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# Proposed Section 899

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# Speaker



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# Status of S. 899

## *Where things stand*

- Originally proposed by Chairman Smith in 2023.
- Reintroduced in early 2025 as H.R. 591.
- Incorporated, in substantially modified form, in the House tax bill.
- House passed the reconciliation bill on May 22, 2025.
- Senate will take up the reconciliation bill—including S. 899—in June.



# S. 899

## *Scoring of provision in House Bill*

Year	Score (Millions of Dollars)
2025	--
2026	12,560
2027	28,721
2028	31,810
2029	27,259
2030	19,241
2031	9,514
2032	160
2033	-4,828
2034	-8,134
2025-2029	100,351
2025-2034	116,303

# S. 899

## *Treasury Report Mechanism*

### **In H.R. 591**

- Application of section 899 depended on whether the Secretary listed a particular country on its periodic reports to Congress.
- Provision therefore was not necessarily automatic in application.
- Though the proposal included a definition of extraterritorial and discriminatory taxes, whether section 899 should apply to residents of a particular country was left to discretion of the Secretary.

### **In House Reconciliation Bill**

- Requirement for Treasury to submit periodic reports of offending countries retained, but section 899 re-structured so that it applies with less dependence on those periodic reports.
- Bill includes a definition of “unfair foreign taxes” that would allow automatic application against certain types of taxes (UTPRs, DSTs, DPTs), while still depending on the Treasury to identify extraterritorial and discriminatory taxes.

# S. 899

## *Imposing increased rates of withholding tax*

### In H.R. 591

- Included an explicit treaty override
- “the rate of tax specified in sections 1441(a) and 1442(a) [...] shall each be [...] determined without regard to any treaty obligation and increased by the applicable number of percentage points”

### In House Reconciliation Bill

- No explicit treaty override
- “each rate of tax specified in section 1441(a) or 1442(a) **(or any rate of tax applicable in lieu of such statutory rate)** shall be increased by the applicable number of percentage points”
- Cap on increase includes a covert treaty override. The increased rate shall not exceed “the amount of the statutory rate **(determined without regard to any rate applicable in lieu of such statutory rate)** increased by 20 percentage points.”
- Creates a 50% cap

# S. 899

## *Imposing increased rates of withholding tax – U.S. Real Property Interests*

### In H.R. 591

- Included an explicit treaty override
- Disposition of U.S. Real Property Interests: “the rate of tax specified in section 1445(a) shall be [...] determined without regard to any treaty obligation and increased by the applicable number of percentage points”
- Other dispositions and distributions related to United States Real Property Interests:

### In House Reconciliation Bill

- No explicit treaty override
- “the rate of tax specified in section 1445(a) **(or any rate of tax applicable in lieu of such statutory rate)** shall be increased by the applicable number of percentage points”
- Cap on increase includes a covert treaty override. The increased rate shall not exceed “the amount of the statutory rate (**determined without regard to any rate applicable in lieu of such statutory rate**) increased by 20 percentage points.”
- Creates a 50% cap

# S. 899

## *Imposing increased rates of withholding tax – Other Dispositions and Distributions Related to U.S. Real Property Interests*

### In H.R. 591

- Included an explicit treaty override
- “each rate of tax in such paragraph shall be [...] determined without regard to any treaty obligation of the United States and increased by the applicable number of percentage points”
- Increased rates applied under 1445(e)(1-6) if the foreign person, corporation, shareholder, or nonresident alien individual referred to in those provisions is an “applicable person”

### In House Reconciliation Bill

- No explicit treaty override
- “the rate of tax specified in section 1445(e) **(or any rate of tax applicable in lieu of such statutory rate)** shall be increased by the applicable number of percentage points”
- Applies in same manner (if the foreign persons in section 1445(e) are applicable persons)
- 20% cap applies to this provision as well.



# S. 899

## *Application to Foreign Governments*

### **In H.R. 591**

- Did not include language implicating foreign governments.

### **In House Reconciliation Bill**

- Turns off section 892 for any government of a "discriminatory foreign country" that enacts an "unfair foreign tax."
- Thus, it removes the exemption from tax in section 892 for income of foreign governments received from investments in the United States and interest on deposits in U.S. banks.

