ICC Briefing Note

Proposed Section 899: a short explainer

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Proposed Section 899 and Section 891: a brief overview

On May 22, 2025, the U.S. House of Representatives passed a bill, commonly referred to as the "One, Big, Beautiful Bill," which includes significant amendments to the U.S. Internal Revenue Code. The bill includes proposed Section 899, titled "Enforcement of Remedies Against Unfair Foreign Taxes," coupled with an expansion of the Base Erosion and Anti-Abuse Tax (BEAT). These provisions consolidate, with modifications, two earlier proposed tax bills and is currently under consideration by the U.S. Senate.

Proposed Section 899 is designed to impose higher U.S. income tax rates on corporations and individuals from countries deemed to levy discriminatory or extraterritorial taxes on U.S. citizens or corporations.

Section 899 as a retaliatory tax policy

The motivation behind Section 899 is mainly incentivize foreign jurisdictions to alter their policies and/or to directly raise revenue from foreign companies operating in the U.S. Proposed Section 899 will be primarily targeted at three foreign tax policies vehemently opposed by the U.S.:

- The Undertaxed Profits Rule (UTPR) associated with the global minimum tax deal known as Pillar Two;
- Digital Services Taxes (DSTs);
- Diverted Profits Taxes (DPTs).

The retaliatory measures are also twofold. The first part involves increased rates of income tax on foreign entities. This measure is notably broad, encompassing virtually any kind of passive or active investment income generated by foreigners, with very few exceptions. For these numerous income classes, the rates would progressively increase by 5 percentage points annually until they ultimately exceed their statutory levels by 20 percentage points. The second part entails an expansion of the Base Erosion and Anti-Abuse Tax (BEAT) for applicable companies from these same countries[1]. The new retaliatory provisions would both hike the BEAT rate to 12.5 percent and, more significantly, deny credits and introduce other changes to the BEAT base for these companies, thereby making it far more onerous.

In terms of affected countries, most large economies would qualify for retaliation. The UTPR, for instance, has been widely adopted through an EU Directive, making it challenging for individual countries to unilaterally unwind. The UTPR has been adopted as part of the implementation of Pillar Two also by Australia, Japan, New Zealand, Singapore, South Africa, South Korea, Thailand, Turkey and the UK. Furthermore, many EU countries, including France and Italy, have implemented national DSTs. Outside the EU, the UK maintains both a DST and a DPT, while Canada has a DST, and Australia operates a DPT.

[1] The BEAT is a minimum tax on corporations that make significant deductible payments to related non-U.S. entities.

However, there is also lack of clarity regarding the scope of countries and provisions that will be impacted. It is still uncertain how the retaliatory effects will come into play, as negotiations are still ongoing, where the scope is unclear and in cases where measures considered "discriminatory" are on hold or dormant.

For instance, Proposed Section 899 does not specifically refer to Significant Economic Presence provisions or similar measures, like those adopted by Nigeria, Kenya, or Colombia. However, it's worth noting that the current scope could be broadened, as other tax measures deemed "extraterritorial and discriminatory" adopted by various countries may be included in a forthcoming U.S. Treasury list.

Moreover, there are countries that although have adopted a UTPR, but have not yet implemented it, could trigger Section 899 upon enactment of a UTPR.

Why and how can Section 899 impact FDI

As indicated by other organizations[2], proposed Section 899, combined with the expansion of the Base Erosion and Anti-Abuse Tax (BEAT), can potentially have negative effects on Foreign Direct Investment (FDI) into the United States, if implemented as described in the current proposed version. It is also unclear, whether and how targeted countries might react and whether this could provoke a retaliatory escalation.

Questions also persist on the application of the proposed section on treasuries. While, a footnote in the House Budget Committee's report on the reconciliation bill states that the provision "does not apply to portfolio interest" which would typically include interest on U.S. Treasuries, it is still uncertain whether the statutory language in the bill itself can provide sufficient clarity on this matter to assuage foreign investors.

Interaction between the U.S. Internal Revenue Code and Treaties

Proposed Section 899, as outlined by the Joint Committee on Taxation, may have tax treaty implications[3]. This means that if the new provisions cause U.S. tax rates to exceed the maximum rates allowed by a relevant tax treaty, proposed Section 899's higher rates would prevail.

However, a key nuance is that these increases are calculated starting from the treaty-reduced rate, rather than the standard domestic U.S. tax rate. For example, if a tax treaty reduces the U.S. tax on dividends from 30% to 5%, proposed Section 899 would increase that 5% rate by its prescribed increments (e.g., to 10%), instead of increasing the original 30% domestic rate to 35%. This approach marks a departure from earlier versions of the bill, which would have applied the rate hike to the domestic statutory rates, disregarding any treaty benefits.

A critical ambiguity remains regarding treaty-provided exemptions. Many tax treaties offer a complete exemption from U.S. tax for certain types of income, such as interest, royalties, or some

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[2] https://taxfoundation.org/blog/us-retaliatory-tax-policies-eu-international-taxes/; https://www.conference-board.org/research/ced-policy-backgrounders/proposed-surcharge-on-foreign-taxpayers.

[3] Joint Committee on Taxation, Description of the Tax Provisions of the Chairman's Amendment in the Nature of a Substitute to the Budget Reconciliation Legislative Recommendations Related to Tax (JCX-21-25), at 363, May 12, 2025.

business profits. It is currently unclear whether proposed Section 899 would respect these outright exemptions, or if it would treat a "zero rate" as a baseline to which the new tax increases would then apply. This lack of clarity introduces uncertainty for foreign investors and entities, who face the risk of higher taxation or the potential loss of full exemptions currently enjoyed under existing treaty provisions.

Timeline

The House adopted tax bill, including proposed Section 899, is now under consideration by the U.S. Senate, where it will need to be adopted and then signed by the President before it becomes law. Any changes made during the Senate review process will require reconsideration by the House before a final bill can be signed by the President.

In relation to when it will come into effect, proposed Section 899 would take effect on the first day of the first calendar year following the later of three dates:

- 90 days after its date of enactment,
- 180 days after the date of enactment of an unfair foreign tax that causes a country to be considered a discriminatory foreign country, or
- The first date that the unfair foreign tax begins to apply. The increased rates would cease to apply on the last date on which the discriminatory foreign country imposes an unfair foreign tax.

Thus, if proposed Section 899 were enacted in its current form before October 2025, residents of countries that already have a UTPR, digital services tax or diverted profits tax in effect, could become subject to the increased rates as of January 1, 2026.

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33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 E icc@iccwbo.org
www.iccwbo.org