113TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
113–428

PERMANENT CFC LOOK-THROUGH ACT OF 2014

MAY 2, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CAMP, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 4464]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4464) to amend the Internal Revenue Code of 1986 to make permanent the look-through treatment of payments between related controlled foreign corporations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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39–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Permanent CFC Look-Through Act of 2014".

SEC. 2. LOOK-THROUGH TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS MADE PERMANENT.

(a) IN GENERAL.—Paragraph (6) of section 954(c) of the Internal Revenue Code of 1986 is amended by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

Identical to a provision contained in the discussion draft of the "Tax Reform Act of 2014" released on February 26, 2014, the bill, H.R. 4464, reported by the Committee on Ways and Means, provides permanent look-through treatment of payments between related controlled foreign corporations. Under current law, the temporary look-through treatment of payments between related controlled foreign corporations expired for taxable years beginning after December 31, 2013.

B. BACKGROUND AND NEED FOR LEGISLATION

While the Committee continues actively to pursue comprehensive tax reform as a critical means of promoting economic growth and job creation, the Committee also believes that it is important to provide permanent, immediate tax relief to worldwide American companies to help encourage economic growth and job creation. By allowing worldwide American companies to deploy capital from one foreign subsidiary to another foreign subsidiary in a tax-efficient manner, H.R. 4464 will enable American employers to be competitive against foreign multinational corporations that are not subject to an onerous worldwide tax system.

C. LEGISLATIVE HISTORY

BACKGROUND

H.R. 4464 was introduced on April 10, 2014, and was referred to the Committee on Ways and Means.

COMMITTEE ACTION

The Committee on Ways and Means marked up H.R. 4464, the Permanent CFC Look-Through Act of 2014, on April 29, 2014, and ordered the bill, as amended, favorably reported (with a quorum being present).

COMMITTEE HEARINGS

The need for permanent look-through treatment of payments between related controlled foreign corporations was discussed at no fewer than five hearings during the 112th and 113th Congresses:

- Full Committee hearing on Fundamental Tax Reform (January 20, 2011);
- Full Committee hearing on The Need for Comprehensive Tax Reform to Help American Companies Compete in the Global Market and Create Jobs for American Workers (May 12, 2011);
- Select Revenue Measures Subcommittee hearing on Ways and Means International Tax Reform Discussion Draft (November 17, 2011);
- Full Committee hearing on Tax Havens, Base Erosion and Profit-Shifting (June 13, 2013); and
- Full Committee hearing on the Benefits of Permanent Tax Policy for America's Job Creators (April 8, 2014).

II. EXPLANATION OF THE BILL

A. Look-Through Treatment of Payments Between Related Controlled Foreign Corporations Under Foreign Personal Holding Company Rules (sec. 954(c)(6) of the Code)

PRESENT LAW

In general

The rules of subpart F[1] require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") to include certain income of the CFC (referred to as "subpart F income") on a current basis for U.S. tax purposes, regardless of whether the income is distributed to the shareholders.

Subpart F income includes foreign base company income. One category of foreign base company income is foreign personal holding company income. For subpart F purposes, foreign personal holding company income generally includes dividends, interest, rents, and royalties, among other types of income. There are several exceptions to these rules. For example, foreign personal holding company income does not include dividends and interest received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized, or rents and royalties received by a CFC from a related corporation for the use of property within the country in which the CFC is organized. Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor. In addition, subpart F income of a CFC does not include any item of income from sources within the United States that is effectively connected with the conduct by such CFC of a trade or business within the United States ("ECI") unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a tax treaty.

[1] Secs. 951–965.

The "look-thru rule"

Under the "look-thru rule,"[2] dividends, interest (including factoring income that is treated as equivalent to interest under section 954(c)(1)(E)), rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to income of the payor that is neither subpart F income nor treated as ECI. For this purpose, a related CFC is a CFC that controls or is controlled by the other CFC, or a CFC that is controlled by the same person or persons that control the other CFC. Ownership of more than 50 percent of the CFC's stock (by vote or value) constitutes control for these purposes.

The Secretary is authorized to prescribe regulations that are necessary or appropriate to carry out the look-thru rule, including such regulations as are necessary or appropriate to prevent the abuse of the purposes of such rule.

The look-thru rule applies to taxable years of foreign corporations beginning after December 31, 2005 and before January 1, 2014, and to taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

REASONS FOR CHANGE

The Committee believes that it is appropriate to make permanent the look-thru rule to provide certainty for businesses and to help U.S. companies with overseas operations compete more effectively with foreign firms.

EXPLANATION OF PROVISION

The proposal makes the application of the look-thru rule permanent.

EFFECTIVE DATE

The proposal is effective for taxable years of foreign corporations beginning after December 31, 2013, and for taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

[2] Sec. 954(c)(6).

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 4464, the Permanent CFC Look-Through Act of 2014.