# S. 899

## *Applicable number of percentage points*

### **In H.R. 591**

- 5% for first year
- 10% for second year
- 15% for third year
- 20% for any year thereafter

### **In House Reconciliation Bill**

- 5% for first year
- Additional 5% “for each annual anniversary”
- Institutes a cap based on statutory rate, increased by 20 percentage points.

# S. 899

## *Merging of “Super BEAT” proposal*

- Previously introduced as H.R. 2423, the Unfair Tax Prevention Act, by Rep. Estes and incorporated into S. 899 in the reconciliation bill
- Eliminates the \$500M gross receipts test and the 3% base erosion percentage threshold requirement;
- Applies 12.5% BEAT rate (instead of 10%);
- Turns off certain provisions within the BEAT that lessen its impact, including:
  - the provision that excludes any base erosion tax benefit attributable to a base erosion payment if withholding applies to the payment,
  - the provision that excludes base erosion payments for amounts that qualify under the services cost method, and
  - the provision that excludes payments made at cost
- Establishes that the amount described in section 59A(b)(1)(B)(ii) (*i.e.* the favored credits in the BEAT calculation) will be zero
- If any amount (other than the purchase price of depreciable or amortizable property or inventory) would have been a base erosion payment but for the fact that the taxpayer capitalizes the amount, then such amount is treated as if it is deducted rather than capitalized (for purposes of determining base erosion payments and base erosion tax benefits)

# S. 899

## Merging of “Super BEAT” proposal

- Applies to any corporation described in section 899(b)(1)(E), applied by substituting “corporation” for “foreign corporation.” Section 899(b)(1)(E), as modified, describes the following:  
[Any ~~foreign~~ corporation (other than a publicly held corporation) if more than 50 percent of—  
    (i) the total combined voting power of all classes of stock of such corporation entitled to vote, or  
    (ii) the total value of the stock of such corporation,  
**is owned (within the meaning of section 958(a)) by persons described in this paragraph.**
- Section 899(b)(1)(C) describes the following person: “[A]ny **foreign corporation** (other than a United States-owned foreign corporation, as defined in section 904(h)(6)) **which is a tax resident of a discriminatory foreign country.**”
- Focus is on the ownership of the corporation in question, not the residence of the recipient of BEAT payments.
- Consider impact of reference to section 904(h)(6) - foreign companies with majority US public shareholders may be exempted

# S. 899

## *Definition of Unfair/Extraterritorial/Discriminatory Taxes*

### **In H.R. 591**

- Included two categories of offending taxes: extraterritorial taxes and discriminatory taxes.

### **In House Reconciliation Bill**

- Introduces the new defined term of an “unfair foreign tax,” which specifically includes UTPRs, DSTs, DPTs, and “to the extent provided by the Secretary, an extraterritorial tax, discriminatory tax, or any other tax enacted with a public or stated purpose indicating the tax will be economically borne, directly or indirectly, disproportionately by United States persons.”
- Does not include a definition of UTPR, DST, or DPT.

# S. 899

*Definition of Extraterritorial Tax: simply re-numbered*

~~“(1) EXTRATERRITORIAL TAX.—~~

~~“(A) IN GENERAL~~ “(2) EXTRATERRITORIAL TAX.—The term ‘extraterritorial tax’ means any tax imposed by a foreign country on a corporation (including any trade or business of such corporation) which is determined by reference to any income or profits received by any person (including any trade or business of any person) by reason of such person being connected to such corporation through any chain of ownership, determined without regard to the ownership interests of any individual, and other than by reason of such corporation having a direct or indirect ownership interest in such person.

