Executive summary

On 22 December 2017, United States (US) President Trump signed into law the Tax Cuts and Jobs Act (the Act) following passage in the House and Senate earlier that week. The Act reflects compromises in a host of areas but aims to foster domestic energy development and production by encouraging the energy sector (which is very capital intensive) to invest significantly in the United States.

Although the Act contains many provisions that have broad applicability to energy sector companies, it is intentionally silent on the disposition of many energy-related tax incentives. Following up on commitments that were made during the tax reform debate, on 20 December 2017, Chairman Orrin Hatch introduced a bill to extend and amend a number of energy and other tax provisions. The objective would be to attach this package to must-pass legislation either in December or January.

Energy companies ought to carefully analyze the provisions of the Act and evaluate the potential effects on current operations, short- and long-range planning, and financial statement and accounting. This Alert discusses the provisions from an energy sector perspective.
Detailed discussion

General business provisions that may affect energy companies

While the effect of the provisions in the Act ought to be analyzed on a company-by-company basis, as well as a sector-by-sector basis, many provisions of the Act have general applicability to many energy sector companies.

Corporate

21% corporate tax rate – The 21% corporate tax rate is effective 1 January 2018. The Act provides that excess deferred tax reserves require normalization on allowances taken for assets placed in service before the date of enactment.

Repeal corporate alternative minimum tax (AMT) – The corporate AMT is repealed under the Act, and taxpayers with an AMT credit can use the credit to offset regular tax liability. Taxpayers are able to claim a refund of 50% (100% for years beginning in 2021) of the remaining credits (to the extent the credits exceed regular tax for the year) in tax years beginning before 2022. The provision applies to tax years beginning after 2017.

Dividends received deduction – The amount of deduction allowable against the dividends received from a domestic corporation is reduced. Specifically, the deduction for dividends received from other than certain small businesses or those treated as “qualifying dividends” is reduced from 70% to 50%. Dividends received from 20%-owned corporations are reduced from 80% to 65%.

Expensing – Bonus depreciation increases from 50% to 100% for “qualified property” placed in service after 27 September 2017 (the date the Unified Framework was released), and before 2023. Under the Act, the original use of the property does not need to commence with the taxpayer. The increased expensing phases down, starting in 2023, by 20% for each of the five following years. Qualified property is defined to exclude – as with the Section 163(j) interest limitation – certain public utility property and floor plan financing property. A transition rule allows for an election to apply 50% expensing for the first tax year ending after 27 September 2017. The Act increases the depreciation limitations for listed property and removes computer or peripheral equipment from the definition of listed property. The changes are effective for property placed in service after 31 December 2017, in tax years ending after that date. Section 179 expensing increases to US$1 million for “qualified property” (i.e., tangible personal property used in a trade or business) placed in service in tax years beginning after 2017, with a phase-out beginning at $2.5 million. Additionally, the term “qualified property” is expanded to include certain depreciable personal property used to furnish lodging, and improvements to nonresidential real property (such as roofs, heating and property protection systems).

Interest limitations – The Act limits the deduction for net interest expense of all businesses by amending Section 163(j). Unlike the House and Senate bills, however, the Act drops the additional interest expense limitation that would have been imposed through a worldwide debt cap under what would have been Section 163(n). The revised Section 163(j) limitation is on net interest expense that exceeds 30% of adjusted taxable income (ATI). For the first four years, ATI is computed without regard to depreciation, amortization, or depletion. Thereafter (beginning in 2022), ATI is decreased by those items, thus making the computation 30% of net interest expense exceeding EBIT (earnings before interest and taxes). ATI is otherwise defined similar to current Section 163(j).

Net operating losses (NOLs) – For losses arising in tax years beginning after 2017, the NOL deduction is limited to 80% of taxable income. Further, the carryback provisions are repealed, except in certain limited situations. Additionally, for many taxpayers, an indefinite carryforward is allowed.

