

118TH CONGRESS  
1ST SESSION

# H. R. 3665

To provide an enforcement of remedies against the extraterritorial taxes  
and discriminatory taxes of foreign countries.

---

## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2023

Mr. SMITH of Missouri (for himself, Mr. BUCHANAN, Mr. SMITH of Nebraska, Mr. KELLY of Pennsylvania, Mr. SCHWEIKERT, Mr. LAHOOD, Mr. WENSTRUP, Mr. ARRINGTON, Mr. FERGUSON, Mr. ESTES, Mr. SMUCKER, Mr. HERN, Mrs. MILLER of West Virginia, Mr. MURPHY, Mr. KUSTOFF, Mr. FITZPATRICK, Mr. STEUBE, Ms. TENNEY, Mrs. FISCHBACH, Mr. MOORE of Utah, Mrs. STEEL, Ms. VAN DUYNE, Mr. FEENSTRA, Ms. MALLIOTAKIS, and Mr. CAREY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Oversight and Accountability, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To provide an enforcement of remedies against the  
extraterritorial taxes and discriminatory taxes of foreign  
countries.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defending American  
5 Jobs and Investment Act”.

1 **SEC. 2. ENFORCEMENT OF REMEDIES AGAINST**  
2 **EXTRATERRITORIAL TAXES AND DISCRIMINA-**  
3 **TORY TAXES.**

4 (a) IN GENERAL.—Subpart D of part II of sub-  
5 chapter N of chapter 1 is amended by adding at the end  
6 the following new section:

7 **“SEC. 899. ENFORCEMENT OF REMEDIES AGAINST**  
8 **EXTRATERRITORIAL TAXES AND DISCRIMINA-**  
9 **TORY TAXES.**

10 “(a) REPORT ON EXTRATERRITORIAL TAXES AND  
11 DISCRIMINATORY TAXES.—

12 “(1) IN GENERAL.—Not later than 90 days  
13 after the date of the enactment of this section, and  
14 not less frequently than once every 180 days there-  
15 after, the Secretary shall submit to the appropriate  
16 committees of Congress a report which lists each  
17 foreign country that has (as of the date of the sub-  
18 mission of such report) one or more extraterritorial  
19 taxes or discriminatory taxes.

20 “(2) ADDITIONAL ITEMS.—Each report sub-  
21 mitted under paragraph (1) shall include—

22 “(A) with respect to each extraterritorial  
23 tax or discriminatory tax of any foreign country  
24 listed in such report, a description of such tax  
25 including the rate thereof and the dates on

1           which such tax was enacted and takes effect,  
2           and

3           “(B) if the Secretary determines that any  
4           foreign country no longer has (as of the date of  
5           the submission of such report) an  
6           extraterritorial tax or discriminatory tax which  
7           was described in any prior report submitted  
8           under this subsection—

9                       “(i) the dates on which the permanent  
10                      repeal or termination of such tax was en-  
11                      acted and takes effect, and

12                     “(ii) whether such foreign country has  
13                     (as of such date) any other extraterritorial  
14                     taxes or discriminatory taxes.

15           “(3) DETERMINATION OF WHEN A FOREIGN  
16           COUNTRY HAS AN EXTRATERRITORIAL TAX OR DIS-  
17           CRIMINATORY TAX.—For purposes of this section, a  
18           foreign country shall be treated as having an  
19           extraterritorial tax or discriminatory tax during the  
20           period—

21                     “(A) beginning on the earlier of the date  
22                     on which such tax is enacted or takes effect,  
23                     and

1           “(B) ending on the later of the date on  
2           which the permanent repeal or termination of  
3           such tax is enacted or takes effect.

4           “(b) ENGAGEMENT WITH TRADING PARTNERS ON  
5 EXTRATERRITORIAL TAXES AND DISCRIMINATORY  
6 TAXES.—The Secretary shall commence enhanced bilat-  
7 eral engagement with each foreign country included in the  
8 report submitted under subsection (a), in order to, as ap-  
9 propriate—

10           “(1) express the concern of the United States  
11           with respect to the adverse trade and economic ef-  
12           fects of tax policies that violate bilateral tax treaties  
13           and international tax norms,

14           “(2) urge repeal of extraterritorial taxes and  
15           discriminatory taxes that target United States per-  
16           sons, and

17           “(3) advise such foreign country of the remedial  
18           actions under subsection (c).

19           “(c) REMEDIAL ACTIONS.—

20           “(1) INCREASED RATE OF TAX ON FOREIGN  
21           CITIZENS AND FOREIGN CORPORATIONS.—

22           “(A) INCOME TAXES.—

23           “(i) IN GENERAL.—In the case of any  
24           applicable person for any taxable year be-  
25           ginning after the applicable date, each

1 specified rate of income tax shall be in-  
2 creased by the applicable number of per-  
3 centage points.

