# The 2024 Election and Implications for Tax Policy & Corporate Tax Planning

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DLA PIPER

# Introductions

Tax Policy

# Speakers

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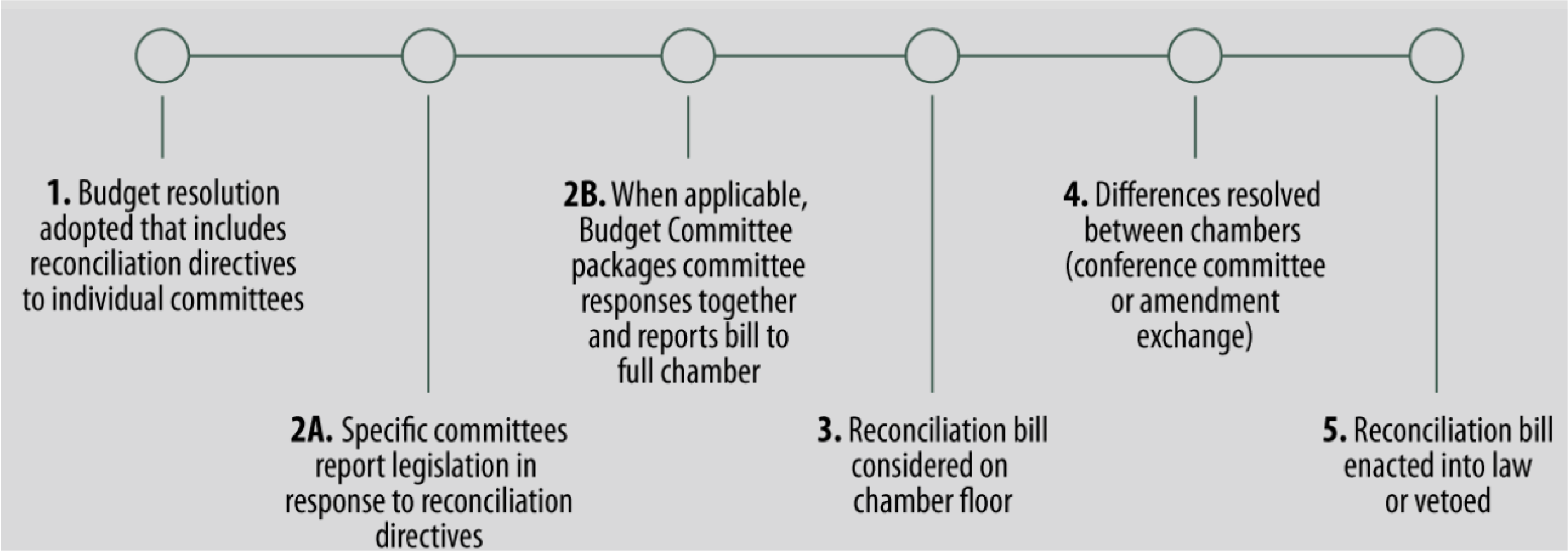
# Budget Reconciliation Process & Considerations

What Factors Influence Drive to Reconciliation Approach and Why It Matters for Tax Reform 2025

# Budget Reconciliation Process

1. **Step 1:** Process begins with Congress adopting a Budget Resolution setting their budgetary goals for the upcoming budget period, and where Congress would have to include “reconciliation instructions” to establish the “roles” each Committee would plat in achieving these fiscal goals.
2. **Step 2:** Each Committee implicated, including Senate Finance/House Ways & Means would then begin working on legislative provisions to meet the spending/revenue goals included in the reconciliation instruction parameters to report back.
3. **Step 3:** Depending upon what reconciliation instructions indicate on where Committees are to report back language, and Chamber passage, ultimately the House and Senate will need to “reconcile” and align respective language, likely through a bicameral Reconciliation Committee.