Like-kind exchanges – The nonrecognition of gain in the case of like-kind exchanges is limited to those involving real property only. Current law still applies for like-kind exchanges if the property disposed of by the taxpayer in the exchange is disposed of on or before 31 December 2017, or the property received by the taxpayer in the exchange is received on or before 31 December 2017. Otherwise, the limitation is effective for exchanges completed after 2017.

Contributions to capital – Section 118 is retained and continues to apply only to corporations. Thus, contributions to capital are excluded from the corporation’s gross income but new rules clarify that such contributions do not
include any contribution in aid of construction, any other contribution made by non-shareholders (such as a customer or potential customer), and any contribution made by any governmental entity or civic group. The clarification generally applies to contributions made after the date of enactment.

Repeal Section 199 – The domestic production deduction relating to deductions for qualifying receipts derived from certain activities performed in the United States is repealed for tax years after 2017.

Pass-throughs

Pass-through income: special 20% deduction – Under the Act, individuals generally receive a 20% deduction on certain pass-through income. Special limitations apply to “specified service businesses” based on the income of their owners. As a general rule, an individual taxpayer is able to deduct 20% of domestic “qualified business income” (QBI) from a partnership, S corporation, or sole proprietorship (qualified businesses), subject to certain limitations and thresholds. At the top tax rate of 37%, provided in the Act, if a taxpayer’s sole income source is domestic QBI and the application of the deduction is not limited, then the effective tax rate on the domestic QBI is 29.6%. The deduction is not allowed against adjusted gross income, but rather a deduction to reduce taxable income. Trusts and estates are eligible for the deduction. Generally, the provisions are effective for tax years beginning after 31 December 2017, and before 1 January 2026.

Repeal of partnership technical terminations – Under Section 708(b)(1)(B) of current law, a sale or exchange of 50% or more of interests in partnership capital and profits within a 12-month period causes a “technical termination” of the partnership. The Act repeals Section 708(b)(1)(B) for partnership tax years beginning after 31 December 2017.

Sale of partnership interests by foreign partners – In Grecian Magnesite (Grecian Magnesite Mining, Industrial & Shipping Co., SA vs. Comm’r, 149 T.C. No. 3 (Jul. 13, 2017)), the Tax Court declined to follow Revenue Ruling 91-32 (1991-1 C.B. 107), holding that the gain recognized by a foreign person on its redemption from a partnership engaged in a US trade or business did not result in effectively connected income (ECI). The Act reverses this decision, reestablishing, by statute, a provision similar to the Revenue Ruling 91-32 holding to treat gain or loss from the sale of a partnership interest by a foreign partner as ECI that is taxable in the United States if the gain or loss from the sale of the underlying assets held by the partnership would be treated as ECI. In addition, the Act requires the purchaser of a partnership interest from a partner to withhold 10% of the amount realized on the sale or exchange of the partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or a foreign corporation (similar to the operation of the Foreign Investment in Real Property Tax Act (FIRPTA) rules applicable to sales of US real estate by foreign owners). The provision regarding the treatment of gain or loss from the sale of a partnership interest by a foreign partner as ECI is effective for sales or exchanges occurring on or after 27 November 2017, while the required withholding on sales of partnership interests applies to sales or exchanges occurring after 31 December 2017.

Carried interest – For certain partnership interests held in connection with the performance of certain services, the Act imposes a three-year holding period to treat capital gain as long-term capital gain. The provision is effective for tax years beginning after 31 December 2017.

International

100% exemption for foreign-source dividends – Effective (generally) for distributions made after 31 December 2017, the Act exempts 100% of the foreign-source portion of dividends received by a US corporation from a foreign corporation (other than a passive foreign investment company (PFIC) that is not also a controlled foreign corporation (CFC)) in which the US corporation owns at least a 10% stake.

