

113TH CONGRESS
1ST SESSION

S. 250

To amend the Internal Revenue Code of 1986 to modify the treatment of foreign corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2013

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

A BILL

To amend the Internal Revenue Code of 1986 to modify the treatment of foreign corporations, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate Tax Dodg-
5 ing Prevention Act”.

6 **SEC. 2. DEFERRAL OF ACTIVE INCOME OF CONTROLLED**
7 **FOREIGN CORPORATIONS.**

8 Section 952 of the Internal Revenue Code of 1986
9 is amended by adding at the end the following new sub-
10 section:

1 “(d) SPECIAL APPLICATION OF SUBPART.—

2 “(1) IN GENERAL.—For taxable years begin-
 3 ning after December 31, 2013, notwithstanding any
 4 other provision of this subpart, the term ‘subpart F
 5 income’ means, in the case of any controlled foreign
 6 corporation, the income of such corporation derived
 7 from any foreign country.

8 “(2) APPLICABLE RULES.—Rules similar to the
 9 rules under the last sentence of subsection (a) and
 10 subsection (d) shall apply to this subsection.”.

11 **SEC. 3. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**

12 **APPLICABLE TO LARGE INTEGRATED OIL**
 13 **COMPANIES WHICH ARE DUAL CAPACITY**
 14 **TAXPAYERS.**

15 (a) IN GENERAL.—Section 901 of the Internal Rev-
 16 enue Code of 1986 is amended by redesignating subsection
 17 (n) as subsection (o) and by inserting after subsection (m)
 18 the following new subsection:

19 “(n) SPECIAL RULES RELATING TO LARGE INTE-
 20 GRATED OIL COMPANIES WHICH ARE DUAL CAPACITY
 21 TAXPAYERS.—

22 “(1) GENERAL RULE.—Notwithstanding any
 23 other provision of this chapter, any amount paid or
 24 accrued by a dual capacity taxpayer which is a large
 25 integrated oil company to a foreign country or pos-

1 session of the United States for any period shall not
 2 be considered a tax—

3 “(A) if, for such period, the foreign coun-
 4 try or possession does not impose a generally
 5 applicable income tax, or

6 “(B) to the extent such amount exceeds
 7 the amount (determined in accordance with reg-
 8 ulations) which—

9 “(i) is paid by such dual capacity tax-
 10 payer pursuant to the generally applicable
 11 income tax imposed by the country or pos-
 12 session, or

13 “(ii) would be paid if the generally ap-
 14 plicable income tax imposed by the country
 15 or possession were applicable to such dual
 16 capacity taxpayer.

17 Nothing in this paragraph shall be construed to
 18 imply the proper treatment of any such amount
 19 not in excess of the amount determined under
 20 subparagraph (B).

21 “(2) DUAL CAPACITY TAXPAYER.—For pur-
 22 poses of this subsection, the term ‘dual capacity tax-
 23 payer’ means, with respect to any foreign country or
 24 possession of the United States, a person who—

1 “(A) is subject to a levy of such country or
2 possession, and

3 “(B) receives (or will receive) directly or
4 indirectly a specific economic benefit (as deter-
5 mined in accordance with regulations) from
6 such country or possession.

7 “(3) GENERALLY APPLICABLE INCOME TAX.—
8 For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘generally
10 applicable income tax’ means an income tax (or
11 a series of income taxes) which is generally im-
12 posed under the laws of a foreign country or
13 possession on income derived from the conduct
14 of a trade or business within such country or
15 possession.

16 “(B) EXCEPTIONS.—Such term shall not
17 include a tax unless it has substantial applica-
18 tion, by its terms and in practice, to—

19 “(i) persons who are not dual capacity
20 taxpayers, and

21 “(ii) persons who are citizens or resi-
22 dents of the foreign country or possession.

23 “(4) LARGE INTEGRATED OIL COMPANY.—For
24 purposes of this subsection, the term ‘large inte-
25 grated oil company’ means, with respect to any tax-

1 able year, an integrated oil company (as defined in
2 section 291(b)(4)) which—

3 “(A) had gross receipts in excess of
4 \$1,000,000,000 for such taxable year, and

5 “(B) has an average daily worldwide pro-
6 duction of crude oil of at least 500,000 barrels
7 for such taxable year.”.

8 (b) EFFECTIVE DATE.—

9 (1) IN GENERAL.—The amendments made by
10 this section shall apply to taxes paid or accrued in
11 taxable years beginning after the date of the enact-
12 ment of this Act.

13 (2) CONTRARY TREATY OBLIGATIONS
14 UPHELD.—The amendments made by this section
15 shall not apply to the extent contrary to any treaty
16 obligation of the United States.

