

114TH CONGRESS
2D SESSION

H. R. 5261

To amend the Internal Revenue Code of 1986 to prevent the avoidance of the rules related to investment of earnings in United States property through corporate expatriation or the use of corporate structures in which the common parent is a foreign corporation.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2016

Mr. LEVIN (for himself, Mr. VAN HOLLEN, Mr. RANGEL, Mr. McDERMOTT, Mr. THOMPSON of California, Mr. PASCRELL, and Mr. DANNY K. DAVIS of Illinois) 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 the avoidance of the rules related to investment of earnings in United States property through corporate expatriation or the use of corporate structures in which the common parent is a foreign corporation.

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 “Protecting the U.S.
5 Corporate Tax Base Act of 2016”.

1 **SEC. 2. INCLUSION IN SUBPART F INCOME OF INVEST-**
 2 **MENTS BY CONTROLLED FOREIGN CORPORA-**
 3 **TIONS WITH RESPECT TO MEMBERS OF FOR-**
 4 **EIGN GROUP WHICH INCLUDES UNITED**
 5 **STATES SHAREHOLDER.**

6 (a) IN GENERAL.—Section 956(a)(1)(A) of the Inter-
 7 nal Revenue Code of 1986 is amended to read as follows:

8 “(A) such shareholder’s pro rata share of
 9 the sum of—

10 “(i) the average of the amounts of
 11 United States property held (directly or in-
 12 directly) by the controlled foreign corpora-
 13 tion as of the close of each quarter of such
 14 taxable year, and

15 “(ii) in the case of a controlled foreign
 16 corporation which is a member of an ex-
 17 panded affiliated group the common parent
 18 of which is not a domestic corporation, the
 19 average of the amounts of foreign group
 20 property held (directly or indirectly) by the
 21 controlled foreign corporation as of the
 22 close of each quarter of such taxable year,
 23 over”.

24 (b) FOREIGN GROUP PROPERTY.—Section 956 of
 25 such Code is amended by redesignating subsections (d)

1 and (e) as subsections (e) and (f), respectively, and by in-
 2 serting after subsection (c) the following new subsection:

3 “(d) FOREIGN GROUP PROPERTY; EXPANDED AF-
 4 FILIATED GROUP.—For purposes of this section—

5 “(1) FOREIGN GROUP PROPERTY.—

6 “(A) IN GENERAL.—The term ‘foreign
 7 group property’ means any stock or obligation
 8 of any foreign person which is not a controlled
 9 foreign corporation.

10 “(B) EXCEPTIONS.—Such term shall not
 11 include—

12 “(i) the stock or obligation of any en-
 13 tity if less than 25 percent of the total
 14 combined voting power of such entity, im-
 15 mediately after the acquisition of any stock
 16 in such entity by the controlled foreign cor-
 17 poration, is owned (directly or indirectly)
 18 by the common parent referred to in sub-
 19 section (a)(1)(A)(ii), and

20 “(ii) property described in subpara-
 21 graph (C), (I), (J), (K) or (L) of sub-
 22 section (c)(2), applied—

23 “(I) by substituting ‘foreign per-
 24 son’ for ‘United States person’ in
 25 such subparagraphs (C), (J), and (L),

“(II) by substituting ‘foreign corporation’ for ‘domestic corporation’ in subsection (c)(2)(L)(i), and

“(III) by treating a foreign person as a United States shareholder described in subsection (c)(2)(L)(ii)(I) if such foreign person would be so described if such person were a United States person.

“(C) LIMITATION ON TREATMENT AS A CONTROLLED FOREIGN CORPORATION.—A foreign corporation shall not be treated as a controlled foreign corporation for purposes of subparagraph (A) unless more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and more than 50 percent of the total value of the stock of such corporation, is owned (directly or indirectly) by United States persons described in subparagraph (A) or (C) of section 7701(a)(30).