Mandatory toll charge on tax-deferred foreign earnings – The Act provides a one-time transition tax on a US 10%-shareholder’s pro rata share of the foreign corporation’s post-1986 tax-deferred earnings, at the rate of either 15.5% (for accumulated earnings held in cash, cash equivalents or certain other short-term assets) or 8% (for accumulated earnings invested in illiquid assets (e.g., property, plant and equipment)). A foreign corporation’s post-1986 tax-deferred earnings is the greater of the earnings as of 2 November 2017 or 31 December 2017. The portion of post-1986 earnings and profits subject to the transition tax does not include earnings and profits that were accumulated by a foreign company before attaining its status as a specified foreign corporation. The Act allows post-1986 accumulated earnings deficits of any foreign corporations to offset tax-deferred earnings of other foreign corporations. Additionally, the Act allows the netting to generally be done among all affiliated group members. The US shareholder may elect to pay the transition tax over eight years or less.
**Overall domestic loss** – The Act provides an election to increase the percentage (but not greater than 100%) of domestic taxable income that may be offset by any pre-2018 unused overall domestic loss and recharacterized as foreign source.

**Anti-base erosion rules for intangible income** – The Act imposes a tax on a US shareholder’s aggregate net CFC income that is treated as global intangible low-taxed income (GILTI). GILTI is gross income in excess of extraordinary returns from tangible depreciable assets excluding ECI, subpart F income, high-taxed income, dividends from related parties, and foreign oil and gas extraction income. The extraordinary return base equals 10% of the CFCs’ aggregate adjusted basis in depreciable tangible property. Only 80% of the foreign taxes paid on the income is allowed as a foreign tax credit. All CFCs are aggregated for purposes of the computation. For tax years beginning after 31 December 2017, and before 1 January 2026, the highest effective tax rate on GILTI is 10.5%. For tax years beginning after 31 December 2025, the effective tax rate on GILTI is 13.125%. The Act maintains the tax incentive in the Senate bill for US companies to earn intangible income from US intangibles abroad. Income from foreign derived intangible income (FDII) for tax years beginning after 31 December 2017 and before 1 January 2026, is provided an effective tax rate of 13.125%. For tax years beginning after 31 December 2025, the effective tax rate on FDII is 16.406%. Eligible income does not include, among other items, financial services income under Section 904(d)(2)(D).

**Transfers of intangible property to the United States** – A Senate bill provision would have allowed US companies to repatriate their intangible property tax-free over three years. The Act did not adopt this provision.

**Subpart F modifications** – The Act makes the following modifications: (a) repeal of foreign base company oil related income (FBCORI) as subpart F income; and (b) repeal of the inclusion based on withdrawal of previously excluded subpart F income from a qualified investment in foreign base company shipping operations.

**Definition of US shareholder** – The definition of a US shareholder was changed to include any US person who owns 10% or more of the total value (as well as vote) of shares of all classes of stock of a foreign corporation.

**Modification of stock attribution rules for CFC status** – The Act changes the stock attribution rules. Under this provision, US corporations are deemed to own the foreign stock that is owned by the US corporation's foreign parent for purposes of determining CFC status. The Act clarifies that the provision is intended to target transactions that avoid subpart F by “de-controlling” a foreign subsidiary so that it is no longer a CFC.

**Repeal of 30-day CFC rules** – Under the Act, foreign corporations are considered CFCs as soon as the ownership requirements are met and subject to the subpart F and base erosion rules.

**CFC look-through rules** – The look-through rule for related CFC dividend, interest and royalties was not made permanent. Thus, the rules expire after 2019.

**Maintains Section 956 investment in US property rules** – Both the House bill and the Senate bill would have repealed or modified current law Section 956. The Act adopted neither change.

**Foreign tax credit changes** – Under the Act, indirect foreign tax credits are only available for subpart F income. No credits are allowed for dividends associated with exempt dividends. Foreign tax credits are used on a current year basis and are not allowed to be carried forward or back.

