it is used by a taxpayer as an integral part of a “qualified production activity” (*i.e.*, the manufacturing, production, or refining of any tangible personal property), (ii) it is placed in service in the United States, (iii) its original use commences with the taxpayer, (iv) construction begins between January 20, 2025, and December 31, 2028, and (v) it is placed in service by December 31, 2032. This deduction is also available to purchasers of qualified production property that begins construction within the specified dates where the property has not previously been used in a qualified production activity. Additionally, a taxpayer can avoid depreciation recapture if the qualified production property is held for at least 10 years.

- *Troutman Take – The acceleration of cost recovery for industrial and manufacturing facilities marks a substantial shift from current law and is intended to encourage domestic manufacturing and production.*

III. Bonus Depreciation

- Current Law – The Tax Cuts and Jobs Act increased the additional first-year depreciation deduction to 100% for certain qualified property placed in service by December 31, 2022, which rate is set to reduce by 20% per year thereafter, and fully phase out in 2027. For qualified property placed in service in 2025, the allowed first-year depreciation deduction is 40%.

- Tax Bill – The Tax Bill would eliminate the current phase-out and restore taxpayers’ ability to immediately expense 100% of the cost of certain qualified property placed in service between January 20, 2025, and December 31, 2029.

- *Troutman Take – Extending bonus depreciation for certain real estate assets that are not otherwise eligible for expensing under the rules for “qualified production property” could provide a significant tax reduction for real estate developers.*

IV. Increased Limitation for Expensing Certain Depreciable Assets

- Current Law – Code Section 179 allows taxpayers to elect to expense the cost of qualifying tangible personal property and certain qualified real property placed in service during the tax year, up to an annual inflation-adjusted? dollar limit ($1.25 million for 2025), with such limit phasing out dollar-for-dollar as the total cost of qualifying property placed in service exceeds an inflation-adjusted threshold ($3.13 million for 2025). This deduction is further limited to the amount of taxable income from the active conduct of a trade or business.

- Tax Bill – The Tax Bill raises the maximum amount a taxpayer can expense under Section 179 to $2.5 million and increases the phaseout threshold to $4 million.

- *Troutman Take – Increasing the limits on this deduction could lead to substantial tax benefits for real estate developers, potentially stimulating increased development activity in the sector.*

V. Excess Business Losses Limitation Extended

- Current Law – The excess business loss limitation under Code Section 461(l) disallows noncorporate taxpayers from claiming "excess businesses losses" — aggregate deductions attributable to trades or businesses over the sum of aggregate gross income or gain from those trades or businesses, plus an annual threshold amount ($313,000 for single filers and $626,000 for joint filers in 2025, adjusted for inflation). Any disallowed excess business loss is treated as a net operating loss carryover to subsequent years, subject to any applicable limitations, and are not taken into account in determining the excess business loss in subsequent years. The excess business loss limitation is set to expire after 2028, meaning that, under current law, such losses would no longer be limited beyond that time.?

- Tax Bill – The Tax Bill would make the excess loss limitation permanent. The Tax Bill also requires excess business losses after December 31, 2024 to be included in a taxpayer's calculation of aggregate deductions attributable to a taxpayer's trade or business in the following year.

- *Troutman Take – The Tax Bill not only extends the excess business loss limitation beyond the anticipated 2028 sunset date but also significantly alters the timeline for investors to utilize losses related to real estate projects, potentially impacting investment decisions.*

VI. New Round of Qualified Opportunity Zones

- Current Law – Qualified opportunity zones (QOZs) are designated low-income census tracts where investments may receive preferential tax treatment if made through a qualified opportunity fund (QOF) that invests at least 90% of its assets in qualified opportunity zone property. Taxpayers can defer eligible capital gains until December 31, 2026 by investing them in a QOF within 180 days of the gain's recognition, with the potential for partial exclusion of the deferred gain if the investment is held for at least five (10% exclusion) or seven years (additional 5% exclusion) (the five and seven year holding periods has to be met prior to December 31, 2026, so this benefit has not been available for several years), and a full exclusion of post-investment appreciation if held for at least 10 years. QOZ designations are set to expire on December 31, 2028.

- Tax Bill – The Tax Bill introduces a new round of QOZ designations that would be in effect for investments made from 2027 through 2033 and provides that the first-round QOZ designations would expire on December 31, 2026 ??(rather than December 31, 2028)?. Gains invested on or after December 31, 2026, would generally be deferred until December 31, 2033, and the Tax Bill retains both (i) 10% exclusion for investments held for at least five years (before the December 31, 2033 date is reached) and (ii) the full exclusion of post-investment appreciation for investments held for at least 10 years, but removes the additional 5% exclusion for investments held for at least seven years. The QOZ program under the Tax Bill places a greater emphasis on rural areas, setting a minimum number of QOZs in each state that must be in rural areas, providing a 30% exclusion (in place of the 5-year 10% exclusion) for investments in QOFs heavily invested in rural areas, and reducing the substantial improvement threshold for existing property in rural QOZ. The Tax Bill proposes to broaden the reach of QOZ tax benefits by permitting ordinary income to be eligible for investment and deferral, capped at $10,000 per year. Both QOFs and ?"qualified opportunity zone businesses" would be subject to enhanced reporting requirements under the Tax Bill.

