

114TH CONGRESS
1ST SESSION

H. R. 1790

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2015

Ms. SCHAKOWSKY 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 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 “(e) SPECIAL APPLICATION OF SUBPART.—

2 “(1) IN GENERAL.—For taxable years begin-
 3 ning after December 31, 2015, 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, 2015.

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.

1 **SEC. 6. RESTRICTIONS ON DEDUCTION FOR INTEREST EX-**
2 **PENSE OF MEMBERS OF FINANCIAL REPORT-**
3 **ING GROUPS WITH EXCESS DOMESTIC IN-**
4 **DEBTEDNESS.**

5 (a) IN GENERAL.—Section 163 of the Internal Rev-
6 enue Code of 1986 is amended by redesignating subsection
7 (n) as subsection (o) and by inserting after subsection (m)
8 the following new subsection:

9 “(n) RESTRICTION ON DEDUCTION FOR INTEREST
10 EXPENSE OF MEMBERS OF FINANCIAL REPORTING
11 GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.—

12 “(1) IN GENERAL.—In the case of any corpora-
13 tion which is a member of an applicable financial re-
14 porting group the common parent of which is a for-
15 eign corporation, the deduction allowed under this
16 chapter for interest paid or accrued by the corpora-
17 tion during the taxable year shall not exceed the ap-
18 plicable limitation for the taxable year.

19 “(2) CARRYFORWARD.—Any amount disallowed
20 under paragraph (1) for any taxable year shall be
21 treated as interest paid or accrued in the succeeding
22 taxable year.

23 “(3) APPLICABLE LIMITATION.—For purposes
24 of this subsection—

“(A) IN GENERAL.—The applicable limitation with respect to a taxpayer for any taxable year is the sum of—

“(i) the greater of—

“(I) the taxpayer’s allocable share of the applicable financial reporting group’s net interest expense for the taxable year, or

“(II) 10 percent of the taxpayer’s adjusted taxable income for the taxable year, plus

“(ii) the excess limitation carryforwards to the taxable year from any preceding taxable year.

“(B) LIMITATION NOT LESS THAN INCLUDIBLE INTEREST.—The applicable limitation under subparagraph (A) for any taxable year shall not be less than the amount of interest includible in the gross income of the taxpayer for the taxable year.

“(C) EXCESS LIMITATION CARRYFORWARD.—If the applicable limitation of a taxpayer for any taxable year (determined without regard to carryforwards under subparagraph (A)(ii)) exceeds the interest paid or ac-

1 crued by the taxpayer during the taxable year,
 2 such excess shall be an excess limitation
 3 carryforward to the 1st succeeding taxable year
 4 and the 2nd and 3rd succeeding taxable years
 5 to the extent not previously taken into account
 6 under this paragraph.

7 “(4) ALLOCABLE SHARE OF NET INTEREST EX-
 8 PENSE.—For purposes of this subsection—

9 “(A) IN GENERAL.—A taxpayer’s allocable
 10 share of an applicable financial reporting
 11 group’s net interest expense for any taxable
 12 year shall be the amount (not less than zero)
 13 which bears the same ratio to such net interest
 14 expense as—

15 “(i) the net earnings of the taxpayer,
 16 bears to

17 “(ii) the aggregate net earnings of all
 18 members of the applicable financial report-
 19 ing group.

20 “(B) NET EARNINGS.—The term ‘net
 21 earnings’ means, with respect to any taxpayer,
 22 the earnings of the taxpayer—

23 “(i) computed without regard to any
 24 reduction allowable for—

25 “(I) net interest expense,

1 “(II) taxes, or

2 “(III) depreciation, amortization,
3 or depletion, and

4 “(ii) computed with such other adjust-
5 ments as the Secretary may by regulations
6 prescribe.

7 “(C) BURDEN ON TAXPAYER.—If a tax-
8 payer elects not to compute its allocable share,
9 or fails to establish to the satisfaction of the
10 Secretary the amount of its allocable share, for
11 any taxable year, the allocable share shall be
12 zero.