**Separate branch FTC basket** – The Act establishes a separate foreign tax credit basket for branches. This minimizes a corporation’s ability to cross-credit between branches and CFCs.

**Worldwide interest allocation** – The Senate bill would have accelerated the effective date of the worldwide interest allocation rules to tax years beginning after 31 December 2017. The Act did not adopt this provision.

**Export sales source rule** – The Act amends the source of income rules from sales of inventory determined solely on basis of production activities.

**Inbound base erosion rule** – The Act contains a base erosion anti-abuse tax (BEAT) provision. The BEAT applies to corporations (other than RICs, REITs, or S corporations) that are subject to US net income tax with average annual gross receipts of at least $500 million and that have made related-party deductible payments totaling 3% (2% for banks and certain security dealers) or more of the corporation’s total deductions for the year. A corporation subject to the tax generally determines the amount of tax owed under the provision (if any) by adding back to its adjusted taxable income for the year, all deductible payments made to a foreign affiliate (base erosion payments) for the year (the modified taxable income). Base erosion payments do not include cost of goods sold, certain amounts paid for services and certain
qualified derivative payments. The amount owed is the excess of 10% (5% for one tax year for base erosion payments paid or accrued in tax years beginning after 31 December 2017) of the corporation's modified taxable income over its regular tax liability for the year (net of an adjusted amount of tax credits allowed). For tax years beginning after 31 December 2025, the rate increases from 10% to 12.5%. The rate for certain banks and security dealers is one percentage point higher than the rates previously described. Premiums related to reinsurance of life and property and casualty contracts are specifically included as base erosion payments. The exception for costs of goods sold does not apply to base erosion payments made to a surrogate foreign corporation that first became a surrogate foreign corporation after 9 November 2017. The Act includes a modification to the Senate provision that mostly eliminates the penalty in the BEAT calculation for companies that take advantage of certain business tax credits, including the low income housing tax credit and certain renewable electricity production tax credits.

Energy sector specific implications

Mining and metals

For mining and metals companies operating in corporate form, the Act is generally a welcome result with key provisions operating similar to the original House bill. Combined with the more industry-favorable general regulatory environment, we expect the Act to provide many investors with a renewed interest in investing within the mining and metals sector. Provisions such as the reduction in corporate tax rates and expanded expensing of capital expenditures significantly benefit the mining and metals sector, as they would all companies. Conversely, the new limitations on the deductibility of interest expense increase the after-tax cost of borrowing for what is a very capital-intensive sector. The following are a few specific provisions that impact the mining and metals sector:

Percentage depletion — The single largest tax incentive related to the mining and metals sector is the percentage depletion deduction. Percentage depletion enables a miner to claim depletion deductions equal to the lesser of 50% of net mining income or a fixed statutory percentage of gross income, which varies with the mineral being mined. The retention of this incentive is very favorable to the mining and metals sector, and combined with the repeal of corporate AMT, should result in effective tax rates significantly less than the statutory rate for mines operated by corporations. As many mining and metals companies factor in the effect of percentage depletion to both short- and long-range planning, the retention of percentage depletion ought to be a welcome development.

Repeal of the corporate AMT — Under current law, the majority of percentage depletion deductions are added back for purposes of determining the corporate AMT, which significantly reduces the cash tax benefit of these amounts. Under the Act, with the repeal of the corporate AMT effective for years beginning after 2017, corporate miners are able to currently benefit from percentage depletion deductions in a much more meaningful way than they have been historically able to do. Interestingly, however, the individual AMT system is retained under the Act, so individuals who own interests in mines through a partnership or S corporation still need to adjust for percentage depletion, potentially subjecting them to AMT at the individual level. This distinction between mines taxed at the corporate level and mines that flow through their income to an individual is significant and will certainly create an interest in re-evaluating the benefits of flow-through versus corporate ownership.

