

114TH CONGRESS
1ST SESSION

S. 397

To amend the Internal Revenue Code of 1986 to allow a temporary dividends received deduction for dividends received from a controlled foreign corporation.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 5, 2015

Mr. MCCAIN 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 allow a temporary dividends received deduction for dividends received from a controlled 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 “Foreign Earnings Re-
5 investment Act”.

6 **SEC. 2. ALLOWANCE OF TEMPORARY DIVIDENDS RECEIVED**

7 **DEDUCTION FOR DIVIDENDS RECEIVED**

8 **FROM A CONTROLLED FOREIGN CORPORA-**

9 **TION.**

10 (a) APPLICABILITY OF PROVISION.—

1 (1) IN GENERAL.—Subsection (f) of section 965
 2 of the Internal Revenue Code of 1986 is amended to
 3 read as follows:

4 “(f) ELECTION; ELECTION YEAR.—

5 “(1) IN GENERAL.—The taxpayer may elect to
 6 apply this section to—

7 “(A) the taxpayer’s last taxable year which
 8 begins before the date of the enactment of the
 9 Foreign Earnings Reinvestment Act, or

10 “(B) the taxpayer’s first taxable year
 11 which begins during the 1-year period beginning
 12 on such date.

13 Such election may be made for a taxable year only
 14 if made on or before the due date (including exten-
 15 sions) for filing the return of tax for such taxable
 16 year.

17 “(C) ELECTION YEAR.—For purposes of
 18 this section, the term ‘election year’ means the
 19 taxable year—

20 “(i) which begins after the date that
 21 is one year before the date of the enact-
 22 ment of the Foreign Earnings Reinvest-
 23 ment Act, and

1 “(ii) to which the taxpayer elects
 2 under paragraph (1) to apply this sec-
 3 tion.”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) EXTRAORDINARY DIVIDENDS.—Section
 6 965(b)(2) of such Code is amended—

7 (i) by striking “June 30, 2003” and
 8 inserting “December 31, 2014”, and

9 (ii) by adding at the end the following
 10 new sentence: “The amounts described in
 11 clauses (i), (ii), and (iii) shall not include
 12 any amounts which were taken into ac-
 13 count in determining the deduction under
 14 subsection (a) for any prior taxable year.”.

15 (B) DETERMINATIONS RELATING TO RE-
 16 LATED PARTY INDEBTEDNESS.—Section
 17 965(b)(3)(B) of such Code is amended by strik-
 18 ing “October 3, 2004” and inserting “Decem-
 19 ber 31, 2014”.

20 (C) DETERMINATIONS RELATING TO BASE
 21 PERIOD.—Section 965(c)(2) of such Code is
 22 amended by striking “June 30, 2003” and in-
 23 serting “December 31, 2014”.

24 (b) DEDUCTION INCLUDES CURRENT AND ACCUMU-
 25 LATED FOREIGN EARNINGS.—

1 (1) IN GENERAL.—Paragraph (1) of section
2 965(b) of the Internal Revenue Code of 1986 is
3 amended to read as follows:

4 “(1) IN GENERAL.—The amount of dividends
5 taken into account under subsection (a) shall not ex-
6 ceed the sum of the current and accumulated earn-
7 ings and profits described in section 959(c)(3) for
8 the year a deduction is claimed under subsection (a),
9 without diminution by reason of any distributions
10 made during the election year, for all controlled for-
11 eign corporations of the United States shareholder.”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) Section 965(c) of such Code, as
14 amended by subsection (a), is amended by
15 striking paragraph (1) and by redesignating
16 paragraphs (2), (3), (4), and (5), as paragraphs
17 (1), (2), (3), and (4), respectively.

18 (B) Paragraph (4) of section 965(c) of
19 such Code, as redesignated by subparagraph
20 (A), is amended to read as follows:

21 “(4) CONTROLLED GROUPS.—All United States
22 shareholders which are members of an affiliated
23 group filing a consolidated return under section
24 1501 shall be treated as one United States share-
25 holder.”.

1 (c) AMOUNT OF DEDUCTION.—

2 (1) IN GENERAL.—Paragraph (1) of section
3 965(a) of the Internal Revenue Code of 1986 is
4 amended by striking “85 percent” and inserting “75
5 percent”.

6 (2) BONUS DEDUCTION IN SUBSEQUENT TAX-
7 ABLE YEAR FOR INCREASING JOBS.—Section 965 of
8 the Internal Revenue Code of 1986 is amended by
9 adding at the end the following new subsection:

10 “(g) BONUS DEDUCTION.—

11 “(1) IN GENERAL.—In the case of any taxpayer
12 who makes an election to apply this section, there
13 shall be allowed as a deduction for the first taxable
14 year following the election year an amount equal to
15 the applicable percentage of the cash dividends
16 which are taken into account under subsection (a)
17 with respect to such taxpayer for the election year.

