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Legislative update: Ways and Means Chairman reintroduces bill to impose additional tax if foreign jurisdiction adopts discriminatory or extraterritorial tax

House Ways and Means Committee Chairman Jason Smith (R-MO), along with every Ways and Means Committee Republican, yesterday introduced H.R. 591, the "Defending American Jobs and Investment Act." The bill would impose a 5% addition to the tax rate each year for four years on the U.S income of individuals and entities located in a foreign jurisdiction that imposes a discriminatory or extraterritorial tax, such an undertaxed payments rule (UTPR) or digital services tax (DST). After four years, the cumulative 20% additional tax would be imposed each year the targeted tax remains in effect.

The bill introduced by Chairman Smith today is almost identical to H.R. 3665, a bill with the same title introduced by Chairman Smith in May 2023 (read *TaxNewsFlash*), although the bill has now been revised to provide that individuals and entities located in foreign jurisdictions imposing a targeted tax would also be denied the benefit of reduced withholding taxes under any treaty obligation of the United States. Thus, under the revised bill, the additional tax would be imposed on top of the 30% withholding tax imposed under sections 1441 and 1442 (or 15% under section 1445 on dispositions of interests in U.S. real property).

Chairman Smith released a statement on the introduction of the bill indicating that it was intended to reinforce President Trump's executive order rejecting the OECD "Global Tax Deal." Read *TaxNewsFlash*

In particular, Chairman Smith stated:

> *The Defending American Jobs and Investment Act will ensure that President Trump has every tool at his disposal to pushback against any foreign country that seeks to undermine America's economic vitality or unfairly target our workers and businesses.*

Senate Finance Committee Chairman Mike Crapo (R-ID) also released a statement expressing support for President Trump's executive order rejecting the OECD "Global Tax Deal," and previously released a statement in support of H.R. 3665 when it was introduced by Chairman Smith in May 2023.

Note that Republican members of the Ways and Means Committee in July 2023 introduced another bill intended to respond to the OECD global tax initiative, which would increase the U.S. base erosion and anti-abuse tax (BEAT) when foreign countries adopt a targeted tax. Read *TaxNewsFlash*

Background

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS), which involves more than 140 countries, released in December 2021 model rules for implementation of the Pillar Two global minimum tax of 15% for multinational enterprises (MNEs) with annual revenue of at least €750 million. The adoption of the new rules is based on a "common approach" which means that jurisdictions are not required to adopt the rules, but if they choose to do so, they must implement the rules consistently with the model. The rules include an income inclusion rule (IIR) and a UTPR, which is a backstop to the IIR. The UTPR, which could allow foreign jurisdictions to impose additional tax on US multinationals with an effective rate below 15%, has been an area of concern previously cited by Chairman Smith and Senate Finance Committee Chairman Mike Crapo (R-ID). This could be the case in a number of instances, including, for example, material R&D credit usage, and material FDII deductions.

The European Union approved a directive in December 2022 requiring EU Member States to implement and apply the UTPR from 2025. Australia, New Zealand, South Korea, and Thailand have also implemented the UTPR from 2025, and Indonesia has implemented the UTPR from 2026. A number of other major economies (including Canada, Mexico, and Japan) also have announced plans to implement the UTPR.

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