“(D) FOREIGN PERSON.—For purposes of this paragraph, the term ‘foreign person’ means any person who is not a United States person (as defined in section 7701(a)(30)).

1 “(2) EXPANDED AFFILIATED GROUP.—The
2 term ‘expanded affiliated group’ means an affiliated
3 group as defined in section 1504(a), determined—

4 “(A) by substituting ‘more than 50 per-
5 cent’ for ‘at least 80 percent’ each place it ap-
6 pears, and

7 “(B) without regard to paragraphs (2) and
8 (3) of section 1504(b).

9 A partnership or any other entity (other than a cor-
10 poration) shall be treated as a member of an ex-
11 panded affiliated group if such entity controls (as
12 determined under section 954(d)(3)), or is controlled
13 by (as so determined), members of such group (in-
14 cluding any entity treated as a member of such
15 group by reason of this sentence).

16 “(3) APPLICATION TO NON-CORPORATE ENTI-
17 TIES.—In the case of any entity which is not a cor-
18 poration—

19 “(A) any reference in this subsection to
20 stock shall be treated as a reference to any eq-
21 uity or profits interest in such entity, and

22 “(B) except as otherwise provided by the
23 Secretary, paragraph (1)(B)(i) shall be applied
24 by substituting ‘25 percent (by value) of the
25 beneficial interests in such entity’ for ‘25 per-

1 cent of the total combined voting power of such
2 entity’.”.

3 (c) APPLICATION OF RULES FOR PLEDGES AND
4 GUARANTEES.—Section 956(e) of such Code, as so redes-
5 ignated, is amended to read as follows:

6 “(e) PLEDGES AND GUARANTEES.—For purposes of
7 subsection (a), a controlled foreign corporation shall,
8 under regulations prescribed by the Secretary, be consid-
9 ered as holding—

10 “(1) an obligation of a United States person if
11 such controlled foreign corporation is a pledgor or
12 guarantor of such obligation, and

13 “(2) an obligation of a foreign person if such
14 controlled foreign corporation or, to the extent pro-
15 vided under such regulations, any United States
16 shareholder of such controlled foreign corporation, is
17 a pledgor or guarantor of such obligation.”.

18 (d) TERMINATION OF RULE WHICH PERMITS USE
19 OF RELATED-PARTY TRANSACTIONS TO AVOID TREAT-
20 MENT AS A CONTROLLED FOREIGN CORPORATION.—Sec-
21 tion 958(b)(4) of such Code is amended by inserting “if
22 such stock was acquired by such person on or before May
23 17, 2016” before the period at the end.

24 (e) APPLICATION OF LIMITATION ON AMOUNT OF
25 FOREIGN TAXES DEEMED PAID WITH RESPECT TO SEC-

1 TION 956 INCLUSIONS.—Notwithstanding section 214(b)
 2 of Public Law 111–226, section 960(c) of the Internal
 3 Revenue Code of 1986 shall apply to acquisitions of for-
 4 eign group property (as defined in 956(d) of such Code,
 5 as amended by this section) after December 31, 2010, in
 6 addition to acquisitions of United States property (as de-
 7 fined in section 956(c) of such Code) after such date.

8 (f) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graph (2), the amendments made by this section
 11 shall apply to taxable years of controlled foreign cor-
 12 porations ending after the date of the enactment of
 13 this Act and to taxable years of United States share-
 14 holders in which or with which such taxable years of
 15 controlled foreign corporations end.

16 (2) TERMINATION OF RULE WHICH PERMITS
 17 USE OF RELATED-PARTY TRANSACTIONS TO AVOID
 18 TREATMENT AS A CONTROLLED FOREIGN CORPORA-
 19 TION.—The amendment made by subsection (d)
 20 shall apply to taxable years of controlled foreign cor-
 21 porations ending on or after May 17, 2016, and to
 22 taxable years of United States shareholders in which
 23 or with which such taxable years of controlled for-
 24 eign corporations end.

○