The bill, H.R. 4464, was ordered favorably reported as amended by a roll call vote of 22 yeas to 14 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Camp	✓			Mr. Levin		✓	
Mr. Johnson	✓			Mr. Rangel		✓	
Mr. Brady	✓			Mr. McDermott		✓	
Mr. Ryan	✓			Mr. Lewis		✓	
Mr. Nunes	✓			Mr. Neal		✓	
Mr. Tiberi	✓			Mr. Becerra		✓	
Mr. Reichert	✓			Mr. Doggett		✓	
Mr. Boustany	✓			Mr. Thompson		✓	
Mr. Roskam	✓			Mr. Larson		✓	
Mr. Gerlach	✓			Mr. Blumenauer		✓	
Mr. Price	✓			Mr. Kind			
Mr. Buchanan	✓			Mr. Pascrell		✓	
Mr. Smith	✓			Mr. Crowley		✓	
Mr. Schock	✓			Ms. Schwartz			
Ms. Jenkins	✓			Mr. Davis		✓	
Mr. Paulsen	✓			Ms. Sanchez		✓	
Mr. Marchant	✓						
Ms. Black	✓						
Mr. Reed	✓						
Mr. Young	✓						
Mr. Kelly	✓						
Mr. Griffin							
Mr. Renacci	✓						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 4464, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2014–2024.

Fiscal Years

[Billions of Dollars]

2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–19	2014–24
−0.8	−1.3	−1.4	−1.5	−1.7	−1.8	−1.9	−2.1	−2.4	−2.6	−2.9	−8.4	−20.3

fNOTE: Details do not add to totals due to rounding.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 1, 2014.

Hon. Dave Camp,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4464, the Permanent CFC Look-Through Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

Douglas W. Elmendorf.

Enclosure.

H.R. 4464—Permanent CFC Look-Through Act of 2014

H.R. 4464 would amend the Internal Revenue Code to make permanent the "look-through rule" that applied to the taxable years of foreign corporations beginning after December 31, 2005 and before January 1, 2014. This treatment would be permanently effective for taxable years beginning after December 31, 2013. The "look-through rule" determines the tax treatment of payments between related controlled foreign corporations (CFCs) under foreign personal holding company rules. Under this rule, dividends, interest, rents, and royalties received or accrued by one CFC from a related CFC are not treated as foreign personal holding company income for tax purposes if they meet certain characteristics.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 4464 would reduce revenues, thus increasing federal deficits, by about $20 billion over the 2014–2024 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 4464 would result in revenue losses in each year beginning in 2014. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4464, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON APRIL 29, 2014

	By fiscal year, in millions of dollars—												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–2019	2014–2024
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Effects ...	808	1,254	1,388	1,527	1,666	1,792	1,934	2,137	2,381	2,589	2,856	8,434	20,331

Source: Staff of the Joint Committee on Taxation.
Note: Components may not sum to totals because of rounding.

D. Macroeconomic Impact Analysis

In compliance with clause 3(h)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the effects of the bill on economic activity are so small as to be incalculable within the context of a model of the aggregate economy.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 4464 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (the "IRS Reform Act") requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(j)(2) of H. Res. 5 (113th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(k) of H. Res. 5 (113th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

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CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter N—Tax Based on Income From Sources Within or Without the United States

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PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

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Subpart F—Controlled Foreign Corporations

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SEC. 954. FOREIGN BASE COMPANY INCOME.

(a) * * *

* * * * * * *

(c) FOREIGN PERSONAL HOLDING COMPANY INCOME.—

(1) * * *

* * * * * * *

(6) LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.—

(A) * * *

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[(C) APPLICATION.—Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2014, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.]

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VII. DISSENTING VIEWS

These bills would add a combined $310 billion to the deficit. Even though these bills were introduced individually with some bipartisan support, the opposition to these bills was based on the position that these tax provisions should not be made permanent by adding to the deficit without any revenue offset.

To put the combined cost ($310 billion) into context, this total represents more than one-half of the entire federal deficit this year—the lowest it has been since President Obama took office. It represents nearly two-thirds of all non-defense domestic discretionary spending in 2014. It is more than three times what we spend annually on education, job training, and social services. It is five times more than we spend on veterans. And, it is five times more than we spend on medical research and public health.

We also opposed the manner in which Republicans were proceeding—selecting six to make permanent without any offset from the approximately 60 tax provisions that expired last year. This approach was both fiscally irresponsible and fundamentally hypocritical.

We found it hypocritical that, four months ago, Republicans let emergency unemployment insurance expire for more than 1.3 million Americans by arguing that an adequate offset had yet to be proposed. In early April, the Senate came to a bipartisan agreement on an offset after months of painstaking negotiations. Yet House Republicans still refuse to act.

Further, we found it also hypocritical that the Republicans were in favor of passing these six tax bills at a cost of $310 billion without an offset at the same time that they were requiring an offset for a provision stripped from another bill under consideration at the markup that helped foster children at a cost of $12 million.

The consideration of these six tax bills should have been part of the consideration of all the expired tax provisions commonly referred to as “tax extenders.” The Republicans did not take up other tax extenders that also are important to Democratic Committee Members. Left to an uncertain fate are provisions like the Work Opportunity Tax Credit, the New Markets Tax Credit, and the renewable energy tax credits, as well as the long-term status of the Earned Income Tax Credit, the Child Tax Credit, and the American Opportunity Tax Credit.

Sincerely,

SANDER M. LEVIN,
Ranking Member.

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