118TH CONGRESS  
1ST SESSION  

H. R. 1

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

IN THE HOUSE OF REPRESENTATIVES

Mr. Smith of Missouri (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

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”. 
SEC. 2. ENFORCEMENT OF REMEDIES AGAINST EXTRATERRITORIAL TAXES AND DISCRIMINATORY TAXES.

(a) IN GENERAL.—Subpart D of part II of subchapter N of chapter 1 is amended by adding at the end the following new section:

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SEC. 899. ENFORCEMENT OF REMEDIES AGAINST EXTRATERRITORIAL TAXES AND DISCRIMINATORY TAXES.

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“(a) REPORT ON EXTRATERRITORIAL TAXES AND DISCRIMINATORY TAXES.—

“(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this section, and not less frequently than once every 180 days thereafter, the Secretary shall submit to the appropriate committees of Congress a report which lists each foreign country that has (as of the date of the submission of such report) one or more extraterritorial taxes or discriminatory taxes.

“(2) ADDITIONAL ITEMS.—Each report submitted under paragraph (1) shall include—

“(A) with respect to each extraterritorial tax or discriminatory tax of any foreign country listed in such report, a description of such tax including the rate thereof and the dates on
which such tax was enacted and takes effect,
and

“(B) if the Secretary determines that any
foreign country no longer has (as of the date of
the submission of such report) an
extraterritorial tax or discriminatory tax which
was described in any prior report submitted
under this subsection—

“(i) the dates on which the permanent
repeal or termination of such tax was en-
acted and takes effect, and

“(ii) whether such foreign country has
(as of such date) any other extraterritorial
taxes or discriminatory taxes.

“(3) DETERMINATION OF WHEN A FOREIGN
COUNTRY HAS AN EXTRATERRITORIAL TAX OR DIS-
CRIMINATORY TAX.—For purposes of this section, a
foreign country shall be treated as having an
extraterritorial tax or discriminatory tax during the
period—

“(A) beginning on the earlier of the date
on which such tax is enacted or takes effect,
“(B) ending on the later of the date on which the permanent repeal or termination of such tax is enacted or takes effect.

“(b) ENGAGEMENT WITH TRADING PARTNERS ON EXTRATERRITORIAL TAXES AND DISCRIMINATORY TAXES.—The Secretary shall commence enhanced bilateral engagement with each foreign country included in the report submitted under subsection (a), in order to, as appropriate—

“(1) express the concern of the United States with respect to the adverse trade and economic effects of tax policies that violate bilateral tax treaties and international tax norms,

“(2) urge repeal of extraterritorial taxes and discriminatory taxes that target United States persons, and

“(3) advise such foreign country of the remedial actions under subsection (c).

“(c) REMEDIAL ACTIONS.—

“(1) INCREASED RATE OF TAX ON FOREIGN CITIZENS AND FOREIGN CORPORATIONS.—

“(A) INCOME TAXES.—

“(i) IN GENERAL.—In the case of any applicable person for any taxable year beginning after the applicable date, each
specified rate of income tax shall be increased by the applicable number of percentage points.

“(ii) SPECIFIED RATE OF INCOME TAX.—For purposes of this subparagraph, the term ‘specified rate of income tax’ means—

“(I) the rates of tax specified in paragraphs (1) and (2) of section 871(a),

“(II) in the case of any applicable person to which section 871(b) applies, each rate of tax in effect under section 1,

“(III) the rate of tax specified in section 881(a),

“(IV) in the case of any applicable person to which section 882(a) applies, each rate of tax in effect under section 11, and

“(V) the rate of tax specified in section 884(a).

“(iii) APPLICATION OF INCREASED RATES TO EFFECTIVELY CONNECTED INCOME OF NONRESIDENT ALIEN INDIVIDU-
UALS LIMITED TO GAINS ON UNITED STATES REAL PROPERTY INTERESTS.—In the case of any individual to whom clause (i) applies, the tax imposed under section 1 on such individual (after application of clause (ii)(II)) shall be reduced (but not below zero) by the excess of—

“(I) the tax which would be imposed under such section (after application of clause (ii)(II)) if FIRPTA items were not taken into account, over

“(II) the tax which would be imposed under such section if FIRPTA items were not taken into account, and clause (ii)(II) did not apply.

For purposes of this clause, the term ‘FIRPTA items’ means gains and losses taken into account under section 871(b)(1) by reason of section 897(a)(1)(A).

“(B) WITHHOLDING TAXES.—

“(i) IN GENERAL.—In the case of any payment to an applicable person after the applicable date, the rate of tax specified in sections 1441(a) and 1442(a) (other than
the 14 percent rate of tax specified in section 1441(a)) shall each be increased by the applicable number of percentage points.

“(ii) Disposition of United States Real Property Interests.—In the case of any disposition of a United States real property interest (as defined in section 897(c)) by an applicable person after the applicable date, the rate of tax specified in section 1445(a) shall be increased by the applicable number of percentage points.

