

109TH CONGRESS
1ST SESSION

H. R. 1303

To amend the Internal Revenue Code of 1986 to prevent corporations from exploiting tax treaties to evade taxation of United States income and to prevent manipulation of transfer prices by deflection of income to tax havens.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2005

Mr. DOGGETT (for himself, Mr. LEVIN, Mr. NEAL of Massachusetts, Mr. LEWIS of Georgia, Mr. McDERMOTT, Mr. McNULTY, Mr. JEFFERSON, Mr. STARK, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ANDREWS, Mr. BAIRD, Ms. BALDWIN, Ms. CORRINE BROWN of Florida, Mr. BROWN of Ohio, Mrs. CAPPS, Mr. CAPUANO, Ms. CARSON, Mr. CONYERS, Mr. CROWLEY, Mr. DAVIS of Illinois, Mr. DEFazio, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. EDWARDS, Mr. EVANS, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. GRIJALVA, Mr. HASTINGS of Florida, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOLT, Ms. HOOLEY, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Ms. KILPATRICK of Michigan, Mr. KIND, Mr. KUCINICH, Ms. LEE, Mr. MARKEY, Mr. MCGOVERN, Mr. MEEHAN, Mr. MEEK of Florida, Ms. MILLENDER-McDONALD, Mr. GEORGE MILLER of California, Mr. NADLER, Mr. OLVER, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN of Ohio, Ms. LINDA T. SÁNCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SOLIS, Mr. STRICKLAND, Mr. TIERNEY, Mrs. JONES of Ohio, Mr. UDALL of New Mexico, Ms. VELÁZQUEZ, Ms. WATERS, Ms. WATSON, and Mr. WAXMAN) 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

corporations from exploiting tax treaties to evade taxation of United States income and to prevent manipulation of transfer prices by deflection of income to tax havens.

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 “Fairness and Account-
5 ability in International Taxation Act of 2005”.

6 **SEC. 2. DENIAL OF TREATY BENEFITS FOR CERTAIN DE-**
7 **DUCTIBLE PAYMENTS.**

8 (a) IN GENERAL.—Section 894 of the Internal Rev-
9 enue Code of 1986 (relating to income affected by treaty)
10 is amended by adding at the end the following new sub-
11 section:

12 “(d) DENIAL OF TREATY BENEFITS FOR CERTAIN
13 DEDUCTIBLE PAYMENTS.—

14 “(1) IN GENERAL.—A foreign entity shall not
15 be entitled under any income tax treaty of the
16 United States with a foreign country to any reduced
17 rate of any withholding tax imposed by this title on
18 any deductible foreign payment unless such entity is
19 predominantly owned by individuals who are resi-
20 dents of such foreign country.

1 “(2) DEDUCTIBLE FOREIGN PAYMENT.—For
2 purposes of paragraph (1), the term ‘deductible for-
3 eign payment’ means any payment—

4 “(A) which is made by a domestic entity
5 directly or indirectly to a related person which
6 is a foreign entity, and

7 “(B) which is allowable as a deduction
8 under this chapter.

9 “(3) DOMESTIC AND FOREIGN ENTITIES; RE-
10 LATED PERSON.—For purposes of this subsection—

11 “(A) DOMESTIC ENTITY.—The term ‘do-
12 mestic entity’ means any domestic corporation
13 or domestic partnership.

14 “(B) FOREIGN ENTITY.—The term ‘for-
15 eign entity’ means any foreign corporation or
16 foreign partnership.

17 “(C) RELATED PERSON.—The term ‘re-
18 lated person’ has the meaning given such term
19 by section 954(d)(3) (determined by sub-
20 stituting ‘domestic entity’ for ‘controlled foreign
21 corporation’ each place it appears).

22 “(4) PREDOMINANT OWNERSHIP.—For pur-
23 poses of this subsection—

1 “(A) IN GENERAL.—An entity is predomi-
2 nantly owned by individuals who are residents
3 of a foreign country if—

4 “(i) in the case of a corporation, more
5 than 50 percent (by value) of the stock of
6 such corporation is owned (within the
7 meaning of section 883(c)(4)) by individ-
8 uals who are residents of such foreign
9 country, or

10 “(ii) in the case of a partnership,
11 more than 50 percent (by value) of the
12 beneficial interests in such partnership are
13 so owned.

