

Proposed Section 899 IRC and its deterrent consequences

May 13, 2025

The bill [H.R. 591](#) proposes the introduction of Sec. 899 of the U.S. Internal Revenue Code, which would impose additional withholding taxes on U.S. income of foreign investors from countries which, from the U.S. perspective, apply extraterritorial or discriminatory taxes. These tax surcharges of up to 20 percentage points would also override double taxation treaties and could, for example, affect German investors in U.S. fund structures. Although certain existing exemptions—such as those for Qualified Foreign Pension Plans—could theoretically continue, their protection under Sec. 899 has not yet been conclusively clarified.

Legislative history

On April 10, 2025, Republicans in the House of Representatives narrowly passed a revised budget resolution, which had already been passed by the Senate the previous week, by a vote of 216 to 214.

Budget reconciliation is a special procedure used by both chambers of the U.S. Congress—the Senate and the House of Representatives—and is used to expedite the passage of certain legislative proposals, particularly in situations where bipartisan support is not expected. This includes the bill [H.R. 591](#).



Dokumente zu diesem beleuchtet:

- [H.R. 591](#)

The bill [H.R. 591](#) supports this administration's "America First Trade Policy" and its renewed focus on investigating whether any foreign country subjects U.S. citizens and corporations to extraterritorial or discriminatory taxes. The bill [H.R. 591](#) would add a new Sec. 899 to the U.S. Internal Revenue Code (IRC). This new provision

would be titled „Enforcement of Remedies Against Extraterritorial Taxes and Discriminatory Taxes“ and could eventually lead to increased tax rates on citizens and corporations of countries imposing extraterritorial or discriminatory taxes (from the US perspective).

In addition to the minimum tax law (OECD Pillar 2) – which has already been introduced in Germany – the digital tax, which is under discussion at EU level, is also explicitly mentioned as a discriminatory tax.

Remedial action by the US government

Once each foreign country, which has one or more extraterritorial taxes or discriminatory taxes, is identified, U.S. income of investors and corporations in those foreign countries would be subject to withholding at the following tax rates:

- Full statutory tax rates, and



- increased by five percentage points each year for four years up to 20 percentage points in the fourth year and thereafter.

Year	Increase by percentage points
1 st Year	plus 5 percentage points
2 nd Year	plus 5 percentage points (10 in total)
3 rd Year	plus 5 percentage points (15 in total)
4 th Year	plus 5 percentage points (20 in total)

The full statutory tax rates would remain elevated by 20 percentage points as long as the discriminatory or extraterritorial taxes continue to apply. They would cease to apply beginning with the first tax year after the relevant foreign country permanently repeals or terminates its extraterritorial and discriminatory taxes.



Interaction between Sec. 899 and double tax treaties

In the event of conflict between statutes and treaties, the U.S. courts generally follow the so-called “last-in-time” rule. Under this rule, if a provision of a U.S. tax law and a provision of a U.S. tax treaty are in conflict, the one enacted or ratified most recently would generally apply. Thus, if [H.R. 591](#) would be passed (and Sec. 899 IRC would become law thereby), it is expected to override double tax treaties with the U.S. currently in effect.

Sec. 899 IRC would then impose the following tax rates (and increased by the applicable number of percentage points):



- Branch profits tax: The statutory rate of 30 percent in Sec. 884(a) IRC would apply on the dividend equivalent amount for the taxable year.
- Fixed or determinable annual or periodical (FDAP) income: A 30 percent tax rate would apply to and be withheld under Sec. 881(a) and Sec. 1442(a) IRC on FDAP income, e.g. dividends, interest and rents.
- Effectively connected income (ECI): A 21 percent corporate income tax rate would apply to foreign corporations subject to tax on their income which is effectively connected with the conduct of a trade or business within the United States under Sec. 882(a) and Sec. 11(b) IRC.
- U.S. real property interests (USRPIs): Certain disposition of any U.S. real property interests will be subject to a minimum tax rate of 15 percent under Sec. 1445(a) or (e) IRC.

Qualified foreign pension plan status

It currently seems that H.R. 591 does not appear to override exemptions from income or withholding taxes that are currently contained in the IRC. This means that foreign investors, who meet the requirements of “qualified foreign pension funds” (QFPFs) and therefore may benefit from the tax exemptions under Sec. 897(l) IRC, may continue to be exempt from withholding taxes. However, we would like to point out that this issue has yet to be fully clarified to date.

Date of application

The U.S. Constitution does not allow the legislature to pass laws that retroactively criminalize behavior that was legal at the time (a so-called ex post facto law). While Sec. 899 would not fall into that category, the U.S. legislature is not likely to have Sec. 899 apply retroactively, in our opinion. The goal of this legislation is to cause countries to repeal extraterritorial and discriminatory tax laws going forward. Retroactive application of Sec. 899 would not be the most effective means to achieve this purpose.



in touch: Any questions? Please do not hesitate to contact us!



Dr. Carsten Bödecker
Partner . Steuerberater . Rechtsanwalt
Tel. +49 211 946847-51
carsten.boedecker@bepartners.pro



Carsten Ernst
Partner . Steuerberater
Tel. +49 211 946847-52
carsten.ernst@bepartners.pro



Alexander Skowronek
Partner . Steuerberater . Rechtsanwalt
Tel. +49 211 946847-62
alexander.skowronek@bepartners.pro



Nathalie Grenewitz
Principal . US-Attorney at Law
Tel. +49 211 946847-57
nathalie.grenewitz@bepartners.pro



Bödecker Ernst & Partner mbB | Steuerberater . Rechtsanwälte
Nordstraße 116-118 | 40477 Düsseldorf
<https://www.bepartners.pro>

