II

118TH CONGRESS
1ST SESSION

S. 2750

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 7, 2023

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To impose restrictions on the investment in Chinese companies by tax-exempt entities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Dump Investments in Troublesome Communist Holdings Act" or as the "DITCH Act".

SEC. 2. RESTRICTION ON INVESTMENT IN CHINESE COMPANIES BY TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Section 501 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

"(s) RESTRICTION ON INVESTMENT IN CHINESE COMPANIES.—

"(1) IN GENERAL.—An organization shall not be treated as described in subsection (c) or (d) or section 401(a) for any taxable year if such organization—

"(A) holds any interest in a disqualified Chinese company at any time during such taxable year, or

"(B) fails to timely transmit the annual report described in paragraph (5) for such taxable year.

"(2) DISQUALIFIED CHINESE COMPANY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified Chinese company' means any corporation—

"(i) that is incorporated in China, or

"(ii) more than 10 percent of the stock of which (determined by vote or value) is held (directly or indirectly through any chain of ownership) by any of the following (or combination thereof):

"(I) 1 or more corporations described in clause (i).

"(II) China or any governmental agency thereof.

"(III) Provincial, regional, municipal, Special Administrative Regions, prefecture, county, township, village, or any other Chinese sub-national governmental entity or agency.

"(IV) Any entity controlled (directly or indirectly) by the Chinese Communist Party or any Chinese Communist Party organ.

"(V) Any Chinese national.

"(B) APPLICATION TO ENTITIES OTHER THAN CORPORATIONS.—In the case of any business organization which is not a corporation, subparagraph (A) shall apply to such organization in the same manner as though such organization were a corporation.

"(C) APPLICATION TO INDIRECT, DERIVATIVE, OR OTHER CONTRACTUAL INTERESTS, ETC.—For purposes of this subsection, an organization shall be treated as holding an interest in a disqualified Chinese company if such organization—

"(i) holds such interest (or any instrument described in subparagraph (A)) directly or indirectly through any chain of ownership, or

"(ii) holds any derivative financial instrument or other contractual arrangement with respect to such interest or company (including any financial instrument or other contract which seeks to replicate any financial return with respect to such interest or such company).

"(D) PUBLICATION OF LIST BY SECRETARY.—The Secretary shall, not later than 120 days after the date of the enactment of this subsection, establish a process for the periodic publishing of a list of certified pooled investments, including exchange traded funds and mutual funds, that do not have exposure to disqualified Chinese companies.

"(3) WAIVERS.—

"(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any interest in a disqualified Chinese company held by any organization during any taxable year if the Secretary issues a waiver to such organization with respect to such interest for such taxable year under this paragraph. Any waiver issued under this paragraph shall be subject to renewal or expiration on a biannual basis.

"(B) WAIVER PROCESS.—

"(i) APPLICATION.—Not later than 60 days after the date of the enactment of this subsection, the Secretary shall establish a process under which an organization may submit a written application for a waiver under this paragraph. Such application shall be made publicly available and shall include the following:

"(I) An explanation of the need for such waiver and the reasons that the need for such waiver outweigh the threat posed to the United States by China and the lack of separation between China and the disqualified Chinese company involved.

"(II) The type (including sector of the economy), amount, and duration of the investment in the disqualified Chinese company.

"(III) The relationship between the disqualified Chinese company and China.

"(IV) The extenuating circumstances justifying the applicant's need to invest in the disqualified Chinese company.

"(ii) RESPONSE.—The Secretary shall provide a written response to each completed application under clause (i) not later than 60 days after receipt of such application. Such written response shall be made publicly available and shall include the following:

"(I) A statement of whether the waiver has been provided or withheld.

"(II) The reasons for providing or withholding the waiver.

"(III) The identification of any future investments with respect to which such waiver applies.

"(IV) The date on which such waiver expires (which may not be later than the earlier of the termination of the extenuating circumstances referred to in clause (i)(IV) or the end of the biannual period referred to in subparagraph (A)).

"(C) STANDARDS FOR DETERMINING IF WAIVER IS PROVIDED.—The Secretary may provide a waiver under this paragraph only if the Secretary independently determines that—

"(i) the need for such waiver, and the reasons for the need for such waiver, outweigh the threat posed to the United States by China and the lack of separation between China and the disqualified Chinese company involved, and

"(ii) extenuating circumstances justify the applicant's need to invest in the disqualified Chinese company.

For purposes of this subparagraph, the Secretary shall not consider the past or future financial returns of any investment in any disqualified Chinese company, or any other justification based on the applicant's own financial needs, as an extenuating circumstance justifying such an investment.

“(D) PUBLICATION OF WAIVERS PROVIDED.—With respect to each calendar quarter, the Secretary shall publish and make publicly available a list of the waivers provided by the Secretary under this paragraph during such quarter.

“(4) CHINA.—For purposes of this section, the term ‘China’ means the People’s Republic of China and includes any subordinate Special Administrative Regions thereof.

“(5) ANNUAL REPORT.—Each organization described in paragraph (1) with respect to each taxable year shall, not later than the due date for the return of tax for such taxable year, transmit to the Secretary a written report including—

“(A) a description of each interest in a disqualified Chinese company held by such organization during such taxable year,

“(B) the period during which such interest was so held, and

“(C) whether such organization has a waiver under paragraph (3) to hold such interest during such period.”.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act, except that only periods after the date that is 270 days after the date of the enactment of this Act shall be taken into account in determining whether the requirement of section 501(s) of the Internal Revenue Code of 1986 (as added by this section) is met with respect to any taxable year.

(2) 1-YEAR GRACE PERIOD UNDER CERTAIN CIRCUMSTANCES.—In the case of organization that, after intensive due diligence, is unaware of the failure to satisfy the requirement of such section 501(s), paragraph (1) shall be applied by substituting “1 year” for “270 days”.

(c) PUBLIC REPORT.—Not later than 360 days after the date of the enactment of this Act, and annually thereafter, the Secretary of the Treasury (or the Secretary’s delegate) shall publicly release a report describing the patterns of United States outbound investment in China, including such investment by organizations described in section 501(s)(1) of the Internal Revenue Code of 1986 (as added by this section). Such report shall detail the sectoral breakdown of such investments.

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