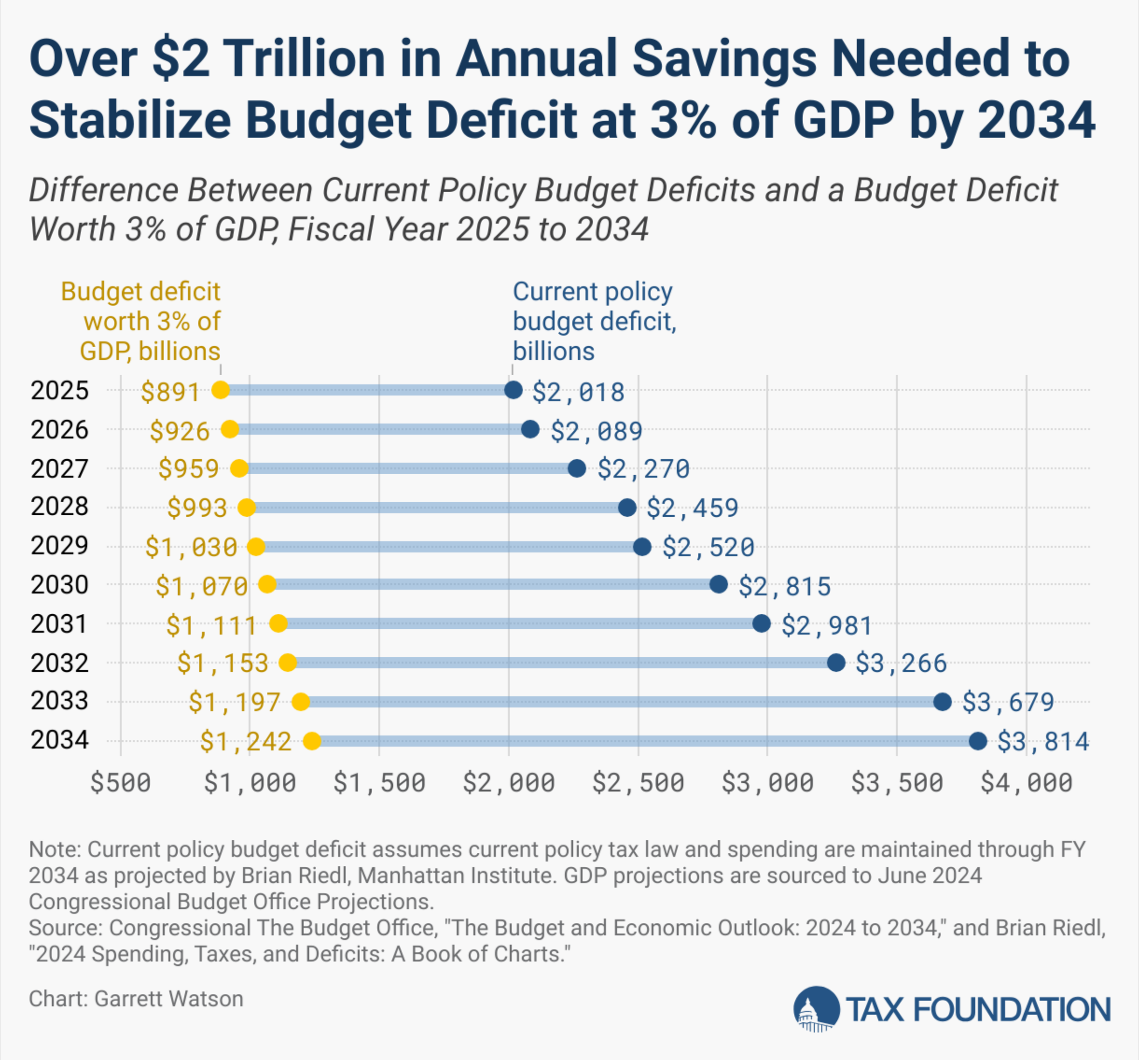
# It's All About the "Base(line)"

## Current Law Baseline vs. Current Policy Baseline

**Current Law Baseline:** Tax is historically scored on a current Law baseline that assumes statutory expiration, in this case, of tax cuts implemented by TCJA, thereby assuming an increase in tax revenue at the start of 2026 as TCJA cuts are currently set to expire Dec 31, 2025. Using this baseline approach would also impart more mitigating assumptions with respect to annual deficits and level or reduced borrowing/debt service interest cost.

**Current Policy Baseline:** Assuming TCJA tax cuts continue as they currently stand would mean assuming lower tax revenue intake in years beyond 2025, which automatically produces an assumption of higher deficits, more borrowing/higher debt, and increasing cost associated with interest expense on debt accrual.

- *Treasury Secretary nominee, Scott Bessent, has suggested his goal of **keeping annual deficits below 3% of GDP by 2028**, would be more difficult using current policy baseline approach.*



# Current Law v. Current Policy Baseline Takeaway Points

## How Congress Decides to Treat Scoring of TCJA Provisions Sets the Guardrails for Tax Reform 2025

- **Key Figures Impacting Scoring Considerations:**
  - Permanently extending TCJA beyond 2025 has been estimated to reduce federal revenues by between ***$3.5 – 4.2T*** over the subsequent 10-year budget window.
  - Estimates have also showed that extending TCJA tax cuts, imparting lower revenue assumptions, would result in annual deficits exceeding $2T starting in 2027, or roughly **6.6% of GPD**.
  - Treasury Secretary nominee, Scott Bessent's purported goal of keeping annual deficits at or below 3% of GDP by 2028.
  - Under this circumstance, Congress would need to achieve roughly $1.5T in annual deficit reduction to achieve this goal, which would necessarily include cuts to mandatory spending like Medicare/Medicaid and Social Security, an endeavor that has been attempted for decades and failed.

