

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5857

To amend the Internal Revenue Code of 1986 to decrease the top marginal corporate rate to 28 percent and to prevent corporations from exploiting tax treaties to evade taxation of United States income.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2010

Mr. DJOU 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 decrease the top marginal corporate rate to 28 percent and to prevent corporations from exploiting tax treaties to evade taxation of United States income.

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 “Fair American Cor-  
5       porate Tax Act” or “FACT Act”.

6       **SEC. 2. DECREASE IN TOP MARGINAL RATE.**

7       (a) IN GENERAL.—Paragraph (1) of section 11(b) of  
8       the Internal Revenue Code of 1986 is amended—

1           (1) by inserting “and” at the end of subpara-  
2 graph (B),

3           (2) by striking subparagraphs (C) and (D) and  
4 inserting the following subparagraph:

5                   “(C) 28 percent of so much of the taxable  
6 income as exceeds \$75,000.”,

7           (3) by striking “of \$100,000” and inserting “of  
8 \$75,000”,

9           (4) by striking “\$11,750” and inserting  
10 “\$7,250”, and

11           (5) by striking the third sentence.

12           (b) CERTAIN PERSONAL SERVICE CORPORATIONS.—  
13 Paragraph (2) of section 11(b) of such Code is amended  
14 by striking “35 percent” and inserting “28 percent”.

15           (c) CONFORMING AMENDMENTS.—

16           (1) Subsection (a) of section 1201 of such Code  
17 is amended by striking “35 percent” each place it  
18 appears and inserting “28 percent”.

19           (2) Paragraphs (1), (2), and (6) of section  
20 1445(e) of such Code are each amended by striking  
21 “35 percent” and inserting “28 percent”.

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

1 **SEC. 3. LIMITATION ON TREATY BENEFITS FOR CERTAIN**  
2 **DEDUCTIBLE PAYMENTS.**

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

7 “(d) LIMITATION ON TREATY BENEFITS FOR CER-  
8 TAIN DEDUCTIBLE PAYMENTS.—

9 “(1) IN GENERAL.—In the case of any deduct-  
10 ible related-party payment, the amount of any with-  
11 holding tax imposed under chapter 3 (and any tax  
12 imposed under subpart A or B of this part) with re-  
13 spect to such payment shall not be less than the  
14 amount which would be imposed if the payment were  
15 made directly to the foreign parent corporation (tak-  
16 ing into account any income tax treaty between the  
17 United States and the country in which the foreign  
18 parent corporation is resident).

19 “(2) DEDUCTIBLE RELATED-PARTY PAY-  
20 MENT.—For purposes of this subsection, the term  
21 ‘deductible related-party payment’ means any pay-  
22 ment made, directly or indirectly, by any person to  
23 any other person if the payment is allowable as a de-  
24 duction under this chapter and both persons are  
25 members of the same foreign controlled group of en-  
26 tities.

1           “(3) FOREIGN CONTROLLED GROUP OF ENTI-  
2           TIES.—For purposes of this subsection—

3           “(A) IN GENERAL.—The term ‘foreign  
4           controlled group of entities’ means a controlled  
5           group of entities the common parent of which  
6           is a foreign corporation.

7           “(B) CONTROLLED GROUP OF ENTITIES.—  
8           The term ‘controlled group of entities’ means a  
9           controlled group of corporations as defined in  
10          section 1563(a)(1), except that—

11          “(i) ‘more than 50 percent’ shall be  
12          substituted for ‘at least 80 percent’ each  
13          place it appears therein, and

14          “(ii) the determination shall be made  
15          without regard to subsections (a)(4) and  
16          (b)(2) of section 1563.

17          A partnership or any other entity (other than a  
18          corporation) shall be treated as a member of a  
19          controlled group of entities if such entity is con-  
20          trolled (within the meaning of section  
21          954(d)(3)) by members of such group (includ-  
22          ing any entity treated as a member of such  
23          group by reason of this sentence).

24          “(4) FOREIGN PARENT CORPORATION.—For  
25          purposes of this subsection, the term ‘foreign parent

1 corporation' means, with respect to any deductible  
2 related-party payment, the common parent of the  
3 foreign controlled group of entities referred to in  
4 paragraph (3)(A).

5 “(5) REGULATIONS.—The Secretary may pre-  
6 scribe such regulations or other guidance as are nec-  
7 essary or appropriate to carry out the purposes of  
8 this subsection, including regulations or other guid-  
9 ance which provide for—

10 “(A) the treatment of two or more persons  
11 as members of a foreign controlled group of en-  
12 tities if such persons would be the common par-  
13 ent of such group if treated as one corporation,  
14 and

15 “(B) the treatment of any member of a  
16 foreign controlled group of entities as the com-  
17 mon parent of such group if such treatment is  
18 appropriate taking into account the economic  
19 relationships among such entities.”.

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to payments made after the date  
22 of the enactment of this Act.

○