Refund of historic AMT credits — AMT tax paid in prior years resulted in an AMT tax credit that could be used to offset the excess of regular tax liability over AMT in a future period. Given the persistent addback of percentage depletion deductions, many mining companies were unable to use these credits in a future period and have accumulated large balances of AMT credits as a result. In a very welcome move for the sector, the Act commits to monetizing these AMT credits, effectively providing for prior-period percentage depletion deductions that resulted in AMT in a prior period.

Oil and gas

Similar to the mining and metals sector, oil and gas companies, on balance, may react somewhat favorably to the business provisions in the Act. Perhaps most importantly for the oil and gas sector, several of its highest priorities - maintaining the deductibility of intangible drilling costs, its eligibility to take percentage depletion, the ability to recover certain geological and geophysical costs, and the designation of certain natural resource-related activities as generating qualifying income under the publicly traded partnership rules (PTP) - were not addressed in the Act. Other provisions that may affect the oil and gas sector are as follows:

Tax rates — Under the Act, the 21% tax rate generally applies to corporate oil and gas companies, with an effective date of 1 January 2018. For companies that are on a fiscal (as opposed to a calendar) year, detailed provisions are provided that effectively result in the corporation having a blended rate for the fiscal tax year that includes 1 January 2018. Separately, as many individuals invest in US oil and gas assets through partnerships, the availability (and effect) of the 20%
deduction (subject to certain limitations) for certain flow-through income ought to be carefully analyzed and modeled. Further, for individual investors in PTPs, it is noteworthy that the Act retains a limited wage limitation exemption—which ought to result in PTP individual unitholders being able to receive the 20% deduction (off individual rates), without the application of the wage limitation.

Expensing – As the oil and gas sector is also very capital-intensive, and often takes many years to recoup necessary investments, expanding the 100% expensing provisions ought to have a large effect on the deployment of capital and development of new projects. The Act includes a five-year period for 100% expensing (for many assets), followed by a five-year phase down of those provisions (as described earlier). Importantly for oil and gas companies, the Act modifies and relaxes the “original use” rules, which ought to make 100% expensing available to a wider base of assets. The oil and gas sector has a history of reinvestment and developing large-scale operations that can provide both economic growth and employment, and the 100% expensing provisions appear to further that purpose.

Repeal of corporate AMT – Given the nature of drilling programs and capital spending in the sector, many oil and gas companies have been in an AMT position and have carryover AMT credits. The repeal of the corporate AMT, coupled with the ability to monetize historic AMT credits, ought to be well-received by corporate oil and gas companies. Similar to the mining and metals sector, many investments in the oil and gas sector are made by individuals. The retention of the individual AMT system, and the impact of certain oil and gas cost recovery provisions (such as percentage depletion) ought to be carefully analyzed.

Interest – The limitation on the deductibility of interest (which generally does not apply to regulated utilities) could negatively affect the after-tax cost of capital for investment decisions. Under the Act, the Section 163(j) limitation is on net interest expense that exceeds 30% of ATI. Initially, ATI is computed without regard to depreciation, amortization, or depletion. Beginning in 2022, however, ATI will be decreased by those items, which may result in a more significant limitation. Oil and gas companies (which generally have depreciation, amortization, and depletion) may have a lower interest expense deduction in years beginning in 2022. Additionally, for multinational oil and gas companies, the removal of the additional worldwide interest limitation (which was proposed to be Section 163(n), but was not adopted in the Act) ought to be well received.

NOLs – As many oil and gas companies often have years in which NOLs result, the limitation on the NOL deduction to 80% of taxable income may have a significant effect, and may result in a form of a minimum tax to certain taxpayers in certain years. Separately, the indefinite carryforward for certain NOLs ought to be well received by the sector.

Repeal of Section 199 – The elimination of the Section 199 deduction for certain domestic production activities may negatively affect certain oil and gas companies, particularly those in the downstream space.

Energy credits – The Act does not repeal any conventional energy tax credits (the House bill would have repealed the enhanced oil recovery tax credit (Section 43) and the credit for producing oil and gas from marginal wells (Section 45I)).