4 “(ii) SPECIFIED RATE OF INCOME  
5 TAX.—For purposes of this subparagraph,  
6 the term ‘specified rate of income tax’  
7 means—

8 “(I) the rates of tax specified in  
9 paragraphs (1) and (2) of section  
10 871(a),

11 “(II) in the case of any applica-  
12 ble person to which section 871(b) ap-  
13 plies, each rate of tax in effect under  
14 section 1,

15 “(III) the rate of tax specified in  
16 section 881(a),

17 “(IV) in the case of any applica-  
18 ble person to which section 882(a) ap-  
19 plies, each rate of tax in effect under  
20 section 11, and

21 “(V) the rate of tax specified in  
22 section 884(a).

23 “(iii) APPLICATION OF INCREASED  
24 RATES TO EFFECTIVELY CONNECTED IN-  
25 COME OF NONRESIDENT ALIEN INDIVID-

1 UALS LIMITED TO GAINS ON UNITED  
2 STATES REAL PROPERTY INTERESTS.—In  
3 the case of any individual to whom clause  
4 (i) applies, the tax imposed under section  
5 1 on such individual (after application of  
6 clause (ii)(II)) shall be reduced (but not  
7 below zero) by the excess of—

8 “(I) the tax which would be im-  
9 posed under such section (after appli-  
10 cation of clause (ii)(II)) if FIRPTA  
11 items were not taken into account,  
12 over

13 “(II) the tax which would be im-  
14 posed under such section if FIRPTA  
15 items were not taken into account,  
16 and clause (ii)(II) did not apply.

17 For purposes of this clause, the term  
18 ‘FIRPTA items’ means gains and losses  
19 taken into account under section 871(b)(1)  
20 by reason of section 897(a)(1)(A).

21 “(B) WITHHOLDING TAXES.—

22 “(i) IN GENERAL.—In the case of any  
23 payment to an applicable person after the  
24 applicable date, the rate of tax specified in  
25 sections 1441(a) and 1442(a) (other than

1 the 14 percent rate of tax specified in sec-  
2 tion 1441(a)) shall each be increased by  
3 the applicable number of percentage  
4 points.

5 “(ii) DISPOSITION OF UNITED STATES  
6 REAL PROPERTY INTERESTS.—In the case  
7 of any disposition of a United States real  
8 property interest (as defined in section  
9 897(e)) by an applicable person after the  
10 applicable date, the rate of tax specified in  
11 section 1445(a) shall be increased by the  
12 applicable number of percentage points.

13 “(iii) OTHER DISPOSITIONS AND DIS-  
14 TRIBUTIONS RELATED TO UNITED STATES  
15 REAL PROPERTY INTERESTS.—In the case  
16 of any disposition or distribution described  
17 in any paragraph of section 1445(e) made  
18 after the applicable date, each rate of tax  
19 in such paragraph shall be increased by  
20 the applicable number of percentage points  
21 if—

22 “(I) in the case of section  
23 1445(e)(1), the foreign person re-  
24 ferred to in subparagraph (A) or (B)

1 of such section is an applicable per-  
2 son,

3 “(II) in the case of section  
4 1445(e)(2), the foreign corporation re-  
5 ferred to in such section is an applica-  
6 ble person,

7 “(III) in the case of section  
8 1445(e)(3), the foreign shareholder  
9 referred to in such section is an appli-  
10 cable person,

11 “(IV) in the case of section  
12 1445(e)(4), the foreign person re-  
13 ferred to in such section is an applica-  
14 ble person,

15 “(V) in the case of section  
16 1445(e)(5), the Secretary issues regu-  
17 lations or other guidance providing for  
18 such increase, and

19 “(VI) in the case of section  
20 1445(e)(6), the nonresident alien indi-  
21 vidual or foreign corporation referred  
22 to in such section is an applicable per-  
23 son.



1           “(C) APPLICABLE PERSON.—For purposes  
2 of this paragraph, the term ‘applicable person’  
3 means—

4           “(i) any individual (other than a cit-  
5 izen or resident of the United States) who  
6 is a citizen of a foreign country listed in a  
7 report under subsection (a),

8           “(ii) any foreign corporation (other  
9 than a specified 10-percent owned foreign  
10 corporation, as defined in section 245A(b))  
11 which is created or organized in such a  
12 foreign country or subject to the income  
13 tax laws of such foreign country, and

14           “(iii) in the case of the application of  
15 subparagraph (B)(i) with respect to section  
16 1441(a), foreign partnerships to the extent  
17 provided by the Secretary (and taking into  
18 account the rules of section 1441(d)).