13 “(5) NET INTEREST EXPENSE AND NET EARN-
14 INGS DETERMINATIONS.—For purposes of this sub-
15 section—

16 “(A) NET INTEREST EXPENSE.—Any de-
17 termination of net interest expense for any tax-
18 able year shall be made—

19 “(i) on the basis of the applicable fi-
20 nancial statement of the applicable finan-
21 cial reporting group for the last financial
22 reporting year ending with or within the
23 taxable year, and

24 “(ii) under United States tax prin-
25 ciples.

1 “(B) NET EARNINGS.—Any determination
2 of net earnings for any taxable year shall be
3 made on the basis of the applicable financial
4 statement of the applicable financial reporting
5 group for the last financial reporting year end-
6 ing with or within the taxable year.

7 “(C) APPLICABLE FINANCIAL STATE-
8 MENT.—The term ‘applicable financial state-
9 ment’ means a statement for financial reporting
10 purposes which is made on the basis of—

11 “(i) generally accepted accounting
12 principles,

13 “(ii) international financial reporting
14 standards, or

15 “(iii) any other method specified by
16 the Secretary in regulations.

17 A statement under clause (ii) or (iii) may be
18 used as an applicable financial statement by a
19 group only if there is no statement of the group
20 under any preceding clause.

21 “(6) APPLICABLE FINANCIAL REPORTING
22 GROUP.—For purposes of this subsection—

23 “(A) IN GENERAL.—The term ‘applicable
24 financial reporting group’ means, with respect
25 to any corporation, a group of which such cor-

1 poration is a member and which files an appli-
2 cable financial statement.

3 “(B) EXCEPTION FOR GROUPS WITH MINI-
4 MAL DOMESTIC NET INTEREST EXPENSE.—
5 Such term shall not include a group if the ag-
6 gregate net interest expense for which a deduc-
7 tion is allowable to all members of the group
8 under this chapter (determined without regard
9 to this subsection or any other limitation on de-
10 ductibility of interest under this chapter) is less
11 than \$5,000,000.

12 “(C) EXCEPTION FOR CERTAIN FINANCIAL
13 ENTITIES.—A corporation which is described in
14 section 864(f)(4)(B), or is treated as described
15 in section 864(f)(4)(B) by reason of paragraph
16 (4)(C) or (5)(A) of section 864(f) (without re-
17 gard to whether an election is made under such
18 paragraph (5)(A)), shall not be treated as a
19 member of an applicable financial reporting
20 group of which it is otherwise a member and
21 this subsection shall not apply to such corpora-
22 tion.

23 “(7) OTHER DEFINITIONS AND RULES.—For
24 purposes of this subsection—

1 “(A) ADJUSTED TAXABLE INCOME.—The
2 term ‘adjusted taxable income’ has the meaning
3 given such term by subsection (j)(6)(A).

4 “(B) NET INTEREST EXPENSE.—The term
5 ‘net interest expense’ has the meaning given
6 such term by subsection (j)(6)(B).

7 “(C) TREATMENT OF AFFILIATED
8 GROUP.—All members of the same affiliated
9 group (within the meaning of section 1504(a))
10 shall be treated as 1 taxpayer.

11 “(8) REGULATIONS.—The Secretary shall pre-
12 scribe such regulations as may be necessary to carry
13 out the purposes of this section, including regula-
14 tions providing—

15 “(A) for the coordination of the application
16 of this subsection and other provisions of this
17 chapter relating to the deductibility of interest,

18 “(B) for the waiver of certain adjustments
19 required under United States tax principles in
20 appropriate cases for purposes of applying this
21 subsection,

22 “(C) for the determination of which finan-
23 cial institutions are eligible for the exception
24 from membership in an applicable financial re-
25 porting group under paragraph (6)(C) and the

1 application of this subsection to the other mem-
 2 bers of the group which are not so excepted,
 3 and

4 “(D) for the application of this subsection
 5 in the case of pass thru entities and for the
 6 treatment of pass thru entities as corporations
 7 in cases where necessary to prevent the avoid-
 8 ance of the purposes of this subsection.”.

