

117TH CONGRESS
1ST SESSION

S. 817

To amend the Internal Revenue Code of 1986 to impose a tax on certain trading transactions.

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2021

Mr. SCHATZ (for himself, Mr. VAN HOLLEN, Ms. WARREN, Mrs. GILLIBRAND, Mr. MERKLEY, and Mr. WHITEHOUSE) 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 impose a tax on certain trading transactions.

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 “Wall Street Tax Act
5 of 2021”.

6 **SEC. 2. TRANSACTION TAX.**

7 (a) IN GENERAL.—Chapter 36 of the Internal Rev-
8 enue Code of 1986 is amended by inserting after sub-
9 chapter B the following new subchapter:

1 **“Subchapter C—Tax on Trading Transactions**

“Sec. 4475. Tax on trading transactions.

“Sec. 4476. Derivative defined.

2 **“SEC. 4475. TAX ON TRADING TRANSACTIONS.**

3 “(a) IMPOSITION OF TAX.—There is hereby imposed
4 a tax on each covered transaction with respect to any secu-
5 rity.

6 “(b) RATE OF TAX.—The tax imposed under sub-
7 section (a) with respect to any covered transaction shall
8 be 0.1 percent of the specified base amount with respect
9 to such covered transaction.

10 “(c) SPECIFIED BASE AMOUNT.—For purposes of
11 this section, the term ‘specified base amount’ means—

12 “(1) except as provided in paragraph (2), the
13 fair market value of a security (determined as of the
14 time of the covered transaction), and

15 “(2) in the case of any payment with respect to
16 a derivative, the amount of such payment.

17 “(d) COVERED TRANSACTION.—For purposes of this
18 section—

19 “(1) IN GENERAL.—The term ‘covered trans-
20 action’ means—

21 “(A) except as provided in subparagraph
22 (B), any purchase if—

1 “(i) such purchase occurs on, or is
 2 subject to the rules of, a qualified board or
 3 exchange located in the United States, or

4 “(ii) the purchaser or seller is a
 5 United States person, and

6 “(B) any transaction with respect to a de-
 7 rivative if—

8 “(i) such derivative is traded on, or is
 9 subject to the rules of, a qualified board or
 10 exchange located in the United States, or

11 “(ii) any party with rights under such
 12 derivative is a United States person.

13 “(2) EXCEPTION FOR INITIAL ISSUES.—No tax
 14 shall be imposed under subsection (a) on any cov-
 15 ered transaction with respect to the initial issuance
 16 of any security described in subparagraph (A), (B),
 17 or (C) of subsection (e)(1).

18 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
 19 poses of this section—

20 “(1) SECURITY.—For purposes of this section,
 21 the term ‘security’ means—

22 “(A) any share of stock in a corporation,

23 “(B) any partnership or beneficial owner-
 24 ship interest in a partnership or trust,

1 “(C) except as provided in paragraph (2),
 2 any note, bond, debenture, or other evidence of
 3 indebtedness, and

4 “(D) any derivative (as defined in section
 5 4476).

6 “(2) EXCEPTION FOR CERTAIN TRADED SHORT-
 7 TERM INDEBTEDNESS.—A note, bond, debenture, or
 8 other evidence of indebtedness which—

9 “(A) is traded on, or is subject to the rules
 10 of, a qualified board or exchange located in the
 11 United States, and

12 “(B) has a fixed maturity of not more
 13 than 100 days,
 14 shall not be treated as described in paragraph
 15 (1)(C).

16 “(3) QUALIFIED BOARD OR EXCHANGE.—The
 17 term ‘qualified board or exchange’ has the meaning
 18 given such term by section 1256(g)(7).

19 “(f) BY WHOM PAID.—

20 “(1) IN GENERAL.—The tax imposed by this
 21 section shall be paid by—

22 “(A) in the case of a transaction which oc-
 23 curs on, or is subject to the rules of, a qualified
 24 board or exchange located in the United States,
 25 such qualified board or exchange, and

1 “(B) in the case of a purchase not de-
 2 scribed in subparagraph (A) which is executed
 3 by a broker (as defined in section 6045(c)(1))
 4 which is a United States person, such broker.

5 “(2) SPECIAL RULES FOR DIRECT, ETC.,
 6 TRANSACTIONS.—In the case of any transaction to
 7 which paragraph (1) does not apply, the tax imposed
 8 by this section shall be paid by—

9 “(A) in the case of a transaction described
 10 in subsection (d)(1)(A)—

11 “(i) the purchaser if the purchaser is
 12 a United States person, and

13 “(ii) the seller if the purchaser is not
 14 a United States person, and

15 “(B) in the case of a transaction described
 16 in subsection (d)(1)(B)—

17 “(i) the payor if the payor is a United
 18 States person, and

19 “(ii) the payee if the payor is not a
 20 United States person.