19           “(D) APPLICABLE DATE.—For purposes of  
20 this paragraph, the term ‘applicable date’  
21 means with respect to any foreign country, the  
22 day after the 180-day period beginning on the  
23 date of the submission of the first report under  
24 subsection (a) which lists such foreign country.

1           “(E) APPLICABLE NUMBER OF PERCENT-  
2           AGE POINTS.—For purposes of this para-  
3           graph—

4                   “(i) IN GENERAL.—The term ‘applica-  
5                   ble number of percentage points’ means,  
6                   with respect to any foreign country—

7                           “(I) with respect to the 1-year  
8                           period beginning on the applicable  
9                           date with respect to such foreign  
10                           country, 5 percentage points,

11                           “(II) with respect to the 1-year  
12                           period beginning with the close of the  
13                           period described in subclause (I), 10  
14                           percentage points,

15                           “(III) with respect to the 1-year  
16                           period beginning with the close of the  
17                           period described in subclause (II), 15  
18                           percentage points, and

19                           “(IV) with respect to any time  
20                           after the close of the period described  
21                           in subclause (III), 20 percentage  
22                           points.

23                   “(ii) APPLICATION TO TAXABLE  
24                   YEARS.—For purposes of subparagraph  
25                   (A), the applicable number of percentage

1 points shall be determined with respect to  
2 the date on which the taxable year begins.

3 “(iii) APPLICATION TO WITHHOLDING  
4 TAXES.—For purposes of subparagraph  
5 (B), the applicable number of percentage  
6 points shall be determined with respect to  
7 the date of the payment or disposition, as  
8 the case may be.

9 “(F) EFFECT OF PERMANENT REPEAL OR  
10 TERMINATION OF EXTRATERRITORIAL AND DIS-  
11 CRIMINATORY TAXES.—If the Secretary deter-  
12 mines under subsection (a)(2)(B)(ii) that any  
13 foreign country no longer has any  
14 extraterritorial or discriminatory taxes, then in  
15 the case of any taxable year beginning, or pay-  
16 ment or disposition made, after the date of the  
17 submission of the report which includes such  
18 determination, this section shall be applied with  
19 respect to such foreign country by not taking  
20 into account any report submitted before such  
21 date.

22 “(2) OTHER REMEDIES.—

23 “(A) PROCUREMENT.—

24 “(i) IN GENERAL.—The President  
25 may prohibit the Federal Government from

1           procuring, or entering into any contract for  
2           the procurement of, goods or services from  
3           applicable persons during the period begin-  
4           ning on the applicable date and ending on  
5           the date of any determination described in  
6           paragraph (1)(F) by the Secretary with re-  
7           spect to such foreign country.

8           “(ii) CONGRESSIONAL NOTIFICA-  
9           TION.—If the President takes any action  
10          described in clause (i), the President shall,  
11          not later than 30 days after the date of  
12          such action, notify the appropriate commit-  
13          tees of Congress of such action.

14          “(B) TAX TREATIES.—

15          “(i) IN GENERAL.—The Secretary  
16          shall take into account the extraterritorial  
17          taxes and discriminatory taxes of any for-  
18          eign country in assessing whether to enter  
19          into a bilateral tax treaty with such foreign  
20          country or to participate in negotiations  
21          with respect to updating a bilateral tax  
22          treaty with such foreign country.

23          “(ii) CONGRESSIONAL NOTIFICA-  
24          TION.—If the Secretary begins negotia-  
25          tions with respect to entering into or up-

1 dating any bilateral tax treaty with any  
2 foreign country that imposes one or more  
3 extraterritorial or discriminatory taxes, the  
4 Secretary shall, not later than 30 days  
5 after beginning such negotiations, notify  
6 the appropriate committees of Congress of  
7 such action. Such notification shall include  
8 a description of the manner in which such  
9 taxes are being taken into account as re-  
10 quired under clause (i).

11 “(C) TRADE AGREEMENTS.—

12 “(i) IN GENERAL.—The United States  
13 Trade Representative and the Secretary of  
14 Commerce shall each take into account the  
15 extraterritorial taxes and discriminatory  
16 taxes of any foreign government in assess-  
17 ing whether to enter into any free trade  
18 agreement or Executive agreement on  
19 trade with such foreign country.

20 “(ii) CONGRESSIONAL NOTIFICA-  
21 TION.—If the United States Trade Rep-  
22 resentative or the Secretary of Commerce  
23 begins negotiations with respect to enter-  
24 ing into any free trade agreement or Exec-  
25 utive agreement on trade with any foreign

1 country that imposes one or more  
2 extraterritorial or discriminatory taxes, the  
3 United States Trade Representative or the  
4 Secretary of Commerce (as the case may  
5 be) shall, not later than 30 days after be-  
6 ginning such negotiations, notify the ap-  
7 propriate committees of Congress of such  
8 action. Such notification shall include a de-  
9 scription of the manner in which such  
10 taxes are being taken into account as re-  
11 quired under clause (i).

