

119TH CONGRESS
1ST SESSION

H. R. 591

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2025

Mr. SMITH of Missouri (for himself, Mr. BUCHANAN, Mr. SMITH of Nebraska, Mr. KELLY of Pennsylvania, Mr. SCHWEIKERT, Mr. LAHOOD, Mr. ARRINGTON, Mr. ESTES, Mr. SMUCKER, Mr. HERN of Oklahoma, Mrs. MILLER of West Virginia, Mr. MURPHY, Mr. KUSTOFF, Mr. FITZPATRICK, Mr. STEUBE, Ms. TENNEY, Mrs. FISCHBACH, Mr. MOORE of Utah, Ms. VAN DUYNE, Mr. FEENSTRA, Ms. MALLIOTAKIS, Mr. CAREY, Mr. YAKYM, Mr. MILLER of Ohio, Mr. BEAN of Florida, and Mr. MORAN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Oversight and Government Reform, 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, the rate of tax specified in sec-
20 tion 11(b), 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—

3 “(I) notwithstanding sections 894
4 and 7852(d), determined without re-
5 gard to any treaty obligation of the
6 United States, and

7 “(II) increased by the applicable
8 number of percentage points.

9 “(ii) DISPOSITION OF UNITED STATES
10 REAL PROPERTY INTERESTS.—In the case
11 of any disposition of a United States real
12 property interest (as defined in section
13 897(c)) by an applicable person after the
14 applicable date, the rate of tax specified in
15 section 1445(a) shall be—

16 “(I) notwithstanding sections 894
17 and 7852(d), determined without re-
18 gard to any treaty obligation of the
19 United States, and

20 “(II) increased by the applicable
21 number of percentage points.

22 “(iii) OTHER DISPOSITIONS AND DIS-
23 TRIBUTIONS RELATED TO UNITED STATES
24 REAL PROPERTY INTERESTS.—In the case
25 of any disposition or distribution described

1 in any paragraph of section 1445(e) made
2 after the applicable date, each rate of tax
3 in such paragraph shall be (notwith-
4 standing sections 894 and 7852(d)) deter-
5 mined without regard to any treaty obliga-
6 tion of the United States and increased by
7 the applicable number of percentage points
8 if—

9 “(I) in the case of section
10 1445(e)(1), the foreign person re-
11 ferred to in subparagraph (A) or (B)
12 of such section is an applicable per-
13 son,

14 “(II) in the case of section
15 1445(e)(2), the foreign corporation re-
16 ferred to in such section is an applica-
17 ble person,

18 “(III) in the case of section
19 1445(e)(3), the foreign shareholder
20 referred to in such section is an appli-
21 cable person,

22 “(IV) in the case of section
23 1445(e)(4), the foreign person re-
24 ferred to in such section is an applica-
25 ble person,

1 “(V) in the case of section
2 1445(e)(5), the Secretary issues regu-
3 lations or other guidance providing for
4 such increase, and

5 “(VI) in the case of section
6 1445(e)(6), the nonresident alien indi-
7 vidual or foreign corporation referred
8 to in such section is an applicable per-
9 son.

10 “(C) APPLICABLE PERSON.—For purposes
11 of this paragraph, the term ‘applicable person’
12 means—

13 “(i) any individual (other than a citi-
14 zen or resident of the United States) who
15 is a citizen of a foreign country listed in a
16 report under subsection (a),

17 “(ii) any foreign corporation (other
18 than a specified 10-percent owned foreign
19 corporation, as defined in section 245A(b))
20 which is created or organized in such a
21 foreign country or subject to the income
22 tax laws of such foreign country, and

23 “(iii) in the case of the application of
24 subparagraph (B)(i) with respect to section
25 1441(a), foreign partnerships to the extent

1 provided by the Secretary (and taking into
2 account the rules of section 1441(d)).

3 “(D) APPLICABLE DATE.—For purposes of
4 this paragraph, the term ‘applicable date’
5 means with respect to any foreign country, the
6 day after the 180-day period beginning on the
7 date of the submission of the first report under
8 subsection (a) which lists such foreign country.