14 “(B) PUBLICLY TRADED CORPORATIONS.—
15 A foreign corporation also shall be treated as
16 predominantly owned by individuals who are
17 residents of a foreign country if—

18 “(i)(I) the stock of such corporation is
19 primarily and regularly traded on an estab-
20 lished securities market in such foreign
21 country, and

22 “(II) such corporation has activities
23 within such foreign country which are sub-
24 stantial in relation to the total activities of

1 such corporation and its related persons,
2 or

3 “(ii) such corporation is wholly owned
4 (directly or indirectly) by another foreign
5 corporation which is described in clause (i).

6 “(C) SPECIAL RULE.—

7 “(i) IN GENERAL.—A foreign corpora-
8 tion shall be treated as meeting the re-
9 quirements of subparagraph (A) if—

10 “(I) such requirements would be
11 met if ‘30 percent’ were substituted
12 for ‘50 percent’ in subparagraph
13 (A)(i),

14 “(II) the treaty country is a
15 member of a multinational economic
16 association such as the European
17 Union, and

18 “(III) at least 50 percent of the
19 value of the stock of the corporation is
20 owned (within the meaning of section
21 883(c)(4)) by individuals who are resi-
22 dents of the treaty country or other
23 qualified foreign countries.

24 “(ii) QUALIFIED FOREIGN COUN-
25 TRY.—For purposes of this subparagraph,

1 the term ‘qualified foreign country’ means
2 any foreign country if—

3 “(I) such foreign country is a
4 member of the multinational economic
5 association of which the treaty coun-
6 try is a member, and

7 “(II) such foreign country has a
8 tax treaty with the United States pro-
9 viding a withholding tax rate reduc-
10 tion which is not less than the with-
11 holding tax rate reduction applicable
12 (without regard to this subsection) to
13 the payment received by such foreign
14 corporation.

15 “(5) EXCEPTION FOR CORPORATIONS WITH
16 SUBSTANTIAL BUSINESS ACTIVITIES IN TREATY
17 COUNTRY.—Paragraph (1) shall not apply to a pay-
18 ment received by a foreign corporation if such cor-
19 poration has substantial business activities in the
20 treaty country and if such corporation establishes to
21 the satisfaction of the Secretary that the payment is
22 subject to an effective rate of income tax imposed by
23 such country greater than 90 percent of the max-
24 imum rate of tax specified in section 11.

1 “(6) EXCEPTION FOR PAYMENTS RECEIVED BY
2 CONTROLLED FOREIGN CORPORATION.—Paragraph
3 (1) shall not apply to any deductible foreign pay-
4 ment made by a corporation if the recipient of the
5 payment is a controlled foreign corporation and the
6 payor is a United States shareholder (as defined in
7 section 951(b)) of such corporation.

8 “(7) CONDUIT PAYMENTS.—Under regulations
9 prescribed by the Secretary, paragraph (1) shall not
10 apply to a payment received by a foreign entity re-
11 ferred to in paragraph (1) if—

12 “(A) within a reasonable period after such
13 entity receives such payment, such entity makes
14 a comparable payment directly or indirectly to
15 another related person,

16 “(B) such related person is a resident of a
17 foreign country with which the United States
18 has an income tax treaty,

19 “(C) such related person is predominantly
20 owned by individuals who are residents of such
21 country, and

22 “(D) the withholding tax rate applicable
23 under such treaty is equal to or greater than
24 the withholding tax rate applicable (without re-

1 gard to this paragraph) to the payment received
2 by such foreign entity.

3 A similar rule shall apply where the payment is in-
4 cludible in the gross income of a related person by
5 reason of a foreign law comparable to subpart F of
6 part III of subchapter N.”

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall take effect on the date of the enactment
9 of this Act.

