

KBF CLIENT ALERT

OBBBA § 163(J) CHANGES

GILTI & Subpart F Removed from ATI —
Critical Impact on CFC Group Elections

The One Big Beautiful Bill Act makes sweeping changes to the Section 163(j) business interest expense limitation. This alert explains what changed, who is affected, and what action is required now.

THE BIG PICTURE

What Happened

The One Big Beautiful Bill Act, P.L. 119-21, enacted **July 4, 2025**, makes major changes to the Section 163(j) business interest expense limitation.

Key Adverse Change

Subpart F, net CFC tested income (formerly GILTI), and section 78 gross-up inclusions are now **excluded** from a U.S. shareholder's adjusted taxable income — effective for tax years beginning after **December 31, 2025**.

Who Is Affected

U.S. shareholders that have already made a CFC group election and early adopted the 2020 Proposed Regulations — the ATI roll-up benefit they previously enjoyed is now gone. Also U.S. shareholders currently *considering* a CFC group election — a key historical benefit is no longer available.

Planning Implication

For those with a CFC group election already in place, this change may require an **immediate review** of where the worldwide group's leverage resides — both third-party debt and intercompany arrangements — to minimize the negative impact.



The ATI roll-up benefit was never available to U.S. shareholders generally — only to those who made a CFC group election and early adopted the 2020 Proposed Regulations.

BACKGROUND: HOW SECTION 163(J) WORKS

The Three-Part Deduction Cap

Section 163(j) limits deductible business interest expense to the sum of:

**Business Interest
Income**

**30% of Adjusted
Taxable Income**

Floor Plan Financing Interest

Disallowed interest carries forward under Section 163(j)(2). Adjusted taxable income starts with taxable income adjusted per Section 163(j)(8)(A).

EBITDA vs. EBIT: A Critical Shift

The Tax Cuts and Jobs Act used **EBITDA** through 2021, then narrowed to **EBIT** beginning in 2022 — significantly reducing deductible interest for capital-intensive industries.

The One Big Beautiful Bill Act **permanently restores EBITDA** beginning in 2025.

⚠ Planning note: The EBITDA restoration and the ATI exclusion of foreign inclusions work in *opposite directions* — both must be modeled together to understand the net impact for a specific taxpayer.

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THE PRE-OBBBA DEFAULT RULE & THE CFC GROUP ELECTION EXCEPTION

The Default Rule (Pre-OBBBA)

Under Treasury Regulation Section 1.163(j)-1(b)(1)(ii)(G), a U.S. shareholder's adjusted taxable income was computed **without regard to** subpart F, section 951A, and section 78 inclusions, net of the section 250 deduction.

Treasury's rationale: Avoid double-counting CFC income already taken into account at the CFC level.

Result: For most U.S. shareholders, subpart F and net CFC tested income inclusions did **NOT** increase adjusted taxable income.

The CFC Group Election Exception

Under Proposed Treas. Reg. § 1.163(j)-7(j) (REG-107911-18, 85 Fed. Reg. 56,846, Sept. 14, 2020), U.S. shareholders that made a CFC group election and early adopted the 2020 Proposed Regulations could **roll up** a portion of subpart F and net CFC tested income inclusions into their own ATI.

The roll-up amount equaled the CFC group's excess taxable income multiplied by the proportion of the group's taxable income included in the U.S. shareholder's income. The section 78 gross-up was **NOT** included in the roll-up.

 For highly leveraged multinationals, this ATI boost was often the **primary reason** to make the CFC group election.

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WHAT THE OBBBA CHANGED: NEW § 163(J)(8)(A)(VI)

Effective: Tax Years Beginning After December 31, 2025

Section 70342 of the One Big Beautiful Bill Act amended Section 163(j)(8) by adding clause (vi), which **codifies and expands** the exclusion of foreign income inclusions from adjusted taxable income.

§ 951(a) Inclusions

Subpart F income and section 956 inclusions excluded from ATI

§ 951A(a) Inclusions

Net CFC tested income (formerly GILTI) excluded from ATI

§ 78 Gross-Up

Gross-up amounts excluded from ATI

Related Deductions

40% net CFC tested income deduction (§ 250) and § 245A DRDs from § 964(e)(4) CFC stock sales also excluded

Symmetric Exclusion

Both income inclusions **and** offsetting deductions are removed from adjusted taxable income. The ATI base is reduced to the extent of net foreign income inclusions.

Now Statutory — Not Regulatory

Previously a regulatory rule subject to challenge or reversal — now **codified in the statute**. Only Congress can undo it. That permanence makes immediate action essential.

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IMPACT, PLANNING & RECOMMENDED ACTIONS

Before vs. After OBBBA: CFC Group Election

Feature	Pre-OBBBA	Post-OBBBA
Subpart F in U.S. shareholder ATI	Yes (roll-up)	No
Net CFC tested income in ATI	Yes (roll-up)	No
CFC-level interest netting	Yes	Yes (retained)
ATI boost from foreign earnings	Yes	Eliminated

Revisiting Worldwide Leverage

→ Where is third-party debt held?

If most borrowing is at the U.S. parent level, the effective cost has increased — foreign income no longer supports deductibility.

→ Push debt down to CFCs?

CFC-level interest directly offsets local income, reducing subpart F or net CFC tested income inclusions — a more direct path to efficiency.

→ Offshore borrowing & on-lending

Both options require careful transfer pricing analysis, foreign interest limitation rules, and withholding tax modeling.

Recommended Actions

01

Quantify the ATI Impact

Model the reduction from excluding subpart F, net CFC tested income, and § 78 gross-up for tax years beginning after December 31, 2025.

02

Address the CFC Group Election

Existing electors: ATI roll-up is gone — assess impact and review worldwide leverage immediately. Prospective electors: weigh CFC-level netting against compliance burden and 60-month binding period.

03

Review Worldwide Debt Placement

Assess whether third-party and intercompany debt at the U.S. parent level would produce better outcomes repositioned at the CFC level.

04

Model EBITDA Restoration & ATI Exclusion Together

Net effect depends on each company's specific facts — do not assume positive or negative without modeling.

05

Monitor Legislative Developments & State Conformity

Bills introduced to reverse the ATI exclusion; prospects uncertain. Rolling conformity states adopt OBBBA automatically; static conformity states may not.

☐ **KBF is available** to assist with modeling, election analysis, and capital structure and leverage planning under the new rules.

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