9 (b) COORDINATION WITH LIMITATION ON RELATED
 10 PARTY INDEBTEDNESS.—Paragraph (2) of section 163(j)
 11 of the Internal Revenue Code of 1986 is amended by add-
 12 ing at the end the following new subparagraph:

13 “(D) COORDINATION WITH LIMITATION ON
 14 EXCESS DOMESTIC INDEBTEDNESS.—This sub-
 15 section shall not apply to any corporation for
 16 any taxable year to which subsection (n) applies
 17 to such corporation.”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2015.

21 **SEC. 7. MODIFICATIONS TO RULES RELATING TO IN-**
 22 **VERTED CORPORATIONS.**

23 (a) IN GENERAL.—Subsection (b) of section 7874 of
 24 the Internal Revenue Code of 1986 is amended to read
 25 as follows:

1 “(b) INVERTED CORPORATIONS TREATED AS DO-
2 MESTIC CORPORATIONS.—

3 “(1) IN GENERAL.—Notwithstanding section
4 7701(a)(4), a foreign corporation shall be treated for
5 purposes of this title as a domestic corporation if—

6 “(A) such corporation would be a surro-
7 gate foreign corporation if subsection (a)(2)
8 were applied by substituting ‘80 percent’ for
9 ‘60 percent’, or

10 “(B) such corporation is an inverted do-
11 mestic corporation.

12 “(2) INVERTED DOMESTIC CORPORATION.—For
13 purposes of this subsection, a foreign corporation
14 shall be treated as an inverted domestic corporation
15 if, pursuant to a plan (or a series of related trans-
16 actions)—

17 “(A) the entity completes after May 8,
18 2014, the direct or indirect acquisition of—

19 “(i) substantially all of the properties
20 held directly or indirectly by a domestic
21 corporation, or

22 “(ii) substantially all of the assets of,
23 or substantially all of the properties consti-
24 tuting a trade or business of, a domestic
25 partnership, and

1 “(B) after the acquisition, more than 50
2 percent of the stock (by vote or value) of the
3 entity is held—

4 “(i) in the case of an acquisition with
5 respect to a domestic corporation, by
6 former shareholders of the domestic cor-
7 poration by reason of holding stock in the
8 domestic corporation, or

9 “(ii) in the case of an acquisition with
10 respect to a domestic partnership, by
11 former partners of the domestic partner-
12 ship by reason of holding a capital or prof-
13 its interest in the domestic partnership.

14 “(3) EXCEPTION FOR CORPORATIONS WITH
15 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
16 COUNTRY OF ORGANIZATION.—A foreign corporation
17 described in paragraph (2) shall not be treated as an
18 inverted domestic corporation if after the acquisition
19 the expanded affiliated group which includes the en-
20 tity has substantial business activities in the foreign
21 country in which or under the law of which the enti-
22 ty is created or organized when compared to the
23 total business activities of such expanded affiliated
24 group. For purposes of subsection (a)(2)(B)(iii) and
25 the preceding sentence, the term ‘substantial busi-

ness activities’ shall have the meaning given such term under regulations in effect on May 8, 2014, except that the Secretary may issue regulations increasing the threshold percent in any of the tests under such regulations for determining if business activities constitute substantial business activities for purposes of this paragraph.”.

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 7874(a)(2)(B) of the Internal Revenue Code of 1986 is amended by striking “after March 4, 2003,” and inserting “after March 4, 2003, and before May 9, 2014,”.

(2) Subsection (c) of section 7874 of such Code is amended—

(A) in paragraph (2)—

(i) by striking “subsection (a)(2)(B)(ii)” and inserting “subsections (a)(2)(B)(ii) and (b)(2)(B)”, and

(ii) by inserting “or (b)(2)(A)” after “(a)(2)(B)(i)” in subparagraph (B),

(B) in paragraph (3), by inserting “or (b)(2)(B), as the case may be,” after “(a)(2)(B)(ii)”,

1 (C) in paragraph (5), by striking “sub-
2 section (a)(2)(B)(ii)” and inserting “sub-
3 sections (a)(2)(B)(ii) and (b)(2)(B)”, and

4 (D) in paragraph (6), by inserting “or in-
5 verted domestic corporation, as the case may
6 be,” after “surrogate foreign corporation”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years ending after May
9 8, 2014.

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