- *Troutman Take – The extension of the QOZ program is welcome news for real estate funds and investors seeking tax-efficient investment strategies. The extension of QOF investment deferral to include both ordinary income and capital gains broadens the range of potential investors in QOFs. However, the cap on ordinary income proposed by the Tax Bill may significantly diminish this advantage, as QOFs commonly require investments that exceed $10,000. The Tax Bill does not extend the deferral of gain for investments in a QOF before January 1, 2027. Consequently, any gains deferred under this existing QOZ program would be recognized as income on December 31, 2026. The early termination of existing QOZ designations eliminates a potential tax strategy that might have allowed a QOF operating in an existing QOZ (which under currently law would have been in effect until December 31, 2028) to issue deferral-eligible investments after December 31, 2026. Instead, QOFs operating in an existing QOZ could only issue qualifying investments post-December 31, 2026 if such QOZ receives a second-round designation pursuant to the Tax Bill. Moving forward, QOFs and "qualified opportunity zone businesses" should be aware of the enhanced reporting requirements under the Tax Bill plan for any resulting administrative costs.*

VII. Low-Income Housing Credit

- Current Law – The low-income housing credit, under Code Section 42, provides a tax credit to owners of qualified low-income residential rental buildings, calculated as the applicable percentage of the building's qualified basis over a 10-year credit period. Generally, to qualify for the credit, a project must have received a credit allocation from the state. Such allocations are limited by the "state housing credit ceiling," which is based on a state's population and other factors. This state housing credit ceiling was increased by 12.5% in 2018 through 2021. The applicable percentage is prescribed by Treasury such that the present value of the credits claimed over the credit period is equal to at least 70% of the buildings qualified basis, or 30% if the project is financed with certain tax-exempt bonds (referred to as 9% credits and 4% credits, respectively). Currently, if 50% of more of the aggregate basis of the building and land is financed with tax-exempt bonds, the 4% credit is allowable with respect to the entire eligible basis of the project, regardless of whether such project received a state allocation. Finally, areas designated as "difficult development areas" benefit from a 30% increase in the otherwise applicable eligible basis.

- Tax Bill – For 9% credits, the Tax Bill extends the 12.5% increase in the state housing credit ceiling for 2026 through 2029, which would increase the amount of available credits. For 4% credits, the Tax Bill lowers the bond financing threshold, for projects without a state allocation, from 50% to 25% if the bonds are issued between 2026 and 2029. Finally, the Tax Bill expands the definition of "difficult development areas" to include certain Indian areas and rural areas between 2026 and 2029.

- *Troutman Take – By increasing the number of available credits, offering greater flexibility for projects financed with tax-exempt bonds, and providing enhanced credits in new areas, the Tax Bill is poised to stimulate investment in low-income housing projects, making such projects more appealing to developers.*

VIII. Revisions to REIT Asset Test

- Current Law – Under Code Section 856, no more than 20% of the value of the assets of a REIT may consist of securities of one or more taxable REIT subsidiaries.

- Tax Bill – The Tax Bill increases the value of securities of taxable REIT subsidiaries that a REIT can own from 20% to 25%.

- *Troutman Take – This change to the asset test would provide more flexibility to REITs with structures that include taxable REIT subsidiaries with significant value. In particular, the expansion would make it easier for REITs with foreign assets and operations (which are often housed in entities taxed as corporations for U.S. federal income tax purposes) to comply with the REIT rules.*

IX. Increased Taxes, Including Withholding Obligations by Real Estate Funds, on Income Allocated to Foreign Investors From Certain Countries

- Current Law – Foreign taxpayers with income that is effectively connected to a U.S. trade or business (ECI) generally are subject to regular U.S. tax rates on such income (currently 21% for corporations and a maximum of 37% for individuals). Foreign taxpayers with certain passive income that is not effectively connected to a U.S. trade or business ("fixed, determinable, annual or periodical income" or FDAP) are subject to tax at a flat rate of 30%, which rate is often reduced by a treaty between the U.S. and the relevant foreign country. FDAP income tax is collected by withholding. Interest income that qualifies as "portfolio interest" (generally, non-contingent interest received by certain unrelated investors not engaged in a lending business) is not subject to such withholding. Non-trade or business capital gains of foreign taxpayers are generally not subject to U.S. income tax. A foreign taxpayer's gain or loss from the disposition of a U.S. real property interest is treated as effectively connected to a U.S. trade or business, and the payor of such income is generally required to withhold tax from the payment.