9 “(E) APPLICABLE NUMBER OF PERCENT-
10 AGE POINTS.—For purposes of this para-
11 graph—

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

15 “(I) with respect to the 1-year
16 period beginning on the applicable
17 date with respect to such foreign
18 country, 5 percentage points,

19 “(II) with respect to the 1-year
20 period beginning with the close of the
21 period described in subclause (I), 10
22 percentage points,

23 “(III) with respect to the 1-year
24 period beginning with the close of the

1 period described in subclause (II), 15
2 percentage points, and

3 “(IV) with respect to any time
4 after the close of the period described
5 in subclause (III), 20 percentage
6 points.

7 “(ii) APPLICATION TO TAXABLE
8 YEARS.—For purposes of subparagraph
9 (A), the applicable number of percentage
10 points shall be determined with respect to
11 the date on which the taxable year begins.

12 “(iii) APPLICATION TO WITHHOLDING
13 TAXES.—For purposes of subparagraph
14 (B), the applicable number of percentage
15 points shall be determined with respect to
16 the date of the payment or disposition, as
17 the case may be.

18 “(F) EFFECT OF PERMANENT REPEAL OR
19 TERMINATION OF EXTRATERRITORIAL AND DIS-
20 CRIMINATORY TAXES.—If the Secretary deter-
21 mines under subsection (a)(2)(B)(ii) that any
22 foreign country no longer has any
23 extraterritorial or discriminatory taxes, then in
24 the case of any taxable year beginning, or pay-
25 ment or disposition made, after the date of the

1 submission of the report which includes such
2 determination, this section shall be applied with
3 respect to such foreign country by not taking
4 into account any report submitted before such
5 date.

6 “(2) OTHER REMEDIES.—

7 “(A) PROCUREMENT.—

8 “(i) IN GENERAL.—The President
9 may prohibit the Federal Government from
10 procuring, or entering into any contract for
11 the procurement of, goods or services from
12 applicable persons during the period begin-
13 ning on the applicable date and ending on
14 the date of any determination described in
15 paragraph (1)(F) by the Secretary with re-
16 spect to such foreign country.

17 “(ii) CONGRESSIONAL NOTIFICA-
18 TION.—If the President takes any action
19 described in clause (i), the President shall,
20 not later than 30 days after the date of
21 such action, notify the appropriate commit-
22 tees of Congress of such action.

23 “(B) TAX TREATIES.—

24 “(i) IN GENERAL.—The Secretary
25 shall take into account the extraterritorial

1 taxes and discriminatory taxes of any for-
2 eign country in assessing whether to enter
3 into a bilateral tax treaty with such foreign
4 country or to participate in negotiations
5 with respect to updating a bilateral tax
6 treaty with such foreign country.

7 “(ii) CONGRESSIONAL NOTIFICA-
8 TION.—If the Secretary begins negotia-
9 tions with respect to entering into or up-
10 dating any bilateral tax treaty with any
11 foreign country that imposes one or more
12 extraterritorial or discriminatory taxes, the
13 Secretary shall, not later than 30 days
14 after beginning such negotiations, notify
15 the appropriate committees of Congress of
16 such action. Such notification shall include
17 a description of the manner in which such
18 taxes are being taken into account as re-
19 quired under clause (i).

20 “(C) TRADE AGREEMENTS.—

21 “(i) IN GENERAL.—The United States
22 Trade Representative and the Secretary of
23 Commerce shall each take into account the
24 extraterritorial taxes and discriminatory
25 taxes of any foreign government in assess-

1 ing whether to enter into any free trade
2 agreement or Executive agreement on
3 trade with such foreign country.

