

118TH CONGRESS
1ST SESSION

S. 2518

To amend the Internal Revenue Code of 1986 to make investment income of certain foreign governments subject to tax.

IN THE SENATE OF THE UNITED STATES

JULY 26, 2023

Mr. WYDEN 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 make investment income of certain foreign governments subject to tax.

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 “Ending Tax Breaks
5 for Massive Sovereign Wealth Funds Act”.

6 **SEC. 2. INVESTMENT INCOME OF CERTAIN FOREIGN GOV-**
7 **ERNMENTS SUBJECT TO TAX.**

8 (a) IN GENERAL.—Section 892(a) of the Internal
9 Revenue Code of 1986 is amended by adding at the end
10 the following new paragraph:

1 “(4) INVESTMENT INCOME OF NON-EXEMPT
2 FOREIGN GOVERNMENTS.—

3 “(A) IN GENERAL.—Paragraph (1)(A)(i)
4 shall not apply to income from investments of
5 a non-exempt foreign government.

6 “(B) NON-EXEMPT FOREIGN GOVERN-
7 MENT.—For purposes of this paragraph, the
8 term ‘non-exempt foreign government’ means
9 any foreign government which—

10 “(i) holds, directly or indirectly, more
11 than \$100,000,000,000 in assets for in-
12 vestment or for the production of income,
13 and

14 “(ii) either—

15 “(I) does not have a free trade
16 agreement in effect with the United
17 States or an income tax treaty or con-
18 vention in effect with the United
19 States, or

20 “(II) is a foreign government of
21 a covered nation (as defined in section
22 4872(d)(2) of title 10, United States
23 Code).”.

1 (b) REGULATIONS.—Section 892(c) of the Internal
 2 Revenue Code of 1986 is amended by inserting before the
 3 period at the end the following “, including—

4 “(1) regulations to prevent the avoidance of the
 5 purposes of subsection (a)(4), and

6 “(2) regulations relating to the types of assets
 7 taken into account under subsection (a)(4)(B)(i).”.

8 (c) PUBLICATION OF LIST OF NON-EXEMPT FOR-
 9 EIGN GOVERNMENTS.—

10 (1) IN GENERAL.—Not later than December 31,
 11 2024, the Secretary of the Treasury (or the Sec-
 12 retary’s delegate) shall publish a list of foreign gov-
 13 ernments which are non-exempt foreign governments
 14 (as defined in section 892(a)(4) of the Internal Rev-
 15 enue Code of 1986, as added by this section).

16 (2) UPDATING.—The Secretary of the Treasury
 17 (or the Secretary’s delegate) shall regularly update
 18 the list published under paragraph (1).

19 (d) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
 21 graph (2), the amendments made by this section
 22 shall apply to income received after December 31,
 23 2023.

24 (2) DELAY IN APPLICATION FOR INCOME ON
 25 QUALIFIED INVESTMENTS.—In the case of any

1 qualified investment, the amendments made by this
2 section shall apply to income received from such in-
3 vestment after December 31, 2025.

4 (3) QUALIFIED INVESTMENT.—For purposes of
5 paragraph (2)—

6 (A) IN GENERAL.—The term “qualified in-
7 vestment” means, with respect to a non-exempt
8 foreign government, any investment made by
9 such government on or before the date of the
10 enactment of this Act the income from which
11 would (without regard to the amendments made
12 by this Act) be excluded from the gross income
13 of such government under section 892 of the
14 Internal Revenue Code of 1986.

15 (B) CERTAIN LATER INVESTMENTS TREAT-
16 ED AS QUALIFIED INVESTMENTS.—In the case
17 of an investment made by a non-exempt foreign
18 government which would be treated as a quali-
19 fied investment of such government but for the
20 fact it was made after the date of the enact-
21 ment of this Act and before January 1, 2026,
22 such investment shall be treated as a qualified
23 investment if it—

24 (i) was made pursuant to a binding
25 contract which—

1 (I) was in effect on such date of
 2 enactment and at all times thereafter
 3 before such investment,

4 (II) required such investment to
 5 be made on a fixed date and in a fixed
 6 amount, and

7 (III) did not allow any person to
 8 delay, deny, or excuse such invest-
 9 ment, or

10 (ii) is a qualified public investment.

11 (C) TERMINATION OF QUALIFIED INVEST-
 12 MENT TREATMENT.—

13 (i) IN GENERAL.—If—

14 (I) a domestic corporation of
 15 which a non-exempt foreign govern-
 16 ment is a direct shareholder and
 17 which has received 1 or more qualified
 18 investments, or

19 (II) a domestic or foreign part-
 20 nership (or similar flow-through enti-
 21 ty) in which a non-exempt foreign
 22 government is a direct partner and
 23 which has made 1 or more qualified
 24 investments on behalf of a non-exempt
 25 foreign government,

receives an additional investment (which is not a qualified investment) from any non-exempt foreign government, then, notwithstanding paragraph (2), the amendments made by this section shall apply to income received from all the qualified investments received by the non-exempt foreign government from such domestic corporation or through such partnership (or similar flow-through entity) after the date on which such domestic corporation or partnership (or similar flow-through entity) receives such additional investment.

(ii) DETERMINATION OF RECEIPT.—

For purposes of this subparagraph, an entity described in subclause (I) or (II) of clause (i) shall be treated as having received an additional investment from a non-exempt foreign government if—

(I) it receives such investment directly from such government, or

(II) it receives such investment from a partnership (or similar flow-through entity) of which such government is a direct or indirect partner.

1 (iii) CERTIFICATION.—For purposes
 2 of this subparagraph, an entity shall be
 3 treated as having received additional in-
 4 vestments described in clause (i) unless, at
 5 the time of making payments of income on
 6 any qualified investment, such entity cer-
 7 tifies (in such manner as the Secretary of
 8 the Treasury or his delegate may pre-
 9 scribe) that no such additional investments
 10 have been received as of such time.

11 (D) QUALIFIED PUBLIC INVESTMENT.—
 12 For purposes of subparagraph (B)(ii)—

13 (i) IN GENERAL.—The term “qualified
 14 public investment” means any investment
 15 by a non-exempt foreign government in a
 16 domestic corporation or a domestic or for-
 17 eign partnership which is regularly traded
 18 on an established securities market.

19 (ii) EXCEPTION.—Such term shall not
 20 include—

21 (I) any investment in a domestic
 22 corporation on or after the date on
 23 which such non-exempt foreign gov-
 24 ernment holds (directly or indirectly)
 25 10 percent or more (by vote or value)

1 of the total outstanding shares of
 2 stock in such domestic corporation,
 3 and

4 (II) any investment in a domestic
 5 or foreign partnership on or after the
 6 date on which such non-exempt for-
 7 eign government holds (directly or in-
 8 directly) 10 percent or more of the
 9 capital or profits interests of such do-
 10 mestic partnership.

11 (E) OTHER TERMS.—For purposes of this
 12 paragraph—

13 (i) NON-EXEMPT FOREIGN GOVERN-
 14 MENT.—The term “non-exempt foreign
 15 government” has the meaning given such
 16 term under section 892(a)(4) of the Inter-
 17 nal Revenue Code of 1986 (as added by
 18 this section).

19 (ii) INVESTMENT.—The term “invest-
 20 ment” means an investment described in
 21 section 892(a)(1)(A)(i) of the Internal
 22 Revenue Code of 1986.

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