

Section 899: What is It and Who is Impacted

MetLife Investment Management (MIM) recently sat down with Ken LaGuardia, Senior Vice President and Global Tax Director at MetLife, to understand Section 899 and its expected impact on investors.

What is Section 899?

Ken LaGuardia: It is a provision in the recent House-passed bill that potentially increases the U.S. tax on certain U.S. investments made by foreign investors from certain countries.

What is the purpose of Section 899?

Ken: According to U.S. government officials, the purpose is not to raise revenue but to retaliate against foreign tax systems that the U.S. government views as unfairly targeting American business and individuals. Therefore, the provision is designed to get those countries to repeal those unfair taxes, and then, Section 899 would not apply.

Has the provision been enacted?

Ken: No. The provision is currently just a bill approved by the U.S. House of Representatives and has to be approved by the Senate and signed by the President to become law.

As drafted by the House, who is impacted, and what investments are impacted?

Ken: There are three points to note.

- As it relates to MetLife Investment Management's capabilities, it potentially impacts MIM's clients: (i) that are from the UK, EU, Japan, Korea and Australia (among others); and (ii) that invest in U.S. real estate equity or certain U.S. private credit. All non-public credit asset classes are potentially impacted

but only certain structures/mandate types are impacted. Although for MIM, most of our private credit mandates to companies from impacted countries could be affected by 899.

- As a general matter, if the investment is impacted, the U.S. withholding tax would increase 5% a year, with a maximum increase of 20%. So, if it was currently 0%, it would be 5% next year, 10% the year after that, etc.
- The tax on U.S. public debt is not impacted, and investments by foreign subsidiaries of a U.S. company (greater than 50%) are not impacted, even if that subsidiary is in a country with an unfair tax.

Is there potential for the Bill to change? What are the next steps?

Ken: MetLife Investment Management is aware of the provision and following it. Given the number of uncertainties, we are monitoring the legislative process for potential changes, what clients could be impacted under the current proposal, and potential mitigating strategies.

Has the US Senate acted on this bill?

Ken: Yes, on June 16th the Senate Finance Committee released legislative text for its version of the bill, setting the stage for negotiations with the House and a high-stakes reconciliation process. In the legislative text, the Senate included similar language regarding Section 899, except that their proposal lowers the ceiling on the tax increase from 20% to 15% and the effective date is delayed by one year.

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