

117TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to deny any foreign tax credit or deduction with respect to taxes paid or accrued to countries participating in the invasion of Ukraine and to provide for the denial of certain other tax benefits in connection with such invasion, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WYDEN (for himself and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to deny any foreign tax credit or deduction with respect to taxes paid or accrued to countries participating in the invasion of Ukraine and to provide for the denial of certain other tax benefits in connection with such invasion, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. DENIAL OF FOREIGN TAX CREDIT WITH RE-**
2 **SPECT TO COUNTRIES PARTICIPATING IN**
3 **THE INVASION OF UKRAINE.**

4 (a) IN GENERAL.—Section 901(j)(2) of the Internal
5 Revenue Code of 1986 is amended by adding at the end
6 the following new subparagraph:

7 “(C) SPECIAL RULE FOR RUSSIA AND
8 BELARUS.—

9 “(i) IN GENERAL.—This subsection
10 shall apply to the Russian Federation and
11 the Republic of Belarus during the period
12 described in clause (ii).

13 “(ii) PERIOD OF APPLICATION.—The
14 period described in this clause with respect
15 to any country is the period—

16 “(I) beginning on the date that is
17 30 days after the date of the enact-
18 ment of this subparagraph, and

19 “(II) ending on the date on
20 which [the resumption of the applica-
21 tion of the rates of duty set forth in
22 column 1 of the Harmonized Tariff
23 Schedule of the United States to
24 products of that country takes effect
25 pursuant to section 4(b) of the Sus-

1 pending Normal Trade Relations with
2 Russia and Belarus Act】.”.

3 (b) DEDUCTION DENIED.—Section 901(j)(3) of such
4 Code is amended by adding at the end the following new
5 sentence: “The preceding sentence shall not apply to any
6 tax of any country to which paragraph (2)(C) applies.”.

7 (c) SPECIAL TRANSITION RULES FOR TAXPAYERS
8 EXITING COUNTRIES FOR WHICH FOREIGN TAX CREDIT
9 IS DENIED.—

10 (1) IN GENERAL.—If—

11 (A) any portion of a taxable year of a tax-
12 payer occurs during the post-exit period, and

13 (B) such taxpayer is an applicable tax-
14 payer for such portion of the taxable year with
15 respect to a foreign country to which section
16 901(j)(2)(C) of the Internal Revenue Code of
17 1986 (as added by subsection (a)) applies,

18 then, notwithstanding such section 901(j)(2)(C), sec-
19 tions 901(j)(1)(B) and 952(a)(5) of such Code shall
20 not apply to income derived by the taxpayer from
21 such foreign country during such portion of such
22 taxable year.

23 (2) APPLICABLE TAXPAYER.—

24 (A) IN GENERAL.—A taxpayer is an appli-
25 cable taxpayer with respect to a foreign country

1 for any portion of a taxable year occurring dur-
2 ing the post-exit period if—

3 (i) the gross receipts of the taxpayer
4 for such portion derived from such foreign
5 country are—

6 (I) in the case of the period be-
7 ginning with the first day of the post-
8 exit period and ending with the last
9 day of the first taxable year ending on
10 or after such date, less than 15 per-
11 cent of such gross receipts derived
12 during the pre-exit period, and

13 (II) in the case of any taxable
14 year beginning after the first day of
15 the post-exit period, less than 5 per-
16 cent of such gross receipts derived
17 during the pre-exit period, or

18 (ii) the taxpayer meets such other re-
19 quirements as the Secretary of the Treas-
20 ury (or the Secretary's delegate) may by
21 regulation or guidance prescribe to deter-
22 mine whether a taxpayer has exited from
23 doing business in such foreign country.

24 (B) RULES FOR DETERMINING GROSS RE-
25 CEIPTS.—

1 (i) IN GENERAL.—The rules of para-
2 graphs (2) and (3) of section 448(c) shall
3 apply for purposes of this paragraph, ex-
4 cept that in applying paragraph (3)(B) to
5 a taxable year in which the entire taxable
6 year does not occur during the post-exit
7 period, the portion of the year during such
8 period shall be treated as a short taxable
9 year.

