

115TH CONGRESS  
1ST SESSION

# S. 1673

To amend the Internal Revenue Code to include in income the unrepatriated earnings of groups that include an inverted corporation.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 2017

Mr. BROWN (for himself, Mr. DURBIN, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code to include in income the unrepatriated earnings of groups that include an inverted 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 “Pay What You Owe  
5       Before You Go Act”.

6       **SEC. 2. RECAPTURE OF UNREPATRIATED EARNINGS OF**  
7                       **GROUPS INCLUDING AN INVERTED COR-**  
8                       **PORATION.**

9       (a) IN GENERAL.—Section 7874 of the Internal Rev-  
10       enue Code of 1986 is amended by redesignating subsection

1 (g) as subsection (h) and by inserting after subsection (f)  
 2 the following new subsection:

3 “(g) RECAPTURE OF TAX ON UNREPATRIATED  
 4 EARNINGS.—

5 “(1) IN GENERAL.—The subpart F income of  
 6 any applicable controlled foreign corporation for its  
 7 last taxable year ending before the acquisition date  
 8 shall be increased by the accumulated deferred for-  
 9 eign income of the corporation.

10 “(2) APPLICABLE CONTROLLED FOREIGN COR-  
 11 PORATION.—For purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘applicable  
 13 controlled foreign corporation’ means any con-  
 14 trolled foreign corporation with respect to  
 15 which—

16 “(i) a covered entity was a United  
 17 States shareholder at any time during the  
 18 5-year period ending on the acquisition  
 19 date, or

20 “(ii) a member of the same expanded  
 21 affiliated group as a covered entity was a  
 22 United States shareholder at any time dur-  
 23 ing the 5-year period ending on the acqui-  
 24 sition date.

“(B) COVERED ENTITY.—The term ‘covered entity’ means, with respect to a controlled foreign corporation, any entity which—

“(i) is treated as a surrogate foreign corporation under subsection (a)(2)(B), determined—

“(I) by substituting ‘July 24, 2017’ for ‘March 4, 2003’ each place it appears,

“(II) by substituting ‘more than 50 percent’ for ‘at least 60 percent’ in clause (ii) thereof, and

“(III) by disregarding clause (iii) thereof, and

“(ii) is not treated as a domestic corporation by reason of subsection (b).

“(3) ACCUMULATED DEFERRED FOREIGN INCOME.—For purposes of this section—

“(A) IN GENERAL.—The term ‘accumulated deferred foreign income’ means the excess of—

“(i) the undistributed earnings of the controlled foreign corporation, over

“(ii) the undistributed U.S. earnings of such controlled foreign corporation.

“(B) **UNDISTRIBUTED EARNINGS.**—The term ‘undistributed earnings’ means the earnings and profits of the controlled foreign corporation described in section 959(c)(3), determined—

“(i) as of the close of the taxable year described in paragraph (1),

“(ii) without diminution by reason of distributions made during such taxable year, and

“(iii) without regard to this subsection.

For purposes of this chapter, any determination with respect to the treatment of distributions described in clause (ii) shall be made after the application of this subsection to the earnings and profits described in the matter preceding clause (i).

“(C) **UNDISTRIBUTED U.S. EARNINGS.**—The term ‘undistributed U.S. earnings’ has the meaning given the term ‘post-1986 undistributed U.S. earnings’ in section 245(a)(5), determined—

“(i) as of the close of the taxable year described in paragraph (1), and

1                   “(ii) without regard to ‘post-1986’  
2                   each place it appears in the matter before  
3                   subparagraph (A).

4                   “(4) ACQUISITION DATE.—For purposes of this  
5                   section, the term ‘acquisition date’ means the date  
6                   the covered entity completes the acquisition de-  
7                   scribed in subsection (a)(2)(B)(i) (after the applica-  
8                   tion of paragraph (2)(B)(i) of this subsection).”.

9                   (b) EFFECTIVE DATE.—The amendments made by  
10                  this section shall apply with respect to taxable years end-  
11                  ing after July 24, 2017.

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