12 “(d) DEFINITIONS.—For purposes of this section—

13 “(1) EXTRATERRITORIAL TAX.—

14 “(A) IN GENERAL.—The term  
15 ‘extraterritorial tax’ means any tax imposed by  
16 a foreign country on a corporation (including  
17 any trade or business of such corporation)  
18 which is determined by reference to any income  
19 or profits received by any person (including any  
20 trade or business of any person) by reason of  
21 such person being connected to such corpora-  
22 tion through any chain of ownership, deter-  
23 mined without regard to the ownership interests  
24 of any individual, and other than by reason of

1 such corporation having a direct or indirect  
2 ownership interest in such person.

3 “(B) TAX.—The term ‘tax’ includes any  
4 increase in tax whether effectuated by an in-  
5 crease in the rate or base of a tax, by a denial  
6 of deductions or credits, or otherwise.

7 “(2) DISCRIMINATORY TAX.—

8 “(A) IN GENERAL.—Except as otherwise  
9 provided in subparagraph (B), the term ‘dis-  
10 criminatory tax’ means any tax imposed by a  
11 foreign country if—

12 “(i) such tax applies to items of in-  
13 come that would not be considered to be  
14 from sources within the foreign country  
15 under the rules of part I of this subchapter  
16 if such part were applied by treating such  
17 foreign country as though it were the  
18 United States,

19 “(ii) such tax is imposed on a base  
20 other than net income and is not computed  
21 by permitting recovery of costs and ex-  
22 penses,

23 “(iii) such tax is exclusively or pre-  
24 dominantly applicable, in practice or by its  
25 terms, to nonresident individuals and for-

1            foreign corporations or partnerships (as de-  
2            termined under rules similar to paragraphs  
3            (4) and (5) of section 7701(a) by treating  
4            the foreign country as though it were the  
5            United States) because of the application  
6            of revenue thresholds, exemptions or exclu-  
7            sions for taxpayers subject to such foreign  
8            country’s corporate income tax, or restric-  
9            tions of scope that ensure that substan-  
10           tially all residents (other than foreign cor-  
11           porations and partnerships (as so deter-  
12           mined)) supplying comparable goods or  
13           services are excluded from the application  
14           of such tax, or

15                    “(iv) such tax is not treated as an in-  
16                    come tax under the laws of such foreign  
17                    country or is otherwise treated by such for-  
18                    eign country as outside the scope of any  
19                    agreements that are in force between such  
20                    foreign country and one or more other ju-  
21                    risdictions for the avoidance of double tax-  
22                    ation with respect to taxes on income.

23                    “(B) EXCEPTIONS.—Except as otherwise  
24                    provided by the Secretary, the term ‘discrimina-



1 tory taxes' shall not include any generally appli-  
2 cable tax which constitutes—

3 “(i) a withholding tax on amounts de-  
4 scribed in sections 871(a)(1) and 881(a),

5 “(ii) a value added tax, goods and  
6 services tax, sales tax, or other similar tax  
7 on consumption,

8 “(iii) a tax imposed with respect to  
9 transactions on a per-unit or per-trans-  
10 action basis rather than on an ad valorem  
11 basis, or

12 “(iv) any other similar tax identified  
13 by the Secretary for purposes of this sub-  
14 paragraph.

15 “(3) FOREIGN COUNTRY.—The term ‘foreign  
16 country’ means a foreign country or a dependent  
17 territory or possession of a foreign country. Such  
18 term does not include any possession of the United  
19 States.

20 “(4) APPROPRIATE COMMITTEES OF CON-  
21 GRESS.—The term ‘appropriate committees of Con-  
22 gress’ means—

23 “(A) the Committee on Finance and the  
24 Committee on Foreign Relations of the Senate,  
25 and

1           “(B) the Committee on Foreign Affairs  
2           and the Committee on Ways and Means of the  
3           House of Representatives.

4           “(5) SECRETARY.—The term ‘Secretary’ means  
5           the Secretary of the Treasury or the Secretary’s del-  
6           egate.

7           “(e) REGULATIONS AND OTHER GUIDANCE.—The  
8           Secretary may issue such regulations or other guidance  
9           as may be necessary or appropriate to carry out the pur-  
10          poses of this section, including regulations or other guid-  
11          ance which provide for such adjustments to the application  
12          of this section as are necessary to prevent the avoidance  
13          of the purposes of this section.”.

14          (b) CLERICAL AMENDMENT.—The table of sections  
15          for subpart D of part II of subchapter N of chapter 1  
16          is amended by adding at the end the following new item:

“Sec. 899. Enforcement of remedies against extraterritorial taxes and discrimi-  
natory taxes.”.

○