

117TH CONGRESS
2D SESSION

S. 4218

To amend the Internal Revenue Code of 1986 to deny foreign tax credits or deductions with respect to taxes paid or accrued to the Russian Federation and the Republic of Belarus, to provide for the denial of certain other tax benefits in connection with the invasion of Ukraine, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2022

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

A BILL

To amend the Internal Revenue Code of 1986 to deny foreign tax credits or deductions with respect to taxes paid or accrued to the Russian Federation and the Republic of Belarus, to provide for the denial of certain other tax benefits in connection with the invasion of Ukraine, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Support Ukraine
5 Through Our Tax Code Act”.

1 **SEC. 2. DENIAL OF FOREIGN TAX CREDIT, ETC., WITH RE-**
 2 **SPECT TO TAXES PAID OR ACCRUED TO THE**
 3 **RUSSIAN FEDERATION AND THE REPUBLIC**
 4 **OF BELARUS.**

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

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

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

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

17 “(I) beginning on the date that is
 18 90 days after the date of the enact-
 19 ment of this subparagraph, and

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

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

3 (b) DEDUCTION DENIED.—

4 (1) IN GENERAL.—Section 275(a) of the Inter-
 5 nal Revenue Code of 1986 is amended by inserting
 6 after paragraph (6) the following new paragraph:

7 “(7) Income, war profits, and excess profits
 8 taxes paid or accrued (or deemed paid under section
 9 960) to any country described in section
 10 901(j)(2)(C)(i) with respect to income attributable
 11 to any period described in section 901(j)(2)(C)(ii).”.

12 (2) CONFORMING AMENDMENT.—Section
 13 901(j)(3) of such Code is amended by adding at the
 14 end the following new sentence: “The preceding sen-
 15 tence shall not apply to any taxes paid or accrued
 16 (or deemed paid under section 960) to any country
 17 described in paragraph (2)(C)(i) with respect to in-
 18 come attributable to any period described in para-
 19 graph (2)(C)(ii).”.

20 (c) SPECIAL TRANSITION RULES FOR TAXPAYERS
 21 EXITING COUNTRIES FOR WHICH FOREIGN TAX CREDIT
 22 IS DENIED.—

23 (1) IN GENERAL.—If—

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

1 (B) such taxpayer is an applicable tax-
 2 payer for such portion of the taxable year with
 3 respect to a foreign country to which section
 4 901(j)(2)(C) of the Internal Revenue Code of
 5 1986 (as added by subsection (a)) applies,
 6 then, notwithstanding such section 901(j)(2)(C), sec-
 7 tions 901(j)(1)(B) and 952(a)(5) of such Code shall
 8 not apply to income derived by the taxpayer from
 9 such foreign country during such portion of such
 10 taxable year.

11 (2) APPLICABLE TAXPAYER.—

12 (A) IN GENERAL.—A taxpayer is an appli-
 13 cable taxpayer with respect to a foreign country
 14 for any portion of a taxable year occurring dur-
 15 ing the post-exit period if—

16 (i) the gross receipts of the taxpayer
 17 for such portion derived from such foreign
 18 country (determined under rules substan-
 19 tially similar to the rules of part I of sub-
 20 chapter N of chapter 1 of the Internal
 21 Revenue Code of 1986) are—

22 (I) in the case of the period be-
 23 ginning with the first day of the first
 24 month beginning after the first day of
 25 the post-exit period and ending with

1 the last day of the first taxable year
 2 ending on or after such date, less
 3 than 15 percent of such gross receipts
 4 derived during the pre-exit period, and

5 (II) in the case of any taxable
 6 year beginning after the first day of
 7 the post-exit period, less than 5 per-
 8 cent of such gross receipts derived
 9 during the pre-exit period, or

10 (ii) the taxpayer meets such other re-
 11 quirements as the Secretary of the Treas-
 12 ury (or the Secretary's delegate) may by
 13 regulation or guidance prescribe to deter-
 14 mine whether a taxpayer has exited from
 15 doing business in such foreign country.

16 (B) RULES FOR DETERMINING GROSS RE-
 17 CEIPTS.—

18 (i) AGGREGATION RULES.—The rules
 19 of section 448(c)(2) shall apply for pur-
 20 poses of this paragraph, except that—

21 (I) in applying section 52(a), the
 22 exception for foreign corporations
 23 under section 1563(b)(2)(C) shall be
 24 disregarded, and

1 (II) in applying section 52(b), the
 2 principles which apply under section
 3 52(a) shall include the modification
 4 under subclause (I) and the term
 5 “trade or business” shall include any
 6 activity treated as a trade or business
 7 under paragraph (5) or (6) of section
 8 469(c) (determined without regard to
 9 the phrase, “To the extent provided in
 10 regulations” in such paragraph (6)).