4 “(ii) CONGRESSIONAL NOTIFICA-
5 TION.—If the United States Trade Rep-
6 resentative or the Secretary of Commerce
7 begins negotiations with respect to enter-
8 ing into any free trade agreement or Exec-
9 utive agreement on trade with any foreign
10 country that imposes one or more
11 extraterritorial or discriminatory taxes, the
12 United States Trade Representative or the
13 Secretary of Commerce (as the case may
14 be) shall, not later than 30 days after be-
15 ginning such negotiations, notify the ap-
16 propriate committees of Congress of such
17 action. Such notification shall include a de-
18 scription of the manner in which such
19 taxes are being taken into account as re-
20 quired under clause (i).

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

22 “(1) EXTRATERRITORIAL TAX.—

23 “(A) IN GENERAL.—The term
24 ‘extraterritorial tax’ means any tax imposed by
25 a foreign country on a corporation (including

1 any trade or business of such corporation)
2 which is determined by reference to any income
3 or profits received by any person (including any
4 trade or business of any person) by reason of
5 such person being connected to such corpora-
6 tion through any chain of ownership, deter-
7 mined without regard to the ownership interests
8 of any individual, and other than by reason of
9 such corporation having a direct or indirect
10 ownership interest in such person.

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

15 “(2) DISCRIMINATORY TAX.—

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

20 “(i) such tax applies to items of in-
21 come that would not be considered to be
22 from sources within the foreign country
23 under the rules of part I of this subchapter
24 if such part were applied by treating such

1 foreign country as though it were the
2 United States,

3 “(ii) such tax is imposed on a base
4 other than net income and is not computed
5 by permitting recovery of costs and ex-
6 penses,

7 “(iii) such tax is exclusively or pre-
8 dominantly applicable, in practice or by its
9 terms, to nonresident individuals and for-
10 eign corporations or partnerships (as de-
11 termined under rules similar to paragraphs
12 (4) and (5) of section 7701(a) by treating
13 the foreign country as though it were the
14 United States) because of the application
15 of revenue thresholds, exemptions or exclu-
16 sions for taxpayers subject to such foreign
17 country’s corporate income tax, or restric-
18 tions of scope that ensure that substan-
19 tially all residents (other than foreign cor-
20 porations and partnerships (as so deter-
21 mined)) supplying comparable goods or
22 services are excluded from the application
23 of such tax, or

24 “(iv) such tax is not treated as an in-
25 come tax under the laws of such foreign

1 country or is otherwise treated by such for-
2 eign country as outside the scope of any
3 agreements that are in force between such
4 foreign country and one or more other ju-
5 risdictions for the avoidance of double tax-
6 ation with respect to taxes on income.

7 “(B) EXCEPTIONS.—Except as otherwise
8 provided by the Secretary, the term ‘discrimina-
9 tory taxes’ shall not include any generally appli-
10 cable tax which constitutes—

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

13 “(ii) a value added tax, goods and
14 services tax, sales tax, or other similar tax
15 on consumption,

16 “(iii) a tax imposed with respect to
17 transactions on a per-unit or per-trans-
18 action basis rather than on an ad valorem
19 basis,

20 “(iv) a tax on real or personal prop-
21 erty, or

22 “(v) any other similar tax identified
23 by the Secretary for purposes of this sub-
24 paragraph.

1 “(3) FOREIGN COUNTRY.—The term ‘foreign
2 country’ means a foreign country or a dependent
3 territory or possession of a foreign country. Such
4 term does not include any possession of the United
5 States.

6 “(4) APPROPRIATE COMMITTEES OF CON-
7 GRESS.—The term ‘appropriate committees of Con-
8 gress’ means—

9 “(A) the Committee on Finance and the
10 Committee on Foreign Relations of the Senate,
11 and

12 “(B) the Committee on Foreign Affairs
13 and the Committee on Ways and Means of the
14 House of Representatives.

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

18 “(e) REGULATIONS AND OTHER GUIDANCE.—The
19 Secretary may issue such regulations or other guidance
20 as may be necessary or appropriate to carry out the pur-
21 poses of this section, including regulations or other guid-
22 ance which provide for such adjustments to the application
23 of this section as are necessary to prevent the avoidance
24 of the purposes of this section.”.

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

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

○