

114TH CONGRESS
1ST SESSION

S. 922

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

APRIL 14, 2015

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 “(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 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 “(3) MANAGEMENT AND CONTROL.—

13 “(A) IN GENERAL.—The Secretary shall
14 prescribe regulations for purposes of deter-
15 mining cases in which the management and
16 control of a corporation is to be treated as oc-
17 ccurring primarily within the United States.

18 “(B) EXECUTIVE OFFICERS AND SENIOR
19 MANAGEMENT.—Such regulations shall provide
20 that—

21 “(i) the management and control of a
22 corporation shall be treated as occurring
23 primarily within the United States if sub-
24 stantially all of the executive officers and
25 senior management of the corporation who

1 exercise day-to-day responsibility for mak-
2 ing decisions involving strategic, financial,
3 and operational policies of the corporation
4 are located primarily within the United
5 States, and

6 “(ii) individuals who are not executive
7 officers and senior management of the cor-
8 poration (including individuals who are of-
9 ficers or employees of other corporations in
10 the same chain of corporations as the cor-
11 poration) shall be treated as executive offi-
12 cers and senior management if such indi-
13 viduals exercise the day-to-day responsibil-
14 ities of the corporation described in clause
15 (i).

16 “(C) CORPORATIONS PRIMARILY HOLDING
17 INVESTMENT ASSETS.—Such regulations shall
18 also provide that the management and control
19 of a corporation shall be treated as occurring
20 primarily within the United States if—

21 “(i) the assets of such corporation (di-
22 rectly or indirectly) consist primarily of as-
23 sets being managed on behalf of investors,
24 and

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

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years beginning on or
5 after the date which is 2 years after the date of the enact-
6 ment of this Act.

7 **SEC. 6. RESTRICTIONS ON DEDUCTION FOR INTEREST EX-**
8 **PENSE OF MEMBERS OF FINANCIAL REPORT-**
9 **ING GROUPS WITH EXCESS DOMESTIC IN-**
10 **DEBTEDNESS.**

11 (a) **IN GENERAL.**—Section 163 of the Internal Rev-
12 enue Code of 1986 is amended by redesignating subsection
13 (n) as subsection (o) and by inserting after subsection (m)
14 the following new subsection:

15 “(n) **RESTRICTION ON DEDUCTION FOR INTEREST**
16 **EXPENSE OF MEMBERS OF FINANCIAL REPORTING**
17 **GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.**—

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

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

5 “(3) APPLICABLE LIMITATION.—For purposes
6 of this subsection—

7 “(A) IN GENERAL.—The applicable limita-
8 tion with respect to a taxpayer for any taxable
9 year is the sum of—

10 “(i) the greater of—

11 “(I) the taxpayer’s allocable
12 share of the applicable financial re-
13 porting group’s net interest expense
14 for the taxable year, or

15 “(II) 10 percent of the taxpayer’s
16 adjusted taxable income for the tax-
17 able year, plus

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

21 “(B) LIMITATION NOT LESS THAN IN-
22 CLUDIBLE INTEREST.—The applicable limita-
23 tion under subparagraph (A) for any taxable
24 year shall not be less than the amount of inter-

1 est includible in the gross income of the tax-
2 payer for the taxable year.

3 “(C) EXCESS LIMITATION
4 CARRYFORWARD.—If the applicable limitation
5 of a taxpayer for any taxable year (determined
6 without regard to carryforwards under subpara-
7 graph (A)(ii)) exceeds the interest paid or ac-
8 crued by the taxpayer during the taxable year,
9 such excess shall be an excess limitation
10 carryforward to the 1st succeeding taxable year
11 and the 2nd and 3rd succeeding taxable years
12 to the extent not previously taken into account
13 under this paragraph.

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

16 “(A) IN GENERAL.—A taxpayer’s allocable
17 share of an applicable financial reporting
18 group’s net interest expense for any taxable
19 year shall be the amount (not less than zero)
20 which bears the same ratio to such net interest
21 expense as—

22 “(i) the net earnings of the taxpayer,
23 bears to

1 “(ii) the aggregate net earnings of all
2 members of the applicable financial report-
3 ing group.

4 “(B) NET EARNINGS.—The term ‘net
5 earnings’ means, with respect to any taxpayer,
6 the earnings of the taxpayer—

7 “(i) computed without regard to any
8 reduction allowable for—

9 “(I) net interest expense,

10 “(II) taxes, or

11 “(III) depreciation, amortization,
12 or depletion, and

13 “(ii) computed with such other adjust-
14 ments as the Secretary may by regulations
15 prescribe.

16 “(C) BURDEN ON TAXPAYER.—If a tax-
17 payer elects not to compute its allocable share,
18 or fails to establish to the satisfaction of the
19 Secretary the amount of its allocable share, for
20 any taxable year, the allocable share shall be
21 zero.

22 “(5) NET INTEREST EXPENSE AND NET EARN-
23 INGS DETERMINATIONS.—For purposes of this sub-
24 section—

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

4 “(i) on the basis of the applicable fi-
5 nancial statement of the applicable finan-
6 cial reporting group for the last financial
7 reporting year ending with or within the
8 taxable year, and

9 “(ii) under United States tax prin-
10 ciples.

11 “(B) NET EARNINGS.—Any determination
12 of net earnings for any taxable year shall be
13 made on the basis of the applicable financial
14 statement of the applicable financial reporting
15 group for the last financial reporting year end-
16 ing with or within the taxable year.