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

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

*[Provision moved to a later definitions section]*



# S. 899

## *Definition of Discriminatory Tax: some changes*

“(3) DISCRIMINATORY TAX.—The term ‘discriminatory tax’ means any tax imposed by a foreign country if—

“(iA) such tax applies more than incidentally to items of income that would not be considered to be from sources, or effectively connected to a trade or business, within the foreign country under the rules of part I of this ~~subchapter~~sub-chapter if such part were applied by treating such foreign country as though it were the United States,

“(iiB) such tax is imposed on a base other than net income and is not computed by permitting recovery of costs and expenses,

“(iiiC) such tax is exclusively or predominantly applicable, in practice or by its terms, to nonresident individuals and foreign corporations or partnerships (as determined under rules similar to paragraphs (4) and (5) of section 7701(a) by treating the foreign country as though it were the United States) because of the application of revenue thresholds, exemptions or exclusions for taxpayers subject to such foreign country’s corporate income tax, or restrictions of scope that ensure that substantially all residents (other than foreign corporations and partnerships (as so determined)) supplying comparable goods or services are excluded from the application of such tax, or

“(ivD) such tax is not treated as an income tax under the laws of such foreign country or is otherwise treated by such foreign country as outside the scope of any agreements that are in force between such foreign country and one or more other jurisdictions for the avoidance of double taxation with respect to taxes on income.

# S. 899 *Exceptions to Definition: more substantial changes*

“(B4) EXCEPTIONS.—Except as otherwise provided by the Secretary, the ~~term~~terms ‘extraterritorial tax’ and ‘discriminatory taxestax’ shall not include any generally applicable tax which constitutes—

“(A) an income tax generally imposed on the income of citizens or residents of the foreign country, even if the computation of income includes payments that would be foreign source income under part I of this subchapter,

“(B) an income tax which would be an unfair foreign tax (determined without regard to this subparagraph) solely because it is imposed on the income of nonresidents attributable to a trade or business in such foreign country,

“(C) an income tax which would be an unfair foreign tax (determined without regard to this subparagraph) solely because it is imposed on citizens or residents of such foreign country by reference to the income of a corporate subsidiary of such person,

“(iD) a withholding tax~~on amounts~~, or other gross basis tax, on any amount described in ~~sections~~section 871(a)(1) ~~and~~or 881(a), other than any withholding tax, or other gross basis tax, imposed with respect to services performed by persons other than individuals,

“(iiE) a value added tax, goods and services tax, sales tax, or other similar tax on consumption,

“(iiiF) a tax imposed with respect to transactions on a per-unit or per-transaction basis rather than on an ad valorem basis,

“(ivG) a tax on real or personal property, ~~or~~an estate tax, a gift tax, other similar tax,

“(H) a tax which would not be an extraterritorial tax or discriminatory tax (determined without regard to this subparagraph) except by reason of consolidation or loss sharing rules that generally apply only with respect to income of tax residents of the foreign country, or

“(vI) any other ~~similar~~ tax identified by the Secretary for purposes of this ~~subparagraph~~paragraph.

# S. 899

## *Applicable Dates – Increased Rates of Withholding*

### **In H.R. 591**

- Applicable date was based on the timing of when a country/offending measure was included in the Secretary's periodic report.
- Increased rates of withholding applied the day after the 180-day period beginning on the date of the submission of the first report listing the country.
- Increased rates continued to apply until the Secretary no longer listed the country in its periodic reports.

### **In House Reconciliation Bill**

- Increased withholding taxes apply to “each calendar year beginning during the period that such person is an applicable person.”
- For residents of countries with existing UTPRs, DSTs, and DPTs, if the bill is passed this year, this means increased rates of withholding could begin January 1, 2026.
- Applicable number of percentage points determined on the date of the payment or disposition. This, along with the provision in S. 899(a)(4)(G) that increased rate does not apply to a foreign country that is not a discriminatory foreign country, appears to create immediate relief if a country repeals its UTPR, DST, DPT.

# S. 899

## *Applicable Dates – Increased Rates of Withholding*

### **In H.R. 591**

- Did not provide safe harbors or acknowledge potential difficulties for withholding agents with regard to tracking increased rates.

### **In House Reconciliation Bill**

- Establishes a safe harbor clarifying that the increased rates of withholding will not apply if the discriminatory foreign country is not listed by the Secretary as a discriminatory foreign country
- For corporations that are “applicable persons” due to the fact that they are owned by an “applicable person,” the increased rates do not apply if the discriminatory foreign country has been listed by the Secretary for less than 90 days.
- No penalties or interest for failures to deduct or withhold if the withholding agent demonstrates to the satisfaction of the Secretary that the agent made best efforts to comply with the increased rates for withholding in a timely manner. Applies only to failures to withhold before January 1, 2027.

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