

118TH CONGRESS
1ST SESSION

H. R. 4695

To amend the Internal Revenue Code of 1986 to modify the application of the base erosion and anti-abuse tax with respect to certain entities connected to jurisdictions which have implemented an extraterritorial tax.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2023

Mr. ESTES (for himself, Mr. SMITH of Missouri, Mr. SMITH of Nebraska, Mr. KELLY of Pennsylvania, Mr. SMUCKER, Mrs. MILLER of West Virginia, Mr. MOORE of Utah, Mrs. STEEL, Ms. VAN DUYNE, Mr. FEENSTRA, and Mr. BUCHANAN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to modify the application of the base erosion and anti-abuse tax with respect to certain entities connected to jurisdictions which have implemented an extraterritorial tax.

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 “Unfair Tax Prevention
5 Act”.

1 **SEC. 2. APPLICATION OF THE BASE EROSION AND ANTI-**
2 **ABUSE TAX WITH RESPECT TO CERTAIN EN-**
3 **TITIES CONNECTED TO EXTRATERRITORIAL**
4 **TAX JURISDICTIONS.**

5 (a) IN GENERAL.—Section 59A of the Internal Rev-
6 enue Code of 1986 is amended by redesignating subsection
7 (i) as subsection (j) and inserting after subsection (h) the
8 following new subsection:

9 “(i) SPECIAL RULES FOR FOREIGN-OWNED
10 EXTRATERRITORIAL TAX REGIME ENTITIES.—

11 “(1) IN GENERAL.—In the case of any foreign-
12 owned extraterritorial tax regime entity—

13 “(A) such entity shall be treated as de-
14 scribed in subparagraphs (B) and (C) of sub-
15 section (e)(1) for purposes of determining
16 whether such entity is an applicable taxpayer,

17 “(B) subsection (b)(2) shall be applied by
18 substituting ‘the date of the enactment of sub-
19 section (i)’ for ‘December 31, 2025’,

20 “(C) subsections (e)(2)(B), (e)(4)(B)(ii),
21 and (d)(5) shall not apply, and

22 “(D) 50 percent of such entity’s cost of
23 goods sold shall be treated as a base erosion tax
24 benefit with respect to a base erosion payment.

25 “(2) FOREIGN-OWNED EXTRATERRITORIAL TAX
26 REGIME ENTITY.—For purposes of this subsection—

1 “(A) IN GENERAL.—The term ‘foreign-
2 owned extraterritorial tax regime entity’ means
3 any taxpayer which is controlled by a foreign
4 entity (other than a foreign entity controlled by
5 any domestic corporation) if any of the fol-
6 lowing entities is subject to an extraterritorial
7 tax:

8 “(i) Any foreign entity which controls
9 the taxpayer.

10 “(ii) Any foreign entity which is con-
11 trolled by—

12 “(I) the taxpayer, or

13 “(II) any foreign entity described
14 in clause (i).

15 “(iii) Any trade or business of any
16 foreign entity described in clause (i) or (ii).

17 “(B) EXTRATERRITORIAL TAX.—

18 “(i) IN GENERAL.—The term
19 ‘extraterritorial tax’ means any tax im-
20 posed by a foreign country on a corpora-
21 tion (including any trade or business of
22 such corporation) which is determined by
23 reference to any income or profits received
24 by any person (including any trade or busi-
25 ness of any person) by reason of such per-

1 son being connected to such corporation
2 through any chain of ownership, deter-
3 mined without regard to the ownership in-
4 terests of any individual, and other than by
5 reason of such corporation having a direct
6 or indirect ownership interest in such per-
7 son.

8 “(ii) TAX.—The term ‘tax’ includes
9 any increase in tax whether effectuated by
10 an increase in the rate or base of a tax, by
11 a denial of deductions or credits, or other-
12 wise.

13 “(C) FOREIGN ENTITY.—The term ‘foreign
14 entity’ means any foreign person other than an
15 individual.

16 “(D) CONTROL.—Control has the same
17 meaning given such term under section
18 954(d)(3).”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years beginning after
21 the date of the enactment of this Act.

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