International – The Act repeal the FBCORI rules, effective for tax years of foreign corporations beginning after 31 December 2017, and for tax years of US shareholders in which or with which such tax years of foreign subsidiaries end. Additionally, the Act does not appear to address the issue of foreign oil and gas recapture in the context of repatriation. The other international tax changes contained in the Act appear to apply equally to all companies in all industries, such as the repatriation tax (although the rates in the Act are higher than those proposed in either the House bill or the Senate bill), the new category of subpart F income for GILTI amounts and the BEAT provisions, among others. The international provisions of the Act are detailed and expansive, and they ought to be analyzed on a company-by-company basis. Multinational oil and gas companies ought to quickly quantify the effect of the provisions on global operations and global payments. Finally, the Act does not alter the FIRPTA rules.

Like-kind exchanges – The Act retains the qualifying like-kind exchange treatment for certain investments in oil and gas reserves (as the like-kind exchange rules are modified to only apply to real property, and operating and non-operating interests in oil and gas reserves ought to be considered real property for this purpose).

Repeal of partnership technical terminations – The Act repeals Section 708(b)(1)(B) for partnership tax years beginning after 31 December 2017. On balance, such repeal ought to remove some barriers to transfers of partnership interests; further analysis is needed, however, to the extent that a technical termination may be desirable to effect a change in partnership elections or methods.
Sale of partnership interests by foreign partners — The Act contains a provision related to the sale of a partnership interest by a foreign partner (which effectively looks through the partnership to determine source) that may negatively affect investments in US oil and gas by non-US investors. The additional rules related to withholding amounts and future guidance and regulations ought to be carefully analyzed.

Power and utilities

Power and utility companies fare relatively well under the Act, retaining many of the important industry-related provisions originally provided under both the House and Senate proposals. Of most importance to the industry is the preservation of the interest expense deduction. Regulated entities in this capital intensive industry are limited in debt capacity by state regulatory agencies, so many times financing activities are in non-regulated holding companies. Also significant to the industry is the ineligibility for immediately expensing of capital investments.

Tax rates and normalization requirements — For non-regulated entities, the reduction in the corporate tax rate is an income statement benefit given the preponderance of deferred tax liabilities on the balance sheet due to bonus depreciation related to plant assets. Lowering the corporate statutory tax rate of regulated entities from 35% to 21% results in excess accumulated deferred tax balances that need to be passed on to customers in accordance with current normalization rules. The normalization rules apply to accelerated depreciation under Sections 167 and 168. The Act requires the use of the average rate assumption method (ARAM), and allows for a simplified alternative method if the utility did not have information available to compute ARAM and was required by its Regulatory Commission to compute depreciation for public utility property on the basis of an average life or composite rate method. ARAM requires amortization of the excess tax reserve over the remaining regulatory lives of the property that gave rise to the reserve for deferred taxes, while the alternative method takes the excess tax reserve on all public utility property and ratably amortizes it over the remaining regulatory life of the property using the weighted average life or composite rate used for regulatory book depreciation.

Another significant regulatory concern is the treatment of changes in deferred tax balances other than accelerated depreciation under Sections 167 and 168 that have no mandated treatment, such as benefit plans, bad debts, NOLs, repairs and derivatives, among other items. Utilities without immediate rate cases may need to determine how to handle the reduction in tax rates for years before the next rate case.

Expensing — The Act allows 100% expensing through the end of 2022 for qualified property placed in service after 27 September 2017. The Act provides an exception to the definition of qualified property for property used in the trade or business of furnishing or selling electrical energy, water, or sewage disposal services, gas or steam through a local distribution systems, or the transportation of gas or steam by pipeline if the rates for furnishing or selling, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof or by the governing or ratemaking body of an electric cooperative. The reference to an electric cooperative was added in the Act.