21 “(g) TREATMENT OF EXCHANGES AND PAYMENTS
 22 WITH RESPECT TO DERIVATIVES.—For purposes of this
 23 section—

24 “(1) TREATMENT OF EXCHANGES.—

1 “(A) IN GENERAL.—An exchange shall be
 2 treated as the sale of the property transferred
 3 and a purchase of the property received by each
 4 party to the exchange.

5 “(B) CERTAIN DEEMED EXCHANGES.—In
 6 the case of a distribution treated as an ex-
 7 change for stock under section 302 or 331, the
 8 corporation making such distribution shall be
 9 treated as having purchased such stock for pur-
 10 poses of this section.

11 “(2) PAYMENTS WITH RESPECT TO DERIVA-
 12 TIVES TREATED AS SEPARATE TRANSACTIONS.—Ex-
 13 cept as otherwise provided by the Secretary, any
 14 payment with respect to any derivative shall be
 15 treated as a separate transaction for purposes of
 16 this section.

17 “(h) APPLICATION TO TRANSACTIONS BY CON-
 18 TROLLED FOREIGN CORPORATIONS.—

19 “(1) IN GENERAL.—For purposes of this sec-
 20 tion, a controlled foreign corporation shall be treated
 21 as a United States person.

22 “(2) SPECIAL RULES FOR PAYMENT OF TAX ON
 23 DIRECT, ETC., TRANSACTIONS.—In the case of any
 24 transaction which is a covered transaction solely by

1 reason of paragraph (1) and which is not described
2 in subsection (f)(1)—

3 “(A) PAYMENT BY UNITED STATES SHARE-
4 HOLDERS.—Any tax which would (but for this
5 paragraph) be payable under subsection (f)(2)
6 by the controlled foreign corporation shall, in
7 lieu thereof, be paid by the United States
8 shareholders of such controlled foreign corpora-
9 tion as provided in subparagraph (B).

10 “(B) PRO RATA SHARES.—Each such
11 United States shareholder shall pay the same
12 proportion of such tax as—

13 “(i) the stock which such United
14 States shareholder owns (within the mean-
15 ing of section 958(a)) in such controlled
16 foreign corporation, bears to

17 “(ii) the stock so owned by all United
18 States shareholders in such controlled for-
19 eign corporation.

20 “(C) DEFINITIONS.—For purposes of this
21 subsection, the terms ‘United States share-
22 holder’ and ‘controlled foreign corporation’ have
23 the meanings given such terms in sections
24 951(b) and 957(a), respectively.

1 “(i) ADMINISTRATION.—The Secretary shall carry
 2 out this section in consultation with the Securities and Ex-
 3 change Commission and the Commodity Futures Trading
 4 Commission.

5 “(j) GUIDANCE; REGULATIONS.—The Secretary
 6 shall—

7 “(1) provide guidance regarding such informa-
 8 tion reporting concerning covered transactions as the
 9 Secretary deems appropriate, and

10 “(2) prescribe such regulations as are necessary
 11 or appropriate to prevent avoidance of the purposes
 12 of this section, including the use of non-United
 13 States persons in such transactions.

14 **“SEC. 4476. DERIVATIVE DEFINED.**

15 “(a) IN GENERAL.—For purposes of this subchapter,
 16 except as otherwise provided in this section, the term ‘de-
 17 rivative’ means any contract (including any option, for-
 18 ward contract, futures contract, short position, swap, or
 19 similar contract) the value of which, or any payment or
 20 other transfer with respect to which, is (directly or indi-
 21 rectly) determined by reference to one or more of the fol-
 22 lowing:

23 “(1) Any share of stock in a corporation.

24 “(2) Any partnership or beneficial ownership
 25 interest in a partnership or trust.

1 “(3) Any evidence of indebtedness.

2 “(4) Except as provided in subsection (b)(1),
3 any real property.

4 “(5) Any commodity which is actively traded
5 (within the meaning of section 1092(d)(1)).

6 “(6) Any currency.

7 “(7) Any rate, price, amount, index, formula, or
8 algorithm.

9 “(8) Any other item as the Secretary may pre-
10 scribe.

11 Except as provided in regulations prescribed by the Sec-
12 retary to prevent the avoidance of the purposes of this
13 subchapter, such term shall not include any item described
14 in paragraphs (1) through (8).

15 “(b) EXCEPTIONS.—

16 “(1) CERTAIN REAL PROPERTY.—

17 “(A) IN GENERAL.—For purposes of this
18 subchapter, the term ‘derivative’ shall not in-
19 clude any contract with respect to interests in
20 real property (as defined in section
21 856(c)(5)(C)) if such contract requires physical
22 delivery of such real property.

