

111TH CONGRESS
2D SESSION

H. R. 5328

To amend the Internal Revenue Code of 1986 to reduce international tax avoidance and restore a level playing field for American businesses.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2010

Mr. DOGGETT (for himself, Mr. McDERMOTT, and Ms. DELAURO) 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 reduce international tax avoidance and restore a level playing field for American businesses.

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 “International Tax
5 Competitiveness Act of 2010”.

6 **SEC. 2. TREATMENT OF FOREIGN CORPORATIONS MAN-**
7 **AGED AND CONTROLLED IN THE UNITED**
8 **STATES AS DOMESTIC CORPORATIONS.**

9 (a) IN GENERAL.—Section 7701 of the Internal Rev-
10 enue Code of 1986 (relating to definitions) is amended by

1 redesignating subsection (p) as subsection (q) and by in-
2 serting after subsection (o) the following new subsection:

3 “(p) CERTAIN CORPORATIONS MANAGED AND CON-
4 TROLLED IN THE UNITED STATES TREATED AS DOMES-
5 TIC FOR INCOME TAX.—

6 “(1) IN GENERAL.—Notwithstanding subsection
7 (a)(4), in the case of a corporation described in
8 paragraph (2) if—

9 “(A) the corporation would not otherwise
10 be treated as a domestic corporation for pur-
11 poses of this title, but

12 “(B) the management and control of the
13 corporation occurs, directly or indirectly, pri-
14 marily within the United States,

15 then, solely for purposes of chapter 1 (and any other
16 provision of this title relating to chapter 1), the cor-
17 poration shall be treated as a domestic corporation.

18 “(2) CORPORATION DESCRIBED.—

19 “(A) IN GENERAL.—A corporation is de-
20 scribed in this paragraph if—

21 “(i) the stock of such corporation is
22 regularly traded on an established securi-
23 ties market, or

24 “(ii) the aggregate gross assets of
25 such corporation (or any predecessor there-

1 of), including assets under management
2 for investors, whether held directly or indi-
3 rectly, at any time during the taxable year
4 or any preceding taxable year is
5 \$50,000,000 or more.

6 “(B) GENERAL EXCEPTION.—A corpora-
7 tion shall not be treated as described in this
8 paragraph if—

9 “(i) such corporation was treated as a
10 corporation described in this paragraph in
11 a preceding taxable year,

12 “(ii) such corporation—

13 “(I) is not regularly traded on an
14 established securities market, and

15 “(II) has, and is reasonably ex-
16 pected to continue to have, aggregate
17 gross assets (including assets under
18 management for investors, whether
19 held directly or indirectly) of less than
20 \$50,000,000, and

21 “(iii) the Secretary grants a waiver to
22 such corporation under this subparagraph.

23 “(C) EXCEPTION FROM GROSS ASSETS
24 TEST.—Subparagraph (A)(ii) shall not apply to
25 a corporation which is a controlled foreign cor-

1 poration (as defined in section 957) and which
2 is a member of an affiliated group (as defined
3 section 1504, but determined without regard to
4 section 1504(b)(3)) the common parent of
5 which—

6 “(i) is a domestic corporation (deter-
7 mined without regard to this subsection),
8 and

9 “(ii) has substantial assets (other
10 than cash and cash equivalents and other
11 than stock of foreign subsidiaries) held for
12 use in the active conduct of a trade or
13 business in the United States.

14 “(3) MANAGEMENT AND CONTROL.—

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

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

23 “(i) the management and control of a
24 corporation shall be treated as occurring
25 primarily within the United States if sub-

1 stantially all of the executive officers and
2 senior management of the corporation who
3 exercise day-to-day responsibility for mak-
4 ing decisions involving strategic, financial,
5 and operational policies of the corporation
6 are located primarily within the United
7 States, and

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

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

23 “(i) the assets of such corporation (di-
24 rectly or indirectly) consist primarily of as

1 sets being managed on behalf of investors,
2 and
3 “(ii) decisions about how to invest the
4 assets are made in the United States.”.

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

9 **SEC. 3. CURRENT TAXATION OF ROYALTIES AND OTHER IN-**
10 **COME FROM INTANGIBLES RECEIVED FROM**
11 **A CONTROLLED FOREIGN CORPORATION.**

12 (a) **REPEAL OF LOOK-THRU RULE FOR ROYALTIES**
13 **RECEIVED FROM CONTROLLED FOREIGN CORPORA-**
14 **TIONS.**—Paragraph (6) of section 954(c) of the Internal
15 Revenue Code of 1986 is amended—

16 (1) by striking “rents, and royalties” in sub-
17 paragraph (A) and inserting “and rents”, and

18 (2) by striking “, rent, or royalty” both places
19 it appears in subparagraph (B) and inserting “or
20 rent”.

