



US Budget Clause Tests Treaty Protections

A provision in President Donald Trump's proposed 2025 budget - Section 899 - is raising significant concerns among foreign investors and legal experts for potentially violating international treaty obligations. The measure, which passed the House and is under consideration in the Senate, would authorize the U.S. to impose increased taxes on investors and companies from countries it labels as having "punitive" or "unfair" tax regimes-reportedly including most EU states, the UK, Canada, and Australia, as well as the Baltic states-Latvia, Estonia, and Lithuania.

What Section 899 would do?

Section 899 would:

- **Increase taxes on dividends and interest** from U.S. stocks and corporate bonds by **5 percentage points per year for four years**-ultimately raising the rate by **20%.**
- **Impose taxes on sovereign wealth fund holdings**, which are currently exempt.
- **Modernisation of asset tracing and digital tools**, including mandatory use of electronic communication and online publication of notices;
- Possibly extend taxation to **U.S. Treasury securities**, although the statutory language is legally ambiguous on that point. Nonetheless, many institutional investors are bracing for that possibility.

This comes at a moment when the U.S. is increasingly reliant on foreign capital to service its expanding debt, and confidence among international investors is fragile.

Legal Implications: Breach of BITs?

While the measure is not yet in force, it already raises serious treaty concerns. The structure of Section 899 appears to discriminate against foreign investors based on nationality, applying higher taxation exclusively to those from

"unfriendly" jurisdictions. This kind of targeted treatment could violate national treatment provisions found in most bilateral investment treaties (BITs) and free trade agreements (FTAs) to which the U.S. is party.

Although many U.S. BITs include annexes that reserve the right to impose differential tax treatment on foreign investors in securities, such carve-outs may not fully shield the U.S. from claims if Section 899 is seen as exceeding a normal taxation measure. Specifically, the provision's explicit targeting of specific nationalities and its extension to sovereign wealth funds and potentially Treasury securities may open legal pathways for claims of unfair discrimination, indirect expropriation, or violations of Most-Favoured Nation (MFN) principles.

Latvia, Estonia, and Lithuania all have active BITs with the United States, and while their annexes generally limit arbitration on taxation matters, they do not necessarily preclude challenges where taxation measures are viewed as discriminatory or coercive beyond the scope of legitimate fiscal policy.

A more likely-and potentially more effective-response could come in the form of a WTO challenge, especially if Section 899 is seen as a disguised restriction on international trade or capital flows, contravening MFN obligations.

Business and Market Reaction

- Major foreign investors and banks (including Shell, Toyota, HSBC, and BNP Paribas) are actively lobbying to halt or amend the provision.
- The Institute of International Bankers and Institute of International Finance have publicly criticized the measure as counterproductive to U.S. job growth and financial stability.
- Wall Street analysts have warned of potential outflows from U.S. markets and downward pressure on the dollar. Some foreign clients are reportedly already panicking, especially considering uncertainty around Treasury bond taxation.



What Comes Next?

While the measure passed the House, it faces uncertain prospects in the Senate. Lobbyists are urging lawmakers to delay implementation by at least a year, and to narrow the scope of the tax.

Still, with 116 billion dollars in expected revenue over 10 years-and with the Trump tax cuts adding 2.4 trillion dollars to the deficit by 2034-the fiscal pressure to retain Section 899 is real.

Final Note

This is not just another trade war tariff. This is a discriminatory tax measure with systemic implications for foreign portfolio investment, sovereign debt markets, and international law compliance. Whether or not it ever comes into effect, it is a sharp signal of the political volatility foreign investors must now price in when buying American.

If Section 899 does become law, a test case by a sovereign or institutional investor could very well mark the next frontier of treaty-based investment arbitration-or, at the very least, a headline-grabbing WTO challenge.

Disclaimer

This publication is to be used for information purposes only and does not constitute legal advice.

Contact information

For more information, contact Theis Klauberg
theis.klauberg@klauberg.legal or Megija Kelle
megija.kelle@klauberg.legal

www.klauberg.legal SIA Zvērinātu advokātu birojs Klauberg
Elizabetes iela 85A-1
LV-1050 Riga, Latvia