10 (ii) RECEIPTS UNDER OFAC HUMANI-
11 TARIAN LICENSES.—For purposes of this
12 subsection, gross receipts shall not include
13 amounts which are covered under general
14 licenses of the Office of Foreign Assets
15 Control of the Department of the Treasury
16 which have been identified by the Secretary
17 of the Treasury (or the Secretary’s dele-
18 gate) as licenses to which this clause ap-
19 plies.

20 (3) PERIODS.—For purposes of this sub-
21 section—

22 (A) PRE-EXIT PERIOD.—The term “pre-
23 exit period” means—

1 (i) except as provided in clause (ii),
2 the 12-month period ending on December
3 31, 2021, and

4 (ii) in the case of a taxpayer with a
5 taxable year which ends on or after No-
6 vember 30, 2021, and before February 24,
7 2022, such taxable year.

8 (B) POST-EXIT PERIOD.—The term “post-
9 exit period” means, with respect to any foreign
10 country, the period during which section
11 901(j)(2)(C) of the Internal Revenue Code of
12 1986 (as added by subsection (a)) applies to
13 such foreign country (determined without re-
14 gard to this subsection).

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall take effect on the date of the enactment of this
19 Act.

20 (2) DEDUCTION LIMITATION.—The amendment
21 made by subsection (b) shall apply to taxes paid or
22 accrued (or deemed paid or accrued under section
23 960 of the Internal Revenue Code of 1986) after the
24 date that is 90 days after the date of the enactment
25 of this Act.

1 (3) NONAPPLICATION OF TREATY RULES.—This
2 section and the amendments made by this section
3 shall be applied without regard to any treaty obliga-
4 tion of the United States.

5 **SEC. 2. DENIAL OF CERTAIN OTHER TAX BENEFITS IN CON-**
6 **NECTION WITH THE INVASION OF UKRAINE.**

7 (a) IN GENERAL.—In the case of any person to whom
8 this section applies—

9 (1) section 892 of the Internal Revenue Code of
10 1986 (relating to income of foreign governments and
11 international organizations) shall not apply to in-
12 come received during the period this section applies
13 to such person,

14 (2) notwithstanding section 894 of the Code,
15 such Code shall be applied to such person without
16 regard to any treaty obligation of the United States
17 during the period this section applies to such person,

18 (3) sections 871(h) (relating to repeal of tax on
19 interest of nonresident alien individuals received
20 from certain portfolio debt investments) and 881(c)
21 (relating to repeal of tax on interest of foreign cor-
22 porations received from certain portfolio debt invest-
23 ments) of such Code shall not apply to interest re-
24 ceived during the period this section applies to such
25 person,

1 (4) section 864(b) of such Code (relating to
2 trade or business within the United States) shall be
3 applied without regard to paragraph (2) thereof (re-
4 lating to exception for trading in securities or com-
5 modities) with respect to the period during which
6 this section applies to such person,

7 (5) section 883 of such Code (relating to exclu-
8 sion of income from shipping, etc.) shall not apply
9 to income or earnings received during the period this
10 section applies to such person, and

11 (6) notwithstanding section 897(l) of such
12 Code, any trust, corporation, or other organization
13 or arrangement established by such person shall not
14 be treated as a qualified foreign pension fund under
15 section 897 of such Code during the period this sec-
16 tion applies to such person.

17 (b) PERSONS TO WHOM THIS SECTION APPLIES.—

18 (1) IN GENERAL.—This section shall apply to—

19 (A) any person with respect to which sanc-
20 tions have been imposed by the United States
21 in relation to the invasion of Ukraine by the
22 Russian Federation that began on February 24,
23 2022,

1 (B) the government of any foreign country
2 to which section 901(j)(2)(C) of the Internal
3 Revenue Code of 1986 applies, and

4 (C) any other person identified by the Sec-
5 retary as—

6 (i) a person that—

7 (I) is participating or has partici-
8 pated in the invasion of Ukraine,

9 (II) is an entity that is organized
10 in a foreign country (including any
11 subdivision thereof) to which section
12 901(j)(2)(C) of the Internal Revenue
13 Code of 1986 applies, and that is not
14 a controlled foreign corporation (as
15 defined in section 957 of such Code),

16 (III) is an executive or officer of
17 an entity described in subclause (II),
18 or

19 (IV) is a person that controls, is
20 controlled by, is related to, or is an
21 affiliate of, any other person to which
22 this section applies, and

23 (ii) meriting the loss of tax benefits.