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

21 “(i) generally accepted accounting
22 principles,

23 “(ii) international financial reporting
24 standards, or

1 “(iii) any other method specified by
2 the Secretary in regulations.

3 A statement under clause (ii) or (iii) may be
4 used as an applicable financial statement by a
5 group only if there is no statement of the group
6 under any preceding clause.

7 “(6) APPLICABLE FINANCIAL REPORTING
8 GROUP.—For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘applicable
10 financial reporting group’ means, with respect
11 to any corporation, a group of which such cor-
12 poration is a member and which files an appli-
13 cable financial statement.

14 “(B) EXCEPTION FOR GROUPS WITH MINI-
15 MAL DOMESTIC NET INTEREST EXPENSE.—
16 Such term shall not include a group if the ag-
17 gregate net interest expense for which a deduc-
18 tion is allowable to all members of the group
19 under this chapter (determined without regard
20 to this subsection or any other limitation on de-
21 ductibility of interest under this chapter) is less
22 than \$5,000,000.

23 “(C) EXCEPTION FOR CERTAIN FINANCIAL
24 ENTITIES.—A corporation which is described in
25 section 864(f)(4)(B), or is treated as described

1 in section 864(f)(4)(B) by reason of paragraph
2 (4)(C) or (5)(A) of section 864(f) (without re-
3 gard to whether an election is made under such
4 paragraph (5)(A)), shall not be treated as a
5 member of an applicable financial reporting
6 group of which it is otherwise a member and
7 this subsection shall not apply to such corpora-
8 tion.

9 “(7) OTHER DEFINITIONS AND RULES.—For
10 purposes of this subsection—

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

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

17 “(C) TREATMENT OF AFFILIATED
18 GROUP.—All members of the same affiliated
19 group (within the meaning of section 1504(a))
20 shall be treated as 1 taxpayer.

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

1 “(A) for the coordination of the application
2 of this subsection and other provisions of this
3 chapter relating to the deductibility of interest,

4 “(B) for the waiver of certain adjustments
5 required under United States tax principles in
6 appropriate cases for purposes of applying this
7 subsection,

8 “(C) for the determination of which finan-
9 cial institutions are eligible for the exception
10 from membership in an applicable financial re-
11 porting group under paragraph (6)(C) and the
12 application of this subsection to the other mem-
13 bers of the group which are not so excepted,
14 and

15 “(D) for the application of this subsection
16 in the case of pass thru entities and for the
17 treatment of pass thru entities as corporations
18 in cases where necessary to prevent the avoid-
19 ance of the purposes of this subsection.”.

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

24 “(D) COORDINATION WITH LIMITATION ON
25 EXCESS DOMESTIC INDEBTEDNESS.—This sub-

1 section shall not apply to any corporation for
2 any taxable year to which subsection (n) applies
3 to such corporation.”.

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

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

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

12 “(b) INVERTED CORPORATIONS TREATED AS DO-
13 MESTIC CORPORATIONS.—

14 “(1) IN GENERAL.—Notwithstanding section
15 7701(a)(4), a foreign corporation shall be treated for
16 purposes of this title as a domestic corporation if—

17 “(A) such corporation would be a surro-
18 gate foreign corporation if subsection (a)(2)
19 were applied by substituting ‘80 percent’ for
20 ‘60 percent’, or

21 “(B) such corporation is an inverted do-
22 mestic corporation.

23 “(2) INVERTED DOMESTIC CORPORATION.—For
24 purposes of this subsection, a foreign corporation
25 shall be treated as an inverted domestic corporation

1 if, pursuant to a plan (or a series of related trans-
2 actions)—

3 “(A) the entity completes after May 8,
4 2014, the direct or indirect acquisition of—

5 “(i) substantially all of the properties
6 held directly or indirectly by a domestic
7 corporation, or

8 “(ii) substantially all of the assets of,
9 or substantially all of the properties consti-
10 tuting a trade or business of, a domestic
11 partnership, and

12 “(B) after the acquisition, more than 50
13 percent of the stock (by vote or value) of the
14 entity is held—

15 “(i) in the case of an acquisition with
16 respect to a domestic corporation, by
17 former shareholders of the domestic cor-
18 poration by reason of holding stock in the
19 domestic corporation, or

20 “(ii) in the case of an acquisition with
21 respect to a domestic partnership, by
22 former partners of the domestic partner-
23 ship by reason of holding a capital or prof-
24 its interest in the domestic partnership.

1 “(3) EXCEPTION FOR CORPORATIONS WITH
2 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
3 COUNTRY OF ORGANIZATION.—A foreign corporation
4 described in paragraph (2) shall not be treated as an
5 inverted domestic corporation if after the acquisition
6 the expanded affiliated group which includes the en-
7 tity has substantial business activities in the foreign
8 country in which or under the law of which the enti-
9 ty is created or organized when compared to the
10 total business activities of such expanded affiliated
11 group. For purposes of subsection (a)(2)(B)(iii) and
12 the preceding sentence, the term ‘substantial busi-
13 ness activities’ shall have the meaning given such
14 term under regulations in effect on May 8, 2014, ex-
15 cept that the Secretary may issue regulations in-
16 creasing the threshold percent in any of the tests
17 under such regulations for determining if business
18 activities constitute substantial business activities for
19 purposes of this paragraph.”.

20 (b) CONFORMING AMENDMENTS.—

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

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

3 (A) in paragraph (2)—

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

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

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

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

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

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years ending after May
20 8, 2014.

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