17 **SEC. 4. REINSTITUTION OF PER COUNTRY FOREIGN TAX**
18 **CREDIT.**

19 (a) IN GENERAL.—Subsection (a) of section 904 of
20 the Internal Revenue Code of 1986 is amended to read
21 as follows:

22 “(a) LIMITATION.—The amount of the credit in re-
23 spect of the tax paid or accrued to any foreign country
24 or possession of the United States shall not exceed the
25 same proportion of the tax against which such credit is

1 taken which the taxpayer's taxable income from sources
 2 within such country or possession (but not in excess of
 3 the taxpayer's entire taxable income) bears to such tax-
 4 payer's entire taxable income for the same taxable year.”.

5 (b) EFFECTIVE DATE.—The amendment made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2013.

8 **SEC. 5. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 9 **AGED AND CONTROLLED IN THE UNITED**
 10 **STATES AS DOMESTIC CORPORATIONS.**

11 (a) IN GENERAL.—Section 7701 of the Internal Rev-
 12 enue Code of 1986 is amended by redesignating subsection
 13 (p) as subsection (q) and by inserting after subsection (o)
 14 the following new subsection:

15 “(p) CERTAIN CORPORATIONS MANAGED AND CON-
 16 TROLLED IN THE UNITED STATES TREATED AS DOMES-
 17 TIC FOR INCOME TAX.—

18 “(1) IN GENERAL.—Notwithstanding subsection
 19 (a)(4), in the case of a corporation described in
 20 paragraph (2) if—

21 “(A) the corporation would not otherwise
 22 be treated as a domestic corporation for pur-
 23 poses of this title, but

1 “(B) the management and control of the
2 corporation occurs, directly or indirectly, pri-
3 marily within the United States,
4 then, solely for purposes of chapter 1 (and any other
5 provision of this title relating to chapter 1), the cor-
6 poration shall be treated as a domestic corporation.

7 “(2) CORPORATION DESCRIBED.—

8 “(A) IN GENERAL.—A corporation is de-
9 scribed in this paragraph if—

10 “(i) the stock of such corporation is
11 regularly traded on an established securi-
12 ties market, or

13 “(ii) the aggregate gross assets of
14 such corporation (or any predecessor there-
15 of), including assets under management
16 for investors, whether held directly or indi-
17 rectly, at any time during the taxable year
18 or any preceding taxable year is
19 \$50,000,000 or more.

20 “(B) GENERAL EXCEPTION.—A corpora-
21 tion shall not be treated as described in this
22 paragraph if—

23 “(i) such corporation was treated as a
24 corporation described in this paragraph in
25 a preceding taxable year,

1 “(ii) such corporation—

2 “(I) is not regularly traded on an
3 established securities market, and

4 “(II) has, and is reasonably ex-
5 pected to continue to have, aggregate
6 gross assets (including assets under
7 management for investors, whether
8 held directly or indirectly) of less than
9 \$50,000,000, and

10 “(iii) the Secretary grants a waiver to
11 such corporation under this subparagraph.

12 “(C) EXCEPTION FROM GROSS ASSETS
13 TEST.—Subparagraph (A)(ii) shall not apply to
14 a corporation which is a controlled foreign cor-
15 poration (as defined in section 957) and which
16 is a member of an affiliated group (as defined
17 section 1504, but determined without regard to
18 section 1504(b)(3)) the common parent of
19 which—

20 “(i) is a domestic corporation (deter-
21 mined without regard to this subsection),
22 and

23 “(ii) has substantial assets (other
24 than cash and cash equivalents and other
25 than stock of foreign subsidiaries) held for

1 use in the active conduct of a trade or
2 business in the United States.

3 “(3) MANAGEMENT AND CONTROL.—

4 “(A) IN GENERAL.—The Secretary shall
5 prescribe regulations for purposes of deter-
6 mining cases in which the management and
7 control of a corporation is to be treated as oc-
8 ccurring primarily within the United States.

9 “(B) EXECUTIVE OFFICERS AND SENIOR
10 MANAGEMENT.—Such regulations shall provide
11 that—

12 “(i) the management and control of a
13 corporation shall be treated as occurring
14 primarily within the United States if sub-
15 stantially all of the executive officers and
16 senior management of the corporation who
17 exercise day-to-day responsibility for mak-
18 ing decisions involving strategic, financial,
19 and operational policies of the corporation
20 are located primarily within the United
21 States, and

22 “(ii) individuals who are not executive
23 officers and senior management of the cor-
24 poration (including individuals who are of-
25 ficers or employees of other corporations in

1 the same chain of corporations as the cor-
 2 poration) shall be treated as executive offi-
 3 cers and senior management if such indi-
 4 viduals exercise the day-to-day responsibil-
 5 ities of the corporation described in clause
 6 (i).

7 “(C) CORPORATIONS PRIMARILY HOLDING
 8 INVESTMENT ASSETS.—Such regulations shall
 9 also provide that the management and control
 10 of a corporation shall be treated as occurring
 11 primarily within the United States if—

12 “(i) the assets of such corporation (di-
 13 rectly or indirectly) consist primarily of as-
 14 sets being managed on behalf of investors,
 15 and

16 “(ii) decisions about how to invest the
 17 assets are made in the United States.”.

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning on or
 20 after the date which is 2 years after the date of the enact-
 21 ment of this Act.

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