  Foreign corporations that engage in a U.S. trade or business through a branch rather than a subsidiary are subject to an additional branch profits tax on their ECI.

- Tax Bill – New Section 899 would impose a retaliatory tax on persons that are residents of or otherwise have sufficient nexus with foreign countries that, in the view of the House of Representatives, unfairly target and impose discriminatory taxes on U.S. taxpayers doing business abroad. Increased tax rates would apply to certain types of income of persons that are residents of or otherwise have sufficient nexus with "discriminatory foreign countries" that impose "unfair foreign taxes." Unfair foreign taxes would include (i) taxes that may be imposed under the undertaxed profits rules (UTPRs) of Pillar Two, (ii) digital services taxes (DSTs), (iii) diverted profits taxes (DPTs), and (iv) any tax, to the extent provided by the Secretary, that is an extraterritorial tax, discriminatory tax, or any other taxes enacted with public or stated purpose that it will be economically borne disproportionately by U.S. persons.[1]

An increased rate of 5% would apply for each year of the unfair tax, up to a 20% maximum increase. The increased taxes would be incremental additional taxes that would apply on top of tax rates that would otherwise apply. For example, if dividends would otherwise be subject to a 30% withholding tax, then Section 899 could increase the rate to as high as 50%. If a tax treaty reduces the rate on dividends to 10%, then Section 899, as proposed, could increase the rate to as high as 30%.

The increased rates would apply to: (1) taxes on dividends, interest, royalties, rent, or other FDAP income (currently subject to 30% withholding, unless reduced by treaty), (2) income that is effectively connected with a U.S. trade or business (ECI) (but for individuals, ECI is limited to gains on the disposition of U.S. real property interests) and (3) FIRPTA withholding (currently 15%) on U.S. real property dispositions, (4) the branch profits tax, and (5) investment income of non-U.S. private foundations.

The Tax Bill would also modify the application of the base erosion and anti-abuse tax, or BEAT to corporations that are primarily owned by tax residents of discriminatory foreign countries.

In addition, the Tax Bill provides that the exemption from tax under Section 892 that applies to certain income of foreign governments (including their sovereign wealth funds) would no longer apply to foreign governments of discriminatory foreign countries.

- *Troutman Take*:
  - *Based on a footnote in the Committee Report, portfolio interest would continue to be exempt from withholding, as would liquidating distributions by corporations, or non-liquidating distributions by corporations with no current or accumulated E&P. As a result, U.S. real estate funds may place an even greater focus on the use of leveraged blockers in tax planning.*
  - *Dividend distributions and capital gain dividends on the sale of U.S. real property by REITs to foreign residents of discriminatory foreign countries would become subject to increased withholding, thus increasing the compliance and withholding burden on REITs.*
  - *U.S. investment funds that allocate ECI to foreign investors and REITs with foreign shareholders should start to consider the potential for increased taxes on their foreign investors, and tax planning strategies to minimize such increased taxes.*
  - *Foreign governments (including sovereign wealth funds) that currently do not have to file income tax returns with respect to dividends received from, or gain on the sale of a U.S. real property holding company because it is not a “controlled commercial entity” will have return filing obligations. Dividend distributions and capital gain dividends on the sale of U.S. real property by REITs to foreign residents of discriminatory foreign countries would become subject to increased withholding, thus increasing the compliance and withholding burden on REITs.*

- *Foreign pension funds that are eligible for the exception form U.S. federal income tax on sales of U.S. real property interests that is available to certain "qualified foreign pension funds (QFPFs) and certain of their wholly owned subsidiaries may start to place a greater reliance on this and other exceptions to U.S. income taxation.*

- *It is possible that one or more countries that have an "unfair foreign tax" may terminate such unfair foreign tax and stop being a "discriminatory foreign country," thereby preventing the increased tax rate from applying to the U.S. income of their residents. U.S. investment funds with investors from discriminatory foreign countries should closely monitor how such countries deal with their unfair taxes.*

- *Increased focus may develop on creating investment structures that allow foreign investors to not be considered as having nexus with discriminatory foreign country.*

For the implications of Section 899 to lending in the U.S. by foreign lenders, please see our advisory: "The Big Beautiful Bill and the Effects on Bank Lending Into the US."

For an initial analysis of key provision for investment funds and sponsors, please see our advisory: "The One Big Beautiful Bill: Initial Analysis of Key Provisions for Investment Funds and Sponsors."

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[1] Currently, countries with one or more of a UTPR, DST or DPR include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Colombia, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Kenya, Luxembourg, Nepal, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Rwanda, Slovenia, South Korea, Spain, Sweden, Thailand, Turkey, and UK.

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