10 **SEC. 3. TRANSFER PRICE REDUCED BY DEFLECTED TAX**
11 **HAVEN INCOME.**

12 (a) IN GENERAL.—Section 482 of the Internal Rev-
13 enue Code of 1986 (relating to allocation of income and
14 deductions among taxpayers) is amended by inserting “(a)
15 In General.—” before “In the case of two or more” and
16 by adding at the end the following new subsection:

17 “(b) SPECIAL RULE FOR RELATED-PARTY INBOUND
18 AND OUTBOUND TRANSACTIONS.—

19 “(1) IN GENERAL.—In the case of property or
20 services to which this subsection applies, the transfer
21 price under this section for such property or service
22 shall be the transfer price determined without regard
23 to this subsection—

24 “(A) in the case of a related-party inbound
25 transaction, reduced by the deflected tax haven

1 income with respect to such property or service,
2 or

3 “(B) in the case of a related-party out-
4 bound transaction, increased by the deflected
5 tax haven income with respect to such property
6 or service.

7 “(2) PROPERTY OR SERVICES TO WHICH SUB-
8 SECTION APPLIES.—

9 “(A) IN GENERAL.—This subsection ap-
10 plies to any property or services if there is a re-
11 lated-party inbound or outbound transaction
12 with respect to such property or services.

13 “(B) RELATED-PARTY INBOUND TRANS-
14 ACTION.—A related-party inbound transaction
15 is any transaction where—

16 “(i) property is acquired directly or
17 indirectly by a foreign-controlled domestic
18 corporation from a foreign related person,
19 or

20 “(ii) the services are performed di-
21 rectly or indirectly for a foreign-controlled
22 domestic corporation by a foreign related
23 person.

1 “(C) RELATED-PARTY OUTBOUND TRANS-
2 ACTION.—A related-party outbound transaction
3 is any transaction where—

4 “(i) property is sold directly or indi-
5 rectly by a foreign-controlled domestic cor-
6 poration to a foreign related person, or

7 “(ii) services are performed directly or
8 indirectly by a foreign-controlled domestic
9 corporation for a foreign related person.

10 “(3) DEFLECTED TAX HAVEN INCOME.—For
11 purposes of this subsection—

12 “(A) IN GENERAL.—The term ‘deflected
13 tax haven income’ means income (whether in
14 the form of profits, commissions, fees, or other-
15 wise) derived by a foreign related person in con-
16 nection with any transaction related to property
17 or services to which this subsection applies if
18 such income would be treated as foreign base
19 company sales income (as defined in section
20 954(d)) or foreign base company services in-
21 come (as defined in section 954(e)) were such
22 foreign related person treated as a controlled
23 foreign corporation.

24 “(B) EXCEPTION FOR INCOME SUBJECT
25 TO FOREIGN TAXES.—

1 “(i) HIGH TAXES.—Such term shall
2 not include any item of income with re-
3 spect to which the requirements of section
4 954(b)(4) are met.

5 “(ii) OTHER TAXES.—If the taxpayer
6 establishes to the satisfaction of the Sec-
7 retary that an item of income was subject
8 to an income tax imposed by a foreign
9 country and the effective rate of such tax
10 (and such effective rate was not greater
11 than 90 percent of the maximum rate of
12 tax specified in section 11), the term ‘de-
13 flected tax haven income’ shall not include
14 the same proportion of such income as
15 such effective rate of tax bears to 90 per-
16 cent.

17 “(4) OTHER DEFINITIONS.—For purposes of
18 this subsection—

19 “(A) FOREIGN RELATED PERSON.—The
20 term ‘foreign related person’ means any foreign
21 person who is related (within the meaning of
22 subsection (a)) to the foreign-controlled domes-
23 tic corporation.

24 “(B) FOREIGN-CONTROLLED DOMESTIC
25 CORPORATION.—The term ‘foreign-controlled

1 domestic corporation' means any domestic cor-
2 poration which is 25-percent foreign-owned (as
3 defined in section 6038A(c)).”

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to property acquired, and services
6 performed, after the date of the enactment of this Act.

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