

# House Passes Tax Bill: Proposed Legislation Would Increase US Taxes on Many Foreign Individuals, Entities and Governments

---

May 30, 2025 Sam Lichtman, Don Shiman, Annie Lawson

---

PRACTICES Tax, Finance

---

"The One, Big, Beautiful Bill" (H.R. 1, 119th Congress) (the **OBBB**) is a tax package advanced as a part of the proposed *Defending American Jobs and Investment Act*. The OBBB was passed in the House of Representatives on May 22, 2025, and now awaits consideration in the Senate, where further changes are expected. Although a significant part of the OBBB is focused on making certain temporary provisions introduced by the Tax Cuts and Jobs Act of 2017 permanent, the OBBB also introduces new tax provisions and amendments.

## **Proposed Section 899**

In its current form, the OBBB includes a new international tax provision — proposed Section 899, titled "Enforcement of Remedies Against Unfair Foreign Taxes" — which would increase U.S. federal income tax rates and U.S. federal withholding tax rates for certain foreign individuals and entities.

## **Operation of Section 899**

**Targeted Taxpayers:** Section 899 would target foreign countries that are deemed to impose "unfair foreign taxes" on U.S. persons or U.S.-owned foreign entities. The Treasury Department would be required to publish a list of "discriminatory foreign countries" every quarter. "Unfair foreign taxes" generally includes taxes imposed under the undertaxed profits rules under OECD Pillar Two, digital services taxes, diverted profits taxes and other taxes "with a public or stated purpose indicating the tax will be economically borne, directly or indirectly, disproportionately by United States persons."

Section 899 would increase tax rates for the following "applicable persons":

- government entities of a discriminatory foreign country;
- individuals and corporations who are tax residents of a discriminatory foreign country;
- any corporation that is more than 50% owned (by vote or value) by residents of a discriminatory foreign country; and
- certain foreign partnerships, branches, trusts and other entities identified by the Treasury Secretary with respect to a discriminatory foreign country.

U.S. citizens, U.S. residents and foreign entities majority-owned (by vote or value) by U.S. persons are generally exempt.

**Escalating Tax Rates:** Section 899 would impose escalating increases in U.S. tax rates on affected foreign persons. The increase starts at 5 percentage points above the otherwise applicable U.S. tax rate and rises by 5 percentage points each year the "unfair foreign tax" remains in place, up to a maximum of 20 percentage points above the statutory rate.

**Scope of Tax Increases:** Section 899 would increase tax rates for the following specified tax rates:

- the 30 percent withholding tax rate imposed on U.S. source interest, dividends and other “fixed or determinable annual or periodical gains, profits and income” (FDAP);
- the U.S. federal net income tax rates imposed on a nonresident alien individual or foreign corporation (including branch profits tax) subject to tax on income that is effectively connected with the conduct of a U.S. trade or business (ECI), but, in the case of a foreign individual, the increase would only apply with respect to ECI relating to U.S. real property subject to net income or withholding tax under FIRPTA.

**Tax Treaties:** The Section’s potential interaction with tax treaties is not entirely clear. However, the legislative history to the OBBB indicates that if a tax treaty provides for a reduced rate of U.S. tax on certain categories of income, then the reduced rate would serve as the base for the 5-20 percent increase and the rate under Section 899 would override the treaty rate.

**Section 892 Exemption:** The provision would eliminate the Section 892 exemption and impose U.S. federal withholding tax (at the regular applicable rate) on certain governmental entities, including sovereign wealth funds from discriminatory foreign countries that are currently exempt from U.S. federal income tax on U.S source income (other than certain U.S. source commercial activity income).

**Delayed Effective Date:** If enacted, and subject to certain safe harbor provisions for withholding agents (outlined below), Section 899 would take effect on the first day of the calendar year following the latest of the following events:

1. 90 days after the enactment of Section 899;
2. 180 days after the enactment of the “unfair foreign tax” by the relevant non-U.S. jurisdiction (if enacted more than 90 days after Section 899 is enacted); or
3. The initial effective date of the “unfair foreign tax” (if that date is more than 180 days after such tax is enacted by the non-U.S. jurisdiction).