24 (2) SPECIAL RULES FOR CONTROLLED ENTI-
25 TIES.—

1 (A) IN GENERAL.—For purposes of para-
2 graph (1), a person that is controlled by an en-
3 tity identified by the Secretary under paragraph
4 (1)(C)(i)(II)—

5 (i) shall be treated as a person to
6 which this section applies without regard
7 to whether the Secretary identifies such
8 person under paragraph (1)(C), and

9 (ii) shall provide to the Secretary (or
10 the Secretary’s delegate) and to each with-
11 holding agent of such person a notice that
12 this section applies to such person.

13 (B) PENALTIES.—For purposes of apply-
14 ing part II of subchapter B of chapter 68 of the
15 Internal Revenue Code of 1986—

16 (i) any notice required to be provided
17 to the Secretary (or the Secretary’s dele-
18 gate) under subparagraph (A)(ii) shall be
19 treated as an information return, and

20 (ii) any notice required to be provided
21 to a withholding agent under subparagraph
22 (A)(ii) shall be treated as a payee state-
23 ment.

24 (3) PERIOD FOR WHICH THIS SECTION AP-
25 PLIES.—For purposes of this section—

1 (A) IN GENERAL.—This section applies to
2 any person described in paragraph (1) during
3 the period—

4 (i) except as provided in subparagraph
5 (B), beginning on the date that is 30 days
6 after the later of—

7 (I) the date of the enactment of
8 this Act, or

9 (II) the date such person is first
10 described in paragraph (1), and

11 (ii) ending on the date such person is
12 no longer described in paragraph (1).

13 (B) SPECIAL RULES FOR PORTFOLIO IN-
14 TEREST.—

15 (i) IN GENERAL.—For purposes of ap-
16 plying subsection (a)(3), except as provided
17 in clause (ii), the period described in sub-
18 paragraph (A) shall begin on the later of—

19 (I) the date that is 180 days (60
20 days in the case of obligations issued
21 on or after the date of the enactment
22 of this Act) after the date of enact-
23 ment of this Act, or

1 (II) 60 days after the date such
2 person first becomes described in
3 paragraph (1).

4 (ii) SIGNIFICANT MODIFICATIONS.—If,
5 after the date of the enactment of this Act,
6 there is a significant modification of an ob-
7 ligation issued before the date of the enact-
8 ment of this Act, then, for purposes of ap-
9 plying subsection (a)(3), the period de-
10 scribed in subparagraph (A) shall begin on
11 the later of—

12 (I) the earlier of—

13 (aa) the day that is 60 days
14 after the date of such significant
15 modification, or

16 (bb) the day that is 180
17 days after the date of the enact-
18 ment of this Act, or

19 (II) the date that is 60 days
20 after the date such person first be-
21 come described in paragraph (1).

22 (c) OTHER DEFINITIONS AND SPECIAL RULES.—

23 (1) SECRETARY.—For purposes of this section,
24 the term “Secretary” means the Secretary of the
25 Treasury.

1 (2) TREATY OBLIGATIONS.—This section shall
2 be applied without regard to any treaty obligation of
3 the United States.

4 **SEC. 3. SUSPENSION OF TAX INFORMATION EXCHANGES.**

5 (a) IN GENERAL.—If there is a treaty or intergovern-
6 mental agreement providing for the exchange of tax infor-
7 mation between the United States and any foreign country
8 to which section 901(j)(2)(C) of the Internal Revenue
9 Code of 1986 (as added by section 2(a)) applies, the Sec-
10 retary of the Treasury (or the Secretary’s delegate) shall
11 not exchange such tax information with such foreign coun-
12 try during the period that such section applies to such for-
13 eign country.

14 (b) TREATY OBLIGATIONS.—This section shall be ap-
15 plied without regard to any treaty obligation of the United
16 States.