11 (ii) SPECIAL RULES.—The rules of
 12 section 448(c)(3) shall apply for purposes
 13 of this paragraph, except that in applying
 14 subparagraph (B) thereof to a taxable year
 15 in which the entire taxable year does not
 16 occur during the post-exit period, the por-
 17 tion of the year during such period shall be
 18 treated as a short taxable year for pur-
 19 poses of determining annualized gross re-
 20 ceipts.

21 (iii) RECEIPTS RELATED TO HUMANI-
 22 TARIAN PURPOSES.—For purposes of this
 23 subsection, gross receipts shall not include
 24 amounts—

1 (I) which are covered under gen-
 2 eral or specific licenses of the Office
 3 of Foreign Assets Control of the De-
 4 partment of the Treasury which have
 5 been identified by the Secretary of the
 6 Treasury (or the Secretary's delegate)
 7 as licenses to which this clause ap-
 8 plies, or

9 (II) which the Secretary of the
 10 Treasury (or the Secretary's delegate)
 11 has otherwise identified as humani-
 12 tarian in nature.

13 (3) PERIODS.—For purposes of this sub-
 14 section—

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

17 (i) except as provided in clause (ii),
 18 the 12-month period ending on December
 19 31, 2021, and

20 (ii) in the case of a taxpayer with a
 21 taxable year which ends on or after No-
 22 vember 30, 2021, and before February 24,
 23 2022, such taxable year.

24 (B) POST-EXIT PERIOD.—The term “post-
 25 exit period” means, with respect to any foreign

1 country, the period during which section
 2 901(j)(2)(C) of the Internal Revenue Code of
 3 1986 (as added by subsection (a)) applies to
 4 such foreign country (determined without re-
 5 gard to this subsection).

6 (d) EFFECTIVE DATE.—The amendments made by
 7 this section shall take effect on the date of the enactment
 8 of this Act.

9 **SEC. 3. DENIAL OF CERTAIN OTHER TAX BENEFITS IN CON-**
 10 **NECTION WITH THE INVASION OF UKRAINE.**

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

13 (1) section 892(a) of the Internal Revenue Code
 14 of 1986 (relating to income of foreign governments)
 15 shall not apply to income received during the period
 16 this section applies to such person,

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

21 (3) section 895 of such Code (relating to in-
 22 come derived by a foreign central bank of issue from
 23 obligations of the United States or from bank depos-
 24 its) shall not apply to any central bank of such per-
 25 son,

1 (4) sections 871(h) (relating to repeal of tax on
2 interest of nonresident alien individuals received
3 from certain portfolio debt investments) and 881(c)
4 (relating to repeal of tax on interest of foreign cor-
5 porations received from certain portfolio debt invest-
6 ments) of such Code shall not apply to interest re-
7 ceived during the period this section applies to such
8 person,

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

15 (6) section 883 of such Code (relating to exclu-
16 sion of income from shipping, etc.) shall not apply
17 to income or earnings received during the period this
18 section applies to such person, and

19 (7) notwithstanding section 897(l) of such
20 Code, any trust, corporation, or other organization
21 or arrangement established by such person shall not
22 be treated as a qualified foreign pension fund under
23 section 897 of such Code during the period this sec-
24 tion applies to such person.

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

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

2 (A) any person with respect to which sanc-
3 tions have been imposed by the United States
4 in relation to the invasion of Ukraine by the
5 Russian Federation that began on February 24,
6 2022,

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

10 (C) any other person identified by the Sec-
11 retary as—

12 (i) a person described in paragraph
13 (2), and

14 (ii) a person with respect to which the
15 application of this section would advance
16 efforts to restore and maintain the peace,
17 security, stability, sovereignty, and terri-
18 torial integrity of Ukraine (as determined
19 by the Secretary in consultation with the
20 Secretary of State).

21 (2) PERSONS DESCRIBED.—A person is de-
22 scribed in this paragraph if such person—

23 (A) is a person that—

24 (i) is participating or has participated
25 in the invasion of Ukraine, and

1 (ii) either—

2 (I) owns, directly or indirectly, at
3 least \$1,000,000 of assets in the
4 United States, or

5 (II) has, for the most recent cal-
6 endar year, at least \$1,000,000 of in-
7 come from sources within the United
8 States,

9 (B) is an entity that—

10 (i) is organized in, or a tax resident
11 of, a foreign country (including any sub-
12 division thereof) to which section
13 901(j)(2)(C) of such Code applies,

14 (ii) is not a controlled foreign corpora-
15 tion (as defined in section 957 of such
16 Code), and

17 (iii) has provided or sold goods or
18 services to a government (including any in-
19 strumentality thereof) to which section
20 901(j)(2)(C) of such Code applies,

21 (C) is an executive, board member, or offi-
22 cer of an entity described in subparagraph (B),
23 or

24 (D) is a person that is related to any other
25 person to which this section applies.