# Implications for Tax Bill Offsets?

- Budget reconciliation instructions and baseline scoring approach will determine which and to what extend Congress looks to offset tax reform legislation.
- Revenue opportunities largely within mandatory spending programs like Medicare/Medicaid and Social Security.
  - ✓ *Example: Repealing the Social Security Windfall Elimination Provision/Gov't Pension Offset would gain ~$200B over 10-year budget window.*
- Some Offsets being discussed include:
  - ✓ *Elimination or limitation of Biden IRA clean energy credits;*
  - ✓ *Eliminate the deductibility of all compensation over 1 million;*
  - ✓ *Retain some part of the SALT deductibility limit;*
  - ✓ *Eliminate Existing Deductions/Credits;*
  - ✓ *Eliminate Round-Tripping;*
  - ✓ *Tariff Revenues;*
  - ✓ *Proposals in Recent Treasury Green Books or JCT raiser lists.*

# What About the Global Competitiveness Argument?

America Increasingly Focused on Major Competitors like China

# Key Tax Differences

## Framing Perspective: Where's the Opportunity?

| | US | CHINA |
|---|---|---|
| **Corp Rate Structure** | 21% | 25% |
| **R&D Incentives** | Sec 41 credit directly reduces tax liability | 100% "superdeduction" for R&D expenses; industry targeting. |
| **Regional High-Tech Incentives** | No federal, regional targeting; state-level incentives | 15% rate for high-tech sectors. |
| **NOLs** | Indefinite carryforward capped at 80% of taxable income; limited, temporary carryback. | General carryforward of up to 100% taxable income for up to 5 years; high-tech sectors carryforward up to 10 years; no carryback. |

# Relevant Nominations & Tax Committee Appointments

# Ways & Means Committee Membership Update

**Ways & Means Chairman, Jason Smith, announced the following new Committee Members to be installed in January:**

- *Rep. Aaron Bean (FL-04)*
- *Rep. Max Miller (OH-07)*
- *Rep. Nathaniel Moran (TX-01)*
- *Rep. Rudy Yakym (IN-02)*

# Commerce Secretary Nominee

## Howard Lutnick

- Lutnick's background rooted in his stake in the financial services firm, Cantor Fitzgerald and its subsequent offshoots.

- Lutnick is famous for having rebuilt the financial services firm after 650+ employees were killing in the attacks of September 11, 2001.

# Treasury Secretary Nominee

## Scott Bessent

- Bessent has been a long-time veteran of the hedge fund world, spending most of the past 35 years alternating between running his own asset management team and working for Soros Fund Management.
- Bessent was part of the 1992 billion dollar bet against the British Pound, when he moved to start his own capital management firm the following decade.
- He then proceeded to engage in subsequent, lucrative currency bets.
- He has vocalized his goal of achieving deficit containment to 3% of GDP or less beginning in 2028, a goal that anticipated 2025 tax reform bill stands to greatly impact.

# IRS Commissioner Nominee

## Billy Long

- Served in House of Representatives from 2011 – 2023 for Missouri District 7.
- Long ran for Missouri Senate seat in the 2024 election, but ultimately lost the Republican Primary to Eric Schmitt.
- Long holds no higher education degrees having dropped out of College.
- Long was a Member of the House Energy and Commerce Committee, which does not hold jurisdiction over tax policy.
- Aside from Congress, Long was both an auctioneer and participated in the World Poker Tour.

# Considerations for Pillar II in Tax Reform

# GILTI & 15% Global Minimum Tax

- GILTI currently sets a rate of between 10.5% - 13.1% on income of multinational foreign subs, which is set to increase in 2026 to between 13.1% - 16%.
  - ✓ The corporate/business community have been pushing to avert the aforementioned increase in GILTI rate, but have yet to comment further on the associated cost.
- The OECD cites a minimum 15% tax parallel to the GILTI regime, but currently has a safe harbor in place that is set to expire in 2026 that effectively decreases the amount of top-up tax a company pays relative to the 15% minimum tax rate cited by the OECD.
- Republicans have been starkly opposed to the OECD's efforts and will likely fight to have GILTI grandfathered as a permanent Income Inclusion Rule ("IIR")
  - ✓ Starting in 2025 it's expected that roughly 90% of multinationals having more than $791 million in revenue will be subject to the minimum tax.
- Concerns over global competitiveness, particularly with respect to China that also hasn't engaged with the OECD, will become a front and center aspect of the tax reform debate.

# What About FDII & BEAT?

- **FDII**
  - Currently taxed at a rate of 13.1% and set to increase to 16% in 2026.
  - FDII has largely been viewed as highly successful to the extent that revenue into the U.S. for IP licensing has increased substantially since enactment, indicating the provision's design has largely achieved the intended effect.
- **BEAT**
  - Currently set at a tax rate of 10% and set to increase in 2026 to 12.5%.
  - The primary concern in BEATable income remains how other tax assets like credits may be treated in the face of offsetting BEAT liability.
  - Businesses are currently able to use their US credits to offset BEAT liability, however absent congressional intervention in upcoming tax reform, is set for disallowance starting in 2026.

# Thank you