

108TH CONGRESS
1ST SESSION

H. R. 2184

To amend the Internal Revenue Code of 1986 to prevent corporations from exploiting tax treaties to evade taxation of United States income and to prevent manipulation of transfer prices by deflection of income to tax havens.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

Mr. DOGGETT (for himself, Ms. BALDWIN, Mr. CROWLEY, Mr. DEFazio, Mr. DELAHUNT, Ms. DELAURO, Mr. FILNER, Mr. FROST, Mr. JEFFERSON, Mrs. JONES of Ohio, Mr. KENNEDY of Rhode Island, Mr. KLECZKA, Mr. KUCINICH, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. MARKEY, Mr. MATSUI, Mr. McDERMOTT, Mr. MCGOVERN, Mr. McNULTY, Mr. GEORGE MILLER of California, Mr. NEAL of Massachusetts, Mr. PALLONE, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Ms. SOLIS, Ms. SLAUGHTER, Mr. STARK, Mr. TIERNEY, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to prevent corporations from exploiting tax treaties to evade taxation of United States income and to prevent manipulation of transfer prices by deflection of income to tax havens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fairness and Account-
3 ability in International Taxation Act of 2003”.

4 **SEC. 2. DENIAL OF TREATY BENEFITS FOR CERTAIN DE-**
5 **DUCTIBLE PAYMENTS.**

6 (a) IN GENERAL.—Section 894 of the Internal Rev-
7 enue Code of 1986 (relating to income affected by treaty)
8 is amended by adding at the end the following new sub-
9 section:

10 “(d) DENIAL OF TREATY BENEFITS FOR CERTAIN
11 DEDUCTIBLE PAYMENTS.—

12 “(1) IN GENERAL.—A foreign entity shall not
13 be entitled under any income tax treaty of the
14 United States with a foreign country to any reduced
15 rate of any withholding tax imposed by this title on
16 any deductible foreign payment unless such entity is
17 predominantly owned by individuals who are resi-
18 dents of such foreign country.

19 “(2) DEDUCTIBLE FOREIGN PAYMENT.—For
20 purposes of paragraph (1), the term ‘deductible for-
21 eign payment’ means any payment—

22 “(A) which is made by a domestic entity
23 directly or indirectly to a related person which
24 is a foreign entity, and

25 “(B) which is allowable as a deduction
26 under this chapter.

1 “(3) DOMESTIC AND FOREIGN ENTITIES; RE-
2 LATED PERSON.—For purposes of this subsection—

3 “(A) DOMESTIC ENTITY.—The term ‘do-
4 mestic entity’ means any domestic corporation
5 or domestic partnership.

6 “(B) FOREIGN ENTITY.—The term ‘for-
7 eign entity’ means any foreign corporation or
8 foreign partnership.

9 “(C) RELATED PERSON.—The term ‘re-
10 lated person’ has the meaning given such term
11 by section 954(d)(3) (determined by sub-
12 stituting ‘domestic entity’ for ‘controlled foreign
13 corporation’ each place it appears).

14 “(4) PREDOMINANT OWNERSHIP.—For pur-
15 poses of this subsection—

16 “(A) IN GENERAL.—An entity is predomi-
17 nantly owned by individuals who are residents
18 of a foreign country if—

19 “(i) in the case of a corporation, more
20 than 50 percent (by value) of the stock of
21 such corporation is owned (within the
22 meaning of section 883(c)(4)) by individ-
23 uals who are residents of such foreign
24 country, or

1 “(ii) in the case of a partnership,
2 more than 50 percent (by value) of the
3 beneficial interests in such partnership are
4 so owned.

5 “(B) PUBLICLY TRADED CORPORATIONS.—
6 A foreign corporation also shall be treated as
7 predominantly owned by individuals who are
8 residents of a foreign country if—

9 “(i)(I) the stock of such corporation is
10 primarily and regularly traded on an estab-
11 lished securities market in such foreign
12 country, and

13 “(II) such corporation has activities
14 within such foreign country which are sub-
15 stantial in relation to the total activities of
16 such corporation and its related persons,
17 or

18 “(ii) such corporation is wholly owned
19 (directly or indirectly) by another foreign
20 corporation which is described in clause (i).

21 “(C) SPECIAL RULE.—

22 “(i) IN GENERAL.—A foreign corpora-
23 tion shall be treated as meeting the re-
24 quirements of subparagraph (A) if—

1 “(I) such requirements would be
2 met if ‘30 percent’ were substituted
3 for ‘50 percent’ in subparagraph
4 (A)(i),

5 “(II) the treaty country is a
6 member of a multinational economic
7 association such as the European
8 Union, and

9 “(III) at least 50 percent of the
10 value of the stock of the corporation is
11 owned (within the meaning of section
12 883(c)(4)) by individuals who are resi-
13 dents of the treaty country or other
14 qualified foreign countries.

15 “(ii) QUALIFIED FOREIGN COUN-
16 TRY.—For purposes of this subparagraph,
17 the term ‘qualified foreign country’ means
18 any foreign country if—

19 “(I) such foreign country is a
20 member of the multinational economic
21 association of which the treaty coun-
22 try is a member, and

23 “(II) such foreign country has a
24 tax treaty with the United States pro-
25 viding a withholding tax rate reduc-

1 tion which is not less than the with-
2 holding tax rate reduction applicable
3 (without regard to this subsection) to
4 the payment received by such foreign
5 corporation.

