Trump Administration Opens the Door to Double-Tax-Rate Penalty on Foreign Companies and Individuals

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As part of its "America First Trade Policy," the White House is exploring an arcane IRS provision that allows the United States to double the tax rates of foreign companies and individuals.

Upon taking office on January 20, 2025, President Trump issued the America First Trade Policy memorandum (the "**Order**"). The Order broadly lays out various trade-based policy positions, and primarily directs the Secretary of the Treasury, Secretary of Commerce, and other federal agencies to study and promote identified trade policies. While many of these directives call for more general reviews of policy, Section 2(j) of the Order directs the Secretary of the Treasury to examine the implementation of Section 891 of the **Internal Revenue Code** (the "**Code**"), an obscure provision that has been a part of the Code for decades.

Section 891 provides that the President may double the tax rates imposed on citizens and corporations of certain foreign countries if the President determines that such countries are subjecting U.S. citizens to "discriminatory or extraterritorial taxes." As of the drafting of this alert, Section 891 has never been invoked, and therefore there is no authority or guidance providing specific standards or process for the application of this provision. Interpreted liberally, Section 891 allows the President, at his sole discretion, to double the U.S. tax rate for all citizens and corporations from one or more foreign countries. This penalty would apply to foreign taxpayers who are already subject to U.S. taxes.

It is unknown whether President Trump would invoke Section 891, and which country or countries he may target. President Trump, however, has ordered that the United States withdraw from the Organization for Economic Co-operation and Development Global Minimum Tax initiative ("**OECD Pillar 2**"). If a country adopts Pillar 2 taxes, it may impose a minimum tax on large multinational companies, including U.S. companies. As of the date of this alert, 140 countries have announced the intent to adopt OECD Pillar 2, and numerous countries, including Japan, Korea, Canada, and the majority of the European Union have passed laws implementing the Pillar 2 taxes. If Section 891 were applied against Pillar 2 countries, the number of impacted individuals and corporations could be significant.

It is uncertain whether existing tax treaties may have an impact on the application of Section 891 or whether U.S. citizens with dual citizenship may be subject to Section 891. Individuals or companies with concerns should contact a member of Miller Canfield's tax team to discuss their specific situation.