23 “(B) OPTIONS TO SETTLE IN CASH.—

24 “(i) IN GENERAL.—For purposes of
25 subparagraph (A), a contract which pro-

vides for an option of cash settlement shall not be treated as requiring physical delivery of real property unless the option is—

“(I) not exercisable unconditionally, and

“(II) exercisable only in unusual and exceptional circumstances.

“(ii) OPTION OF CASH SETTLEMENT.—For purposes of clause (i), a contract provides an option of cash settlement if the contract settles in (or could be settled in) cash or property other than the underlying real property.

“(2) SECURITIES LENDING, SALE-REPURCHASE, AND SIMILAR FINANCING TRANSACTIONS.—To the extent provided by the Secretary, for purposes of this subchapter, the term ‘derivative’ shall not include the right to the return of the same or substantially identical securities transferred in a securities lending transaction, sale-repurchase transaction, or similar financing transaction.

“(3) OPTIONS RECEIVED IN CONNECTION WITH THE PERFORMANCE OF SERVICES.—For purposes of this subchapter, the term ‘derivative’ shall not include any option described in section 83(e)(3) re-

ceived in connection with the performance of services.

“(4) INSURANCE CONTRACTS, ANNUITIES, AND ENDOWMENTS.—For purposes of this subchapter, the term ‘derivative’ shall not include any insurance, annuity, or endowment contract issued by an insurance company to which subchapter L applies (or issued by any foreign corporation to which such subchapter would apply if such foreign corporation were a domestic corporation).

“(5) DERIVATIVES WITH RESPECT TO STOCK OF MEMBERS OF SAME WORLDWIDE AFFILIATED GROUP.—For purposes of this subchapter, the term ‘derivative’ shall not include any derivative (determined without regard to this paragraph) with respect to stock issued by any member of the same worldwide affiliated group (as defined in section 864(f)) in which the taxpayer is a member.

“(6) COMMODITIES USED IN NORMAL COURSE OF TRADE OR BUSINESS.—For purposes of this subchapter, the term ‘derivative’ shall not include any contract with respect to any commodity if—

“(A) such contract requires physical delivery with the option of cash settlement only in unusual and exceptional circumstances, and

1 “(B) such commodity is used (and is used
 2 in quantities with respect to which such deriva-
 3 tive relates) in the normal course of the tax-
 4 payer’s trade or business (or, in the case of an
 5 individual, for personal consumption).

6 “(c) CONTRACTS WITH EMBEDDED DERIVATIVE
 7 COMPONENTS.—

8 “(1) IN GENERAL.—If a contract has derivative
 9 and nonderivative components, then each derivative
 10 component shall be treated as a derivative for pur-
 11 poses of this subchapter. If the derivative component
 12 cannot be separately valued, then the entire contract
 13 shall be treated as a derivative for purposes of this
 14 subchapter.

15 “(2) EXCEPTION FOR CERTAIN EMBEDDED DE-
 16 RIVATIVE COMPONENTS OF DEBT INSTRUMENTS.—A
 17 debt instrument shall not be treated as having a de-
 18 rivative component merely because—

19 “(A) such debt instrument is denominated
 20 in a nonfunctional currency (as defined in sec-
 21 tion 988(c)(1)(C)(ii)), or

22 “(B) payments with respect to such debt
 23 instrument are determined by reference to the
 24 value of a nonfunctional currency (as so de-
 25 fined).

1 “(d) TREATMENT OF AMERICAN DEPOSITORY RE-
 2 CEIPTS AND SIMILAR INSTRUMENTS.—Except as other-
 3 wise provided by the Secretary, for purposes of this sub-
 4 chapter, American depository receipts (and similar instru-
 5 ments) with respect to shares of stock in foreign corpora-
 6 tions shall be treated as shares of stock in such foreign
 7 corporations.”.

8 (b) INFORMATION REPORTING WITH RESPECT TO
 9 CONTROLLED FOREIGN CORPORATIONS.—Section
 10 6038(a)(1)(B) of such Code is amended by inserting “and
 11 transactions which are covered transactions for purposes
 12 of section 4475 by reason of the application of section
 13 4475(h)(1) to such corporation” before the semicolon at
 14 the end.

15 (c) CONFORMING AMENDMENT.—The table of sub-
 16 chapters for chapter 36 of such Code is amended by in-
 17 serting after the item relating to subchapter B the fol-
 18 lowing new item:

“Subchapter C. Tax on trading transactions.”.

19 (d) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to transactions after December 31,
 21 2021.

○