18 “(2) APPLICABLE PERCENTAGE.—For purposes
19 of paragraph (1), the applicable percentage is the
20 amount which bears the same ratio (not greater
21 than 1) to 10 percent as—

22 “(A) the excess (if any) of—

23 “(i) the qualified payroll of the tax-
24 payer for the calendar year which begins

1 with or within the first taxable year fol-
 2 lowing the election year, over

3 “(ii) the qualified payroll of the tax-
 4 payer for calendar year 2014, bears to

5 “(B) 10 percent of the qualified payroll of
 6 the taxpayer for calendar year 2014.

7 “(3) QUALIFIED PAYROLL.—For purposes of
 8 this paragraph:

9 “(A) IN GENERAL.—The term ‘qualified
 10 payroll’ means, with respect to a taxpayer for
 11 any calendar year, the aggregate wages (as de-
 12 fined in section 3121(a)) paid by the corpora-
 13 tion during such calendar year.

14 “(B) EXCEPTION FOR CHANGES IN OWN-
 15 ERSHIP OF TRADES OR BUSINESSES.—

16 “(i) ACQUISITIONS.—If, after Decem-
 17 ber 31, 2013, and before the close of the
 18 first taxable year following the election
 19 year, a taxpayer acquires the trade or busi-
 20 ness of a predecessor, then the qualified
 21 payroll of such taxpayer for any calendar
 22 year shall be increased by so much of the
 23 qualified payroll of the predecessor for
 24 such calendar year as was attributable to

1 the trade or business acquired by the tax-
2 payer.

3 “(ii) DISPOSITIONS.—If, after Decem-
4 ber 31, 2013, and before the close of the
5 first taxable year following the election
6 year, a taxpayer disposes of a trade or
7 business, then—

8 “(I) the qualified payroll of such
9 taxpayer for calendar year 2014 shall
10 be decreased by the amount of wages
11 for such calendar year as were attrib-
12 utable to the trade or business which
13 was disposed of by the taxpayer, and

14 “(II) if the disposition occurs
15 after the beginning of the first taxable
16 year following the election year, the
17 qualified payroll of such taxpayer for
18 the calendar year which begins with
19 or within such taxable year shall be
20 decreased by the amount of wages for
21 such calendar year as were attrib-
22 utable to the trade or business which
23 was disposed of by the taxpayer.

24 “(C) SPECIAL RULE.—For purposes of de-
25 termining qualified payroll for any calendar

year after calendar year 2015, such term shall not include wages paid to any individual if such individual received compensation from the taxpayer for services performed—

“(i) after the date of the enactment of this paragraph, and

“(ii) at a time when such individual was not an employee of the taxpayer.”.

(3) REDUCTION FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—Paragraph (4) of section 965(b) of such Code is amended to read as follows:

“(4) REDUCTION IN BENEFITS FOR FAILURE TO MAINTAIN EMPLOYMENT LEVELS.—

“(A) IN GENERAL.—If, during the period consisting of the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1) and the succeeding 23 calendar months, the taxpayer does not maintain an average employment level at least equal to the taxpayer’s prior average employment, an additional amount equal to \$75,000 multiplied by the number of employees by which the taxpayer’s average employment level during such period falls below the prior average employment (but not exceeding the aggregate amount al-

lowed as a deduction pursuant to subsection (a)(1)) shall be taken into income by the taxpayer during the taxable year that includes the final day of such period.

“(B) AVERAGE EMPLOYMENT LEVEL.—

For purposes of this paragraph, the taxpayer’s average employment level for a period shall be the average number of full-time United States employees of the taxpayer, measured at the end of each month during the period.

“(C) PRIOR AVERAGE EMPLOYMENT.—For

purposes of this paragraph, the taxpayer’s ‘prior average employment’ shall be the average number of full-time United States employees of the taxpayer during the period consisting of the 24 calendar months immediately preceding the calendar month in which the taxpayer first receives a distribution described in subsection (a)(1).

“(D) FULL-TIME UNITED STATES EM-

PLOYEE.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘full-

time United States employee’ means an individual who provides services in the United States as a full-time employee,

1 based on the employer's standards and
2 practices; except that regardless of the em-
3 ployer's classification of the employee, an
4 employee whose normal schedule is 40
5 hours or more per week is considered a
6 full-time employee.

7 “(ii) EXCEPTION FOR CHANGES IN
8 OWNERSHIP OF TRADES OR BUSINESSES.—
9 Such term does not include—

10 “(I) any individual who was an
11 employee, on the date of acquisition,
12 of any trade or business acquired by
13 the taxpayer during the 24-month pe-
14 riod referred to in subparagraph (A),
15 and

16 “(II) any individual who was an
17 employee of any trade or business dis-
18 posed of by the taxpayer during the
19 24-month period referred to in sub-
20 paragraph (A) or the 24-month period
21 referred to in subparagraph (C).

22 “(E) AGGREGATION RULES.—In deter-
23 mining the taxpayer's average employment level
24 and prior average employment, all domestic

1 members of a controlled group shall be treated
2 as a single taxpayer.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years ending after the
5 date of the enactment of this Act.

○