1 (3) SPECIAL RULES FOR CONTROLLED ENTI-
 2 TIES.—Under regulations provided by the Sec-
 3 retary—

4 (A) IN GENERAL.—The Secretary may
 5 treat a person controlled (within the meaning of
 6 section 954(d)(3) of the Internal Revenue Code
 7 of 1986) by a person described in paragraph
 8 (1) as a person to whom this section applies
 9 without regard to whether such controlled per-
 10 son has been identified by the Secretary under
 11 paragraph (1)(C).

12 (B) NOTIFICATION.—

13 (i) IN GENERAL.—The Secretary may
 14 require any person treated as a person to
 15 whom this section applies by reason of sub-
 16 paragraph (A) to provide notice to the Sec-
 17 retary and to each withholding agent of
 18 such person that this section applies to
 19 such person.

20 (ii) PENALTIES.—For purposes of ap-
 21 plying part II of subchapter B of chapter
 22 68 of the Internal Revenue Code of
 23 1986—

24 (I) any notice required to be pro-
 25 vided to the Secretary under clause (i)

1 shall be treated as an information re-
 2 turn described in section 6724(d)(1)
 3 of such Code, and

4 (II) any notice required to be
 5 provided to a withholding agent under
 6 clause (i) shall be treated as a payee
 7 statement described in section
 8 6724(d)(2) of such Code.

9 (c) PERIOD FOR WHICH THIS SECTION APPLIES.—
 10 For purposes of this section—

11 (1) IN GENERAL.—This section applies to any
 12 person described in subsection (b) during the pe-
 13 riod—

14 (A) except as provided in paragraph (2),
 15 beginning on the date that is 30 days after the
 16 later of—

17 (i) the date of the enactment of this
 18 Act, or

19 (ii) the date such person is first de-
 20 scribed in subsection (b), and

21 (B) ending on the date such person is no
 22 longer described in subsection (b).

23 (2) SPECIAL RULES FOR PORTFOLIO INTER-
 24 EST.—

1 (A) IN GENERAL.—For purposes of apply-
2 ing subsection (a)(4), except as provided in sub-
3 paragraph (B), the period described in para-
4 graph (1) shall begin on the later of—

5 (i) the date that is 180 days (60 days
6 in the case of obligations issued on or after
7 the date of the enactment of this Act)
8 after the date of enactment of this Act, or

9 (ii) 60 days after the date such person
10 first becomes described in subsection (b).

11 (B) SIGNIFICANT MODIFICATIONS.—If,
12 after the date of the enactment of this Act,
13 there is a significant modification of an obliga-
14 tion issued before the date of the enactment of
15 this Act, then, for purposes of applying sub-
16 section (a)(4), the period described in para-
17 graph (1) shall begin on the later of—

18 (i) the earlier of—

19 (I) the day that is 60 days after
20 the date of such significant modifica-
21 tion, or

22 (II) the day that is 180 days
23 after the date of the enactment of this
24 Act, or

1 (ii) the date that is 60 days after the
2 date such person first become described in
3 subsection (b).

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

5 (1) SECRETARY.—The term “Secretary” means
6 the Secretary of the Treasury.

7 (2) RELATED.—A person (hereinafter in this
8 paragraph referred to as the “related person”) is re-
9 lated to any person if—

10 (A) the related person bears a relationship
11 to such person which is—

12 (i) specified in section 267(b) or
13 707(b)(1) of the Internal Revenue Code of
14 1986, or

15 (ii) specified in the regulations pre-
16 scribed under subsection (f), or

17 (B) the related person and such person are
18 engaged in trades or businesses under common
19 control (within the meaning of subsections (a)
20 and (b) of section 52 of such Code, determined
21 after the application of the rules of section
22 2(c)(2)(B)(i)).

23 (e) REPORTS.—Not later than 1 year after the date
24 of the enactment of this Act, and annually thereafter, the
25 Secretary shall submit to Congress a report detailing the

1 parameters, processes, and justifications by which a per-
2 son is identified by the Secretary under (b)(1)(C) of this
3 section.

4 (f) REGULATIONS.—The Secretary shall prescribe
5 such regulations, rules, or other guidance as the Secretary
6 determines necessary or appropriate to carry out the pur-
7 poses of this section.

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

9 If there is a tax convention (within the meaning of
10 section 6105(c)(2) of the Internal Revenue Code of 1986)
11 providing for the exchange of tax information between the
12 United States and any foreign country to which section
13 901(j)(2)(C) of such Code (as added by section 2(a)) ap-
14 plies, the Secretary of the Treasury (or the Secretary's
15 delegate) shall not exchange such tax information with
16 such foreign country during the period that such section
17 applies to such foreign country.

18 **SEC. 5. TREATY OBLIGATIONS.**

19 This Act and the amendments made by this Act shall
20 be applied without regard to any treaty obligation of the
21 United States.

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