21 (b) **ENTITIES NOT PERMITTED TO BE DIS-**
22 **REGARDED IN DETERMINING ROYALTIES.**—Subsection (c)
23 of section 954 of such Code is amended by adding at the
24 end the following new paragraph:

1 “(7) ALL ROYALTIES TAKEN INTO ACCOUNT.—
2 For purposes of determining the foreign personal
3 holding company income which consists of royalties,
4 this subsection shall be applied without regard to
5 any election to disregard any entity which would be
6 taken into account for Federal income tax purposes
7 but for such election.”.

8 (c) CERTAIN OTHER INCOME DERIVED FROM
9 UNITED STATES INTANGIBLES TAKEN INTO ACCOUNT AS
10 SUBPART F INCOME.—Subsection (d) of section 954 of
11 such Code is amended by adding at the end the following
12 new paragraph:

13 “(5) SPECIAL RULE FOR CERTAIN PRODUCTS
14 PRODUCED PURSUANT TO INTANGIBLES MADE
15 AVAILABLE BY UNITED STATES PERSONS.—For pur-
16 poses of this subsection, personal property shall be
17 treated as having been purchased from a related per-
18 son if any intangible property (within the meaning
19 of section 936(h)(3)(B)) made available to a con-
20 trolled foreign corporation, directly or indirectly, by
21 a related person which is a United States person
22 contributes, directly or indirectly, to the production
23 of such personal property by the controlled foreign
24 corporation. The preceding sentence shall not apply
25 to any personal property produced directly by the

1 controlled foreign corporation, without regard to any
2 election to disregard any entity which would be
3 taken into account for Federal income tax purposes
4 but for such election.”.

5 (d) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to taxable years of foreign corpora-
7 tions beginning after December 31, 2010, and to taxable
8 years of United States shareholders within which or with
9 which such tax years of such foreign corporations end.

10 **SEC. 4. REPEAL OF SPECIAL RULES FOR INTEREST AND**
11 **DIVIDENDS RECEIVED FROM PERSONS MEET-**
12 **ING THE 80-PERCENT FOREIGN BUSINESS RE-**
13 **QUIREMENTS.**

14 (a) REPEAL OF SPECIAL RULES FOR INTEREST AS
15 UNITED STATES SOURCE.—Paragraph (1) of section
16 861(a) of the Internal Revenue Code of 1986 is amended
17 by striking subparagraph (A) and by redesignating sub-
18 paragraphs (B) and (C) as subparagraphs (A) and (B),
19 respectively.

20 (b) REPEAL OF EXCEPTION TO TAX ON DIVIDENDS
21 RECEIVED BY NONRESIDENT ALIENS AND FOREIGN COR-
22 PORATIONS.—Paragraph (2) of section 871(i) of such
23 Code is amended by striking subparagraph (B) and by re-
24 designating subparagraphs (C) and (D) as subparagraphs
25 (B) and (C), respectively.

1 (c) CONFORMING AMENDMENTS.—

2 (1) Section 861 of such Code is amended by
3 striking subsection (c) and by redesignating sub-
4 sections (d), (e), and (f) as subsections (c), (d), and
5 (e), respectively.

6 (2) Paragraph (9) of section 904(h) of such
7 Code is amended to read as follows:

8 “(9) TREATMENT OF CERTAIN DOMESTIC COR-
9 PORATIONS.—In the case of any dividend treated as
10 not from sources with the United States under sec-
11 tion 861(a)(2)(A), the corporation paying such divi-
12 dend shall be treated for purposes of this subsection
13 as a United States-owned foreign corporation.”.

14 (3) Subsection (c) of section 2104 of such Code
15 is amended in the last sentence by striking “or to
16 a debt obligation of a domestic corporation” and all
17 that follows and inserting a period.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2010.

1 **SEC. 5. TAXATION OF BOOT RECEIVED IN CERTAIN REOR-**
2 **GANIZATIONS INVOLVING FOREIGN COR-**
3 **PORATIONS.**

4 (a) IN GENERAL.—Paragraph (2) of section 356(a)
5 of the Internal Revenue Code of 1986 is amended to read
6 as follows:

7 “(2) TREATMENT AS DIVIDEND.—

8 “(A) IN GENERAL.—The sum of such
9 money and the fair market value of such other
10 property received by the taxpayer in the ex-
11 change shall be treated as a dividend to the ex-
12 tent it would be so treated if such money and
13 other property had been distributed to the tax-
14 payer by the corporation immediately after the
15 exchange in redemption of stock having a fair
16 market value equal to the amount of such sum.

17 “(B) COORDINATION WITH PARAGRAPH
18 (1).—Gain shall be recognized under paragraph
19 (1) only to the extent the amount which would
20 be recognized under such paragraph without re-
21 gard to this paragraph exceeds the amount
22 treated as a dividend under subparagraph (A).

23 “(C) REGULATIONS.—The Secretary shall
24 prescribe such regulations as may be necessary
25 to carry out the purposes of this paragraph, in-

1 including regulations to address interactions be-
2 tween this subchapter and subchapter N.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to exchanges after December 31,
5 2010.

○