

# Memorandum

## The Senate Finance Committee's Proposed Section 899 Would Increase Taxes on Certain Foreign Individuals and Entities Majority-Owned by Such Individuals

June 18, 2025

### Overview

On June 16, 2025, the Senate Finance Committee released its version of a tax bill, containing new proposed Section 899 of the Internal Revenue Code (which is similar to a provision approved in the earlier House tax bill). Section 899 would impose significant additional taxes on certain non-U.S. persons and entities majority-owned by such persons (including withholding taxes). In addition to certain other practical considerations highlighted below, Section 899 would be difficult to administer for U.S. withholding agents in particular.

### ADDITIONAL TAXES

Section 899 would impose additional taxes on applicable persons, initially at 5%, ramping up to 15%, on certain U.S. source income, such as U.S.-source dividends and interest, effectively connected income, and capital gains subject to tax under the FIRPTA rules, and depending upon the source, may apply directly or by means of withholding.

Applicable persons are generally tax residents of an offending foreign country with an extraterritorial tax, such as taxes on under-taxed income pursuant to the OECD Pillar 2, or solely for purposes of the BEAT modification rules discussed below and not for purposes of additional taxes, a discriminatory tax, such as a digital services tax.

Importantly, applicable persons also include the foreign government of the offending foreign country and other foreign corporations more than 50% owned by applicable persons, which may include applicable persons from multiple jurisdictions.

Helpfully, additional taxes are not applied on income that otherwise qualifies as portfolio interest or, although not explicitly specified, in respect of FIRPTA gains in the hands of qualified foreign pension funds. However, Section 899 does appear to override lower treaty rates that may be available to non-US persons, including bank lenders.

While Section 899 is intended to tax investors that reside in certain non-U.S. jurisdictions, as discussed below, the law itself may apply to U.S. persons that invest in certain entities themselves treated as applicable persons.

## BEAT MODIFICATIONS—THE NEW SUPER BEAT

The base erosion anti-abuse tax (“BEAT”) currently implements an additional tax that has the effect of imposing a minimum tax on certain large U.S. corporations that make deductible payments (such as interest and royalties) to foreign related parties.

Section 899 would modify the application of the BEAT rules so that they would apply to U.S. corporations owned 50% or more by applicable persons, without regard to an income threshold and with modified tests for the calculation of the BEAT liability.

### Effective Dates

Specified tax rate increases would first apply for calendar year taxpayers from current offending foreign tax regimes on January 1, 2027, and for future foreign tax regimes subject to Section 899, the later of 180 days after the enactment of an extraterritorial tax that causes a country to become an offending foreign country or the first day such tax applies.

### Practical Implications

#### SECTION 892 INVESTORS

Proposed Section 899 would deny foreign governments (“892 investors”) of offending foreign countries the statutory exemptions under Section 892 on portfolio income received from U.S. investments, including with respect to gain on the sale of a U.S. real property holding corporation. As a result, current investments structured for 892 investors to hold U.S. real property holding corporations and rely on the Section 892 exemption would no longer be available, and 892 investors would be required to file income tax returns on the recognition of U.S. FIRPTA income and pay tax on such income at the section 899 tax rates.

#### SUPER BEAT IMPLICATIONS

U.S. corporations owned more than 50% by applicable persons may have a BEAT implication which would be borne by the corporation as a whole, and not necessarily by the applicable persons themselves. While BEAT historically would apply and tax such corporations, the new law would greatly expand the group of corporations subject to Super BEAT. Importantly, this would indirectly impact minority U.S. investors in the corporation.

#### EFFECT ON NON-APPLICABLE PERSONS

A U.S. person or non-U.S. person who is not an applicable person investing in a non-U.S. entity that is a corporation and resident in an offending jurisdiction or itself is more than 50% owned by applicable persons would be investing in an applicable person. As a result, such U.S. and non-U.S. persons may be subject to incremental taxes under Section 899. Attention should be given to the ownership mix and jurisdiction of foreign corporations, including potentially separating out applicable persons and using non-U.S. entities that are not

subject to Section 899, if possible. Consideration should be given as to whether non-U.S. entities should elect to be treated as U.S. persons for U.S. tax purposes in order to minimize the effect to non-applicable persons.

#### CERTAIN LOAN ORIGINATION ACTIVITIES

Section 899 may impose taxation on non-U.S. persons currently engaged in certain U.S. loan origination structures set up to not be subject to U.S. tax under applicable U.S. income tax treaties as not effectively connected with a U.S. trade or business. Consideration should also be given to loan origination activities which are incurred through RICs, REITs and taxable C Corporations.

#### INVESTMENT FUND ADMINISTRATIVE DIFFICULTIES

Investment funds may have difficulty determining the percentage ownership by applicable persons in their investment entities and whether the investors themselves are applicable persons. Fund managers might benefit from updating subscription documents to require prospective investors to provide useful information to determine whether they are applicable persons.

#### FINANCING ARRANGEMENTS

Existing loan agreements should be reviewed to determine who would bear the risk of increased withholding under Section 899. In new financing arrangements, borrowers may consider specifically allocating the burden of increased withholding to lenders.

### We Can Help

Simpson Thacher is actively monitoring the progress of Section 899, including its implications for the private equity and financing sectors.

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For further information regarding this memorandum, please speak to your regular contact in the [Simpson Thacher Tax Department](#).

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