Withholding agents would not be penalized for under-withholding through Dec. 31, 2026, provided they act in good faith to comply with the new requirements.

## **Potential Implications for the U.S. Lending Market**

If enacted as drafted, non-U.S. banks that are generally not eligible for the portfolio interest exemption and rely on treaty exemptions would be subject to increased U.S. withholding tax (in the case of a non-U.S bank not acting out of a U.S. branch) or increased U.S. federal net income tax (in the case of a non-U.S. bank acting out of a U.S. branch). Under the terms of existing loan agreements with standard LSTA tax provisions, non-U.S. bank lenders not acting through a U.S. branch may be entitled to tax gross-up, indemnity, and increased costs change in law protections and the mitigation and replacement of lender provisions may be triggered.

Non-bank lenders that are entitled to rely on the portfolio interest exemption should not be affected by Section 899. However, offshore private investment lending funds that utilize treaty-based fund structures to avoid ECI on their loan origination activities will need to consider the impact of Section 899 to their fund structures.

Borrowers and lenders in cross-border loan facilities, as well as counterparties to cross-border derivatives transactions, that are currently being negotiated (and, if the OBBB is enacted as drafted, the parties to loan agreements and derivatives contracts entered into after the enactment of Section 899) will need to consider how to allocate the risk of additional U.S. withholding or U.S. federal income tax that may be borne by non-U.S. lenders, participants or other counterparties under Section 899 and whether changes will need to be made to the loan documents or ISDA schedule, as applicable, to provide the non-US party with the appropriate yield protection.

## Additional Noteworthy OBBB Provisions

In addition to enacting Section 899, the OBBB seeks to extend or make permanent many of the individual and business tax cuts enacted under the 2017 Tax Cuts and Jobs Act and modifies other existing tax laws. Below is a summary of additional select provisions in the OBBB.

- **SALT Deduction:** The cap on the state and local tax deduction is raised from \$10,000 to \$40,000 for taxpayers with incomes up to \$500,000, at which point the deduction would begin to phase out. The cap and threshold increase by 1 percent annually over 10 years. In addition, the OBBB would close the pass-through election loophole in which many states have passed legislation to allow for pass-through entities to elect to pay taxes that are creditable to the interest holders effectively creating a deduction for state taxes.
- **Section 199A Deduction:** The deduction for qualified business income is made permanent and increased to 23 percent.
- **Bonus Depreciation and Expensing:** Reinstates 100 percent first-year bonus depreciation for equipment and machinery, increases the Section 179 expensing cap to \$2.5 million and allows 100 percent expensing for certain commercial real property and new factories.
- **Business Interest Deduction:** Increases the deduction for business interest expenses, which is limited to 30 percent of a business's "adjustable taxable income" by revising the definition of "adjustable taxable income" to exclude depreciation and amortization through 2029.
- **Opportunity Zones:** Renews and enhances the Opportunity Zone program for taxable years 2027 through 2033.
- **Green Energy Tax Credits:** Repeals or phases out many clean energy tax credits from the Inflation Reduction Act, particularly those for electric vehicles and residential energy products, while retaining or modifying others (e.g., nuclear credits). It would generally terminate transferability of clean energy production tax credits and investment tax credits.
- **GILTI and FDII:** Permanently extends lower tax rates for Global Intangible Low-Taxed Income (GILTI), and Foreign-Derived Intangible Income (FDII).
- **MAGA Accounts:** The OBBB creates "MAGA" accounts, which can be used to pay for higher education, make a first-time home purchase or pay off small business-related loans. Qualified distributions are subject to tax at a capital gain tax rate.
- **Disguised Sales:** Revises Section 707(a)(2) so that its substantive terms apply "except as provided by the Secretary," as compared to the "under regulations prescribed by the Secretary," as currently included in the statutory language. This change appears to be intended to ensure Section 707(a)(2) is self-executing and thus eliminates the argument that Section 707(a)(2) is operative only to the extent that Treasury has promulgated final regulations amplifying the provision. The statutory substance of the disguised sale and payment rules remains unchanged.