Interest expense limitation — The Act exempts interest on the debt of regulated entities by providing an exception to the definition of a trade or business for the furnishing or sale of electrical energy, water, or sewage disposal services, gas or steam through a local distribution systems, or the transportation of gas or steam by pipeline if the rates for furnishing or selling, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative. The reference to an electric cooperative was added in the Act. In addition, the Act provides for the exemption of debt properly allocable to regulated public utilities. An allocation method is to be determined by the Secretary.

NOLs — Power and utilities companies are prohibited, along with other taxpayers, from using the Section 172(f) 10-year carryback rules under the Act rules. As a capital intensive industry, power and utility companies often have NOLs due to bonus depreciation, as well as other expenses such as environmental, workmen’s compensation and tort claims, Section 172(f) allowed them to carry such expenses to profitable years and obtain a refund of taxes previously paid.

Contributions in aid of construction — The Act modifies the definition of tax contributions in aid of construction under Section 118(b) and repeals the exclusion from gross income under Section 118(c) for water utility companies.
Also notable, the Act does not extend a number of other temporary tax incentives for renewable electricity, including expired credits for production of hydropower, biomass and waste to energy. Similarly, the Act does not extend expired fuel tax incentives for biodiesel, renewable diesel, second generation biofuels, alternative fuels, and alternative fuels mixtures. The nuclear production tax incentives modification, featured in the House bill, also was not included in the Act.

Renewables and alternative energy
Overall, the renewables industry was very satisfied with the Act. Most notably, the Act does not adopt the House proposals to eliminate the renewable electricity production tax credit (PTC) inflation adjustment factor, revisit the rules defining “beginning of construction” of renewable energy facilities or terminate the permanent 10% investment tax credit (ITC) available for geothermal and solar technologies.

The Senate bill’s version of the BEAT could have materially reduced the ability of certain taxpayers (e.g., tax equity investors) to utilize their PTCs and ITCs. The Act retains a BEAT provision, but modifies the Senate proposal by allowing certain taxpayers to use these renewable energy PTCs and ITCs against the BEAT, subject to a 20% haircut. This partial mitigation is only available through 2025, after which the PTC and ITC will no longer be available to offset the BEAT. It remains to be seen how this temporary relief will affect the tax equity markets overall.

Beyond these specific items, what’s most notable is what the Act does “not” address. The Act does not to repeal the tax credit for new, four-wheeled, battery powered electric vehicles (repealed in the House bill for vehicles placed in service in tax years beginning after 31 December 2017). It also does not extend the incentives for certain renewable electricity technologies (fiber-optic solar property, fuel cells, microturbines, combined heat and power systems, thermal energy property and small wind systems). Likewise, the Act does not address credits for residential energy efficiency property (qualified geothermal heat pump property, qualified small wind property and qualified fuel cell power plants).

Implications
While the potential effects of the Act vary across the domestic energy sector on a company-by-company basis, the Act, at first glance, could drive economic growth and foster energy development. The energy sector is very capital-intensive and has a history of re-deploying capital and earnings into new projects, driving economic activity and employment, and the Act appears to support and encourage companies to continue investing significantly in the United States. That being said, a number of provisions, including those related to expensing, those affecting inbound energy investments, and those related to the taxation of foreign income and foreign persons, will require further analysis.

Key actions to take now are as follows:

- Model the Act – Model the effect of tax reform legislation to understand how it impacts your tax liability and business
- Analyze and document earnings and profits (E&P) – Prepare E&P studies to calculate and document the transition tax while understanding the impact on your state and local taxes
- Review executive compensation programs – Understand transition rules and the potential need to re-design executive compensation structures
- Execute accounting method change opportunities – Analyze accounting method change opportunities to implement as we shift from a high- to low-tax rate environment
- Identify any provisions that may require additional legislation or regulatory guidance to achieve congressional intent or to allow taxpayers to comply with enacted legislation

Endnote
1. Currency references in this Alert are to US$. 
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