“(iii) Other Dispositions and Distributions Related to United States Real Property Interests.—In the case of any disposition or distribution described in any paragraph of section 1445(e) made after the applicable date, each rate of tax in such paragraph shall be increased by the applicable number of percentage points if—

“(I) in the case of section 1445(e)(1), the foreign person referred to in subparagraph (A) or (B)
of such section is an applicable person,

“(II) in the case of section 1445(e)(2), the foreign corporation referred to in such section is an applicable person,

“(III) in the case of section 1445(e)(3), the foreign shareholder referred to in such section is an applicable person,

“(IV) in the case of section 1445(e)(4), the foreign person referred to in such section is an applicable person,

“(V) in the case of section 1445(e)(5), the Secretary issues regulations or other guidance providing for such increase, and

“(VI) in the case of section 1445(e)(6), the nonresident alien individual or foreign corporation referred to in such section is an applicable person.
“(C) APPLICABLE PERSON.—For purposes of this paragraph, the term ‘applicable person’ means—

“(i) any individual (other than a citizen or resident of the United States) who is a citizen of a foreign country listed in a report under subsection (a),

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

“(iii) in the case of the application of subparagraph (B)(i) with respect to section 1441(a), foreign partnerships to the extent provided by the Secretary (and taking into account the rules of section 1441(d)).

“(D) APPLICABLE DATE.—For purposes of this paragraph, the term ‘applicable date’ means with respect to any foreign country, the day after the 180-day period beginning on the date of the submission of the first report under subsection (a) which lists such foreign country.
“(E) APPLICABLE NUMBER OF PERCENTAGE POINTS.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable number of percentage points’ means, with respect to any foreign country—

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

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

“(III) with respect to the 1-year period beginning with the close of the period described in subclause (II), 15 percentage points, and

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

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

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

“(F) EFFECT OF PERMANENT REPEAL OR
TERMINATION OF EXTRATERRITORIAL AND DIS-
CRIMINATORY TAXES.—If the Secretary deter-
mines under subsection (a)(2)(B)(ii) that any
foreign country no longer has any
extraterritorial or discriminatory taxes, then in
the case of any taxable year beginning, or pay-
ment or disposition made, after the date of the
submission of the report which includes such
determination, this section shall be applied with
respect to such foreign country by not taking
into account any report submitted before such
date.

“(2) OTHER REMEDIES.—

“(A) PROCUREMENT.—

“(i) IN GENERAL.—The President
may prohibit the Federal Government from
procuring, or entering into any contract for the procurement of, goods or services from applicable persons during the period beginning on the applicable date and ending on the date of any determination described in paragraph (1)(F) by the Secretary with respect to such foreign country.

“(ii) Congressional notification.—If the President takes any action described in clause (i), the President shall, not later than 30 days after the date of such action, notify the appropriate committees of Congress of such action.

“(B) Tax treaties.—

“(i) In general.—The Secretary shall take into account the extraterritorial taxes and discriminatory taxes of any foreign country in assessing whether to enter into a bilateral tax treaty with such foreign country or to participate in negotiations with respect to updating a bilateral tax treaty with such foreign country.

“(ii) Congressional notification.—If the Secretary begins negotiations with respect to entering into or up-
dating any bilateral tax treaty with any foreign country that imposes one or more extraterritorial or discriminatory taxes, the Secretary shall, not later than 30 days after beginning such negotiations, notify the appropriate committees of Congress of such action. Such notification shall include a description of the manner in which such taxes are being taken into account as required under clause (i).

“(C) TRADE AGREEMENTS.—

“(i) IN GENERAL.—The United States Trade Representative and the Secretary of Commerce shall each take into account the extraterritorial taxes and discriminatory taxes of any foreign government in assessing whether to enter into any free trade agreement or Executive agreement on trade with such foreign country.

“(ii) CONGRESSIONAL NOTIFICATION.—If the United States Trade Representative or the Secretary of Commerce begins negotiations with respect to entering into any free trade agreement or Executive agreement on trade with any foreign
country that imposes one or more
extraterritorial or discriminatory taxes, the
United States Trade Representative or the
Secretary of Commerce (as the case may be) shall, not later than 30 days after begin-
ing such negotiations, notify the ap-
propriate committees of Congress of such
action. Such notification shall include a de-
scription of the manner in which such
taxes are being taken into account as re-
quired under clause (i).

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

“(1) EXTRATERRITORIAL TAX.—

“(A) IN GENERAL.—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 corpora-
tion through any chain of ownership, deter-
mined 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 in-
crease in the rate or base of a tax, by a denial
of deductions or credits, or otherwise.

“(2) Discriminatory tax.—

“(A) In general.—Except as otherwise
provided in subparagraph (B), the term ‘dis-
criminatory tax’ means any tax imposed by a
foreign country if—

“(i) such tax applies to items of in-
come that would not be considered to be
from sources within the foreign country
under the rules of part I of this subchapter
if such part were applied by treating such
foreign country as though it were the
United States,

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

“(iii) such tax is exclusively or pre-
dominantly applicable, in practice or by its
terms, to nonresident individuals and for-
eign 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

“(iv) 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.

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

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

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

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

“(iv) any other similar tax identified
by the Secretary for purposes of this sub-
paragraph.

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

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

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

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

“(5) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury or the Secretary’s delegate.

“(e) REGULATIONS AND OTHER GUIDANCE.—The Secretary may issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section.”.

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

“Sec. 899. Enforcement of remedies against extraterritorial taxes and discriminatory taxes.”.