6 “(5) EXCEPTION FOR CORPORATIONS WITH
7 SUBSTANTIAL BUSINESS ACTIVITIES IN TREATY
8 COUNTRY.—Paragraph (1) shall not apply to a pay-
9 ment received by a foreign corporation if such cor-
10 poration has substantial business activities in the
11 treaty country and if such corporation establishes to
12 the satisfaction of the Secretary that the payment is
13 subject to an effective rate of income tax imposed by
14 such country greater than 90 percent of the max-
15 imum rate of tax specified in section 11.

16 “(6) EXCEPTION FOR PAYMENTS RECEIVED BY
17 CONTROLLED FOREIGN CORPORATION.—Paragraph
18 (1) shall not apply to any deductible foreign pay-
19 ment made by a corporation if the recipient of the
20 payment is a controlled foreign corporation and the
21 payor is a United States shareholder (as defined in
22 section 951(b)) of such corporation.

23 “(7) CONDUIT PAYMENTS.—Under regulations
24 prescribed by the Secretary, paragraph (1) shall not

1 apply to a payment received by a foreign entity re-
2 ferred to in paragraph (1) if—

3 “(A) within a reasonable period after such
4 entity receives such payment, such entity makes
5 a comparable payment directly or indirectly to
6 another related person,

7 “(B) such related person is a resident of a
8 foreign country with which the United States
9 has an income tax treaty,

10 “(C) such related person is predominantly
11 owned by individuals who are residents of such
12 country, and

13 “(D) the withholding tax rate applicable
14 under such treaty is equal to or greater than
15 the withholding tax rate applicable (without re-
16 gard to this paragraph) to the payment received
17 by such foreign entity.

18 A similar rule shall apply where the payment is in-
19 cludible in the gross income of a related person by
20 reason of a foreign law comparable to subpart F of
21 part III of subchapter N.”

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the date of the enactment
24 of this Act.

1 **SEC. 3. TRANSFER PRICE REDUCED BY DEFLECTED TAX**
 2 **HAVEN INCOME.**

3 (a) IN GENERAL.—Section 482 of the Internal Rev-
 4 enue Code of 1986 (relating to allocation of income and
 5 deductions among taxpayers) is amended by inserting “(a)
 6 IN GENERAL.—” before “In the case of two or more” and
 7 by adding at the end the following new subsection:

8 “(b) SPECIAL RULE FOR RELATED-PARTY INBOUND
 9 AND OUTBOUND TRANSACTIONS.—

10 “(1) IN GENERAL.—In the case of property or
 11 services to which this subsection applies, the transfer
 12 price under this section for such property or service
 13 shall be the transfer price determined without regard
 14 to this subsection—

15 “(A) in the case of a related-party inbound
 16 transaction, reduced by the deflected tax haven
 17 income with respect to such property or service,
 18 or

19 “(B) in the case of a related-party out-
 20 bound transaction, increased by the deflected
 21 tax haven income with respect to such property
 22 or service.

23 “(2) PROPERTY OR SERVICES TO WHICH SUB-
 24 SECTION APPLIES.—

25 “(A) IN GENERAL.—This subsection ap-
 26 plies to any property or services if there is a re-

lated-party inbound or outbound transaction
with respect to such property or services.

“(B) RELATED-PARTY INBOUND TRANSACTION.—A related-party inbound transaction
is any transaction where—

“(i) property is acquired directly or
indirectly by a foreign-controlled domestic
corporation from a foreign related person,
or

“(ii) the services are performed directly or indirectly for a foreign-controlled
domestic corporation by a foreign related
person.

“(C) RELATED-PARTY OUTBOUND TRANSACTION.—A related-party outbound transaction
is any transaction where—

“(i) property is sold directly or indirectly by a foreign-controlled domestic corporation
to a foreign related person, or

“(ii) services are performed directly or indirectly by a foreign-controlled domestic
corporation for a foreign related person.

“(3) DEFLECTED TAX HAVEN INCOME.—For
purposes of this subsection—

1 “(A) IN GENERAL.—The term ‘deflected
2 tax haven income’ means income (whether in
3 the form of profits, commissions, fees, or other-
4 wise) derived by a foreign related person in con-
5 nection with any transaction related to property
6 or services to which this subsection applies if
7 such income would be treated as foreign base
8 company sales income (as defined in section
9 954(d)) or foreign base company services in-
10 come (as defined in section 954(e)) were such
11 foreign related person treated as a controlled
12 foreign corporation.

13 “(B) EXCEPTION FOR INCOME SUBJECT
14 TO FOREIGN TAXES.—

15 “(i) HIGH TAXES.—Such term shall
16 not include any item of income with re-
17 spect to which the requirements of section
18 954(b)(4) are met.

19 “(ii) OTHER TAXES.—If the taxpayer
20 establishes to the satisfaction of the Sec-
21 retary that an item of income was subject
22 to an income tax imposed by a foreign
23 country and the effective rate of such tax
24 (and such effective rate was not greater
25 than 90 percent of the maximum rate of

1 tax specified in section 11), the term ‘de-
2 flected tax haven income’ shall not include
3 the same proportion of such income as
4 such effective rate of tax bears to 90 per-
5 cent.

6 “(4) OTHER DEFINITIONS.—For purposes of
7 this subsection—

8 “(A) FOREIGN RELATED PERSON.—The
9 term ‘foreign related person’ means any foreign
10 person who is related (within the meaning of
11 subsection (a)) to the foreign-controlled domes-
12 tic corporation.

13 “(B) FOREIGN-CONTROLLED DOMESTIC
14 CORPORATION.—The term ‘foreign-controlled
15 domestic corporation’ means any domestic cor-
16 poration which is 25-percent foreign-owned (as
17 defined in section 6038A(c)).”

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to property acquired, and services
20 performed, after ____.

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