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113TH CONGRESS
2D SESSION

H. R. 5444

To amend the Internal Revenue Code of 1986 to limit the interest deduction for excessive interest of members of financial reporting groups.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2014

Mr. POCAN 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 limit the interest deduction for excessive interest of members of financial reporting groups.

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 ‘‘Corporate Fair Share Tax Act’’.

SEC. 2. LIMITATION ON INTEREST DEDUCTION FOR EXCESSIVE INTEREST OF MEMBERS OF FINANCIAL REPORTING GROUPS.

(a) IN GENERAL.—Section 163 of the Internal Revenue Code of 1986 is amended by redesignating subsection

(n) as subsection (o) and by inserting after subsection (m) the following:

"(n) LIMITATION ON EXCESSIVE INTEREST OF MEMBERS OF FINANCIAL REPORTING GROUPS.—

"(1) LIMITATION.—

"(A) IN GENERAL.—If this subsection applies to any corporation for any taxable year, no deduction shall be allowed under this chapter for the taxable year for interest expense to the extent that such expense exceeds the sum of—

"(i) the amount of interest on indebtedness of the corporation includible in the corporation's gross income for the taxable year, plus

"(ii) the corporation's proportionate share of the financial reporting group's net interest expense for the taxable year computed under United States income tax principles.

"(B) PROPORTIONATE SHARE OF NET INTEREST EXPENSE.—For purposes of subparagraph (A)(ii)—

"(i) IN GENERAL.—A corporation's proportionate share of the financial reporting group's net interest expense means the amount equal to the percentage of the group's net interest expense which bears the same percentage as the corporation's earnings bears to the group's earnings.

"(ii) EARNINGS.—For purposes of clause (i), earnings shall be the sum of net earnings plus net interest expense, taxes, depreciation, and amortization.

"(iii) DETERMINATIONS RELATING TO EARNINGS.—For purposes of clause (ii), earnings, net interest expense, taxes, depreciation, and amortization with respect to a financial reporting group shall be as reflected on the financial reporting group's financial statements for the taxable year ending in the taxable year of the corporation.

"(C) ALTERNATIVE DETERMINATION.—In lieu of the limitation in subparagraph (A), if—

"(i) a corporation fails to substantiate the corporation's proportionate share of the financial reporting group's net interest expense for a taxable year, or

"(ii) a corporation so elects,

no deduction shall be allowed under this chapter for the taxable year for interest expense to the extent that such expense exceeds 10 percent of the corporation's adjusted taxable income (as defined under subsection (j)(6)(A)).

"(2) CORPORATIONS TO WHICH SUBSECTION APPLIES.—

"(A) IN GENERAL.—This subsection shall apply to any corporation for any taxable year if the corporation is a member of a financial reporting group.

"(B) CERTAIN CORPORATIONS NOT INCLUDED.—This subsection shall not apply to any corporation which—

"(i) is a corporation predominantly engaged in the active conduct of a banking, financing, or similar business, or

"(ii) has less than $5,000,000 of net interest expense for the taxable year.

"(C) FINANCIAL REPORTING GROUP.—For purposes of subparagraph (A), the term 'financial reporting group' means a group that prepares consolidated financial statements in accordance with United States generally accepted accounting principles, international financial reporting standards, or other method authorized by the Secretary of the Treasury under regulations. Such term shall not include any corporation described in subparagraph (B)(i).

"(D) SUBGROUPS.—For purposes of this subsection, all members of an expanded affiliated group (as defined in section 7874(c)(1)) shall be treated as 1 corporation.

"(3) NET INTEREST EXPENSE.—The term 'net interest expense' has the meaning given such term by subsection (j)(6)(B).

"(4) CARRYFORWARD.—

"(A) DISALLOWED INTEREST.—Any amount disallowed under subparagraph (A) or (C) for any taxable year shall be treated as an interest expense in the next taxable year, and such amount shall not be taken into account for purposes of applying subsection (j)(2)(A)(ii) for such taxable year.

"(B) EXCESS LIMITATION.—The excess (if any) of the sum determined under paragraph (1)(A) (i) and (ii) for a taxable year over the amount of interest expense deducted under this subsection for the taxable year shall be added to the limitation determined under paragraph

(1) for the next taxable year (determined without regard to this subparagraph). No excess limitation may be carried to more than 3 taxable years.

"(5) ELECTION.—The election under paragraph (1)(C)(ii) shall be made at such time and in such manner as the Secretary may prescribe by regulations.

"(6) REGULATIONS.—The Secretary shall prescribe such regulations and other guidance as may be necessary to carry out the purposes of this subsection, including regulations to—

"(A) coordinate the application of this subsection with other interest deductibility rules,

"(B) define financial services entities,

"(C) permit financial reporting groups to compute the group's non-United States net interest expense without making certain adjustments required under United States income tax principles,

"(D) provide for the treatment of pass-through entities, and

"(E) allow the use of financial statements prepared under other countries' generally accepted accounting principles in appropriate circumstances where a financial reporting group does not prepare financial statements under United States generally accepted accounting principles or international financial reporting standards.''.

(b) COORDINATION WITH 163(j).—Section 163(j)(2)(A) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence: ''This subsection shall not apply to any corporation which is a member of a financial reporting group to which subsection (n) applies.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

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