

118TH CONGRESS
2D SESSION

H. R. 8895

To amend the Internal Revenue Code of 1986 to provide that certain payments to foreign related parties subject to sufficient foreign tax are not treated as base erosion payments.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2024

Mr. KIM of New Jersey (for himself and Mr. SUOZZI) 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 provide that certain payments to foreign related parties subject to sufficient foreign tax are not treated as base erosion payments.

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. CERTAIN PAYMENTS TO FOREIGN RELATED**
4 **PARTIES SUBJECT TO SUFFICIENT FOREIGN**
5 **TAX NOT TREATED AS BASE EROSION PAY-**
6 **MENTS.**

7 (a) IN GENERAL.—Section 59A of the Internal Rev-
8 enue Code of 1986 is amended by redesignating subsection

1 (i) as subsection (j) and by inserting after subsection (h)
2 the following new subsection:

3 “(i) CERTAIN PAYMENTS TO FOREIGN RELATED
4 PARTIES SUBJECT TO SUFFICIENT FOREIGN TAX NOT
5 TREATED AS BASE EROSION PAYMENTS.—

6 “(1) IN GENERAL.—An amount shall not be
7 treated as a base erosion payment if the taxpayer es-
8 tablishes to the satisfaction of the Secretary that—

9 “(A) the foreign person to whom such
10 amount is paid or incurred is subject to an ef-
11 fective rate of foreign income tax of at least 15
12 percent, and

13 “(B) such amount is subject to an effective
14 rate of foreign income tax of at least 15 per-
15 cent.

16 “(2) DETERMINATION OF EFFECTIVE RATE ON
17 BASIS OF APPLICABLE FINANCIAL STATEMENTS.—

18 Except as otherwise provided by the Secretary, the
19 effective rate of foreign income tax may be estab-
20 lished on the basis of applicable financial statements
21 (as defined in section 451(b)(3)) with appropriate
22 adjustments (as determined by the Secretary) for ex-
23 cluded dividends, net tax expense, excluded equity
24 gain or loss, included revaluation method gain or
25 loss, gain or loss from intragroup transfers of assets

1 and liabilities, asymmetric foreign currency gains or
2 losses, bribes, illegal payments, large penalties, prior
3 period errors and changes in accounting methods,
4 accrued pension expenses, and such other items as
5 the Secretary may provide.

6 “(3) FOREIGN INCOME TAX.—For purposes of
7 this subsection, the term “foreign income taxes”
8 means any income, war profits, or excess profits
9 taxes paid or accrued to any foreign country or to
10 any possession of the United States.”.

11 (b) REGULATIONS.—Section 59A(j) of such Code, as
12 redesignated by subsection (a), is amended by striking
13 “and” at the end of paragraph (1), by striking the period
14 at the end of paragraph (2) and inserting “, and”, and
15 by adding at the end the following new paragraph:

16 “(3) for the application of subsection (i), in-
17 cluding—

18 “(A) procedures for determining the effec-
19 tive rate of foreign income tax, and

20 “(B) rules to the prevent tax avoidance or
21 abuse, including rules for recharacterizing a
22 transaction or series of transactions among re-
23 lated parties.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

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