[DISCUSSION DRAFT]

JULY 28, 2015

114TH CONGRESS
1ST SESSION

H. R. ______

To amend the Internal Revenue Code of 1986 to allow a deduction for
innovation box profit from the use of United States innovations and
to encourage domestication of intangible property.

IN THE HOUSE OF REPRESENTATIVES

M. ______ introduced the following bill; which was referred to the
Committee on ________

A BILL

To amend the Internal Revenue Code of 1986 to allow a
deduction for innovation box profit from the use of
United States innovations and to encourage domestica-
tion of intangible property.

1 Be it enacted by the Senate and House of Represen-
tatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Innovation Promotion

4 Act of 2015”.

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SEC. 2. DEDUCTION FOR INNOVATION BOX PROFITS.

(a) IN GENERAL.—Part VIII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 250. INNOVATION BOX PROFITS.

“(a) ALLOWANCE OF DEDUCTION.—In the case of a corporation, there shall be allowed as a deduction an amount equal to 71 percent of the lesser of—

“(1) the innovation box profit of the taxpayer for the taxable year, or

“(2) taxable income (determined without regard to this section) for the taxable year.

“(b) INNOVATION BOX PROFIT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘innovation box profit’ means, with respect to a taxable year, tentative innovation profit multiplied by the ratio—

“(A) the numerator of which is the taxpayer’s 5-year research and development expenditures with respect to the taxable year for research and development performed in the United States, and

“(B) the denominator of which is the 5-year total costs of the taxpayer with respect to the taxable year.

“(2) TENTATIVE INNOVATION PROFIT.—
“(A) IN GENERAL.—The term ‘tentative innovation profit’ means, with respect to a taxable year, the excess (if any) of—

“(i) qualified gross receipts, over

“(ii) the sum of—

“(I) the taxpayer’s cost of goods sold for the taxable year that are properly allocable to qualified gross receipts, plus

“(II) other expenses, losses, or deductions (other than the deduction allowed under this section), which are properly allocable to qualified gross receipts.

“(B) QUALIFIED GROSS RECEIPTS.—

“(i) IN GENERAL.—The term ‘qualified gross receipts’ means gross receipts of the taxpayer for the taxable year which are derived from the sale, lease, license, or other disposition of qualified property in the ordinary course of a United States trade or business of the taxpayer.

“(ii) COMPENSATION FOR INFRINGEMENT.—Such term includes compensation for infringement on the taxpayer’s intellec-
tual property rights to qualified property
to the extent the compensation is included
in gross income of the taxpayer.

“(iii) SALES TO RELATED PERSONS.—

“(I) IN GENERAL.—Such term
shall not include any gross receipts of
the taxpayer derived from the sale of
qualified property to a related person.

“(II) EXCEPTION.—Subclause (I)
shall not apply with respect to quali-
fied property described in paragraph
(5)(D) which is sold to a related per-
son outside the United States if such
property is resold to an unrelated per-
son outside the United States.

“(iv) RELATED PERSON.—For pur-
poses of clause (iii), a person shall be
treated as related to another person if such
persons are treated as a single employer
under subsection (a) or (b) of section 52 or
subsection (m) or (o) of section 414, ex-
cept that determinations under subsections
(a) and (b) of section 52 shall be made
without regard to section 1563(b).
“(C) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items under subparagraph (A) for purposes of determining innovation box profit. Such rules shall provide for the proper allocation of items whether or not such items are directly allocable to qualified gross receipts.

“(3) 5-YEAR RESEARCH AND DEVELOPMENT EXPENDITURES.—The term ‘5-year research and development expenditures’ means with respect to a taxable year the research and development expenditures paid or incurred by the taxpayer for the performance of research and development for which a deduction is allowed under subsection (a) or (b) of section 174 (determined without regard to sections 41 and 280C(e)) for the 5-taxable-year period ending with the taxable year.

“(4) 5-YEAR TOTAL COSTS.—

“(A) IN GENERAL.—The term ‘5-year total costs’ means with respect to a taxable year the excess of—

“(i) all costs paid or incurred by the taxpayer for the 5-taxable year period ending with such taxable year, over

“(ii) the sum of—
“(I) the taxpayer’s cost of goods sold for such 5-taxable year period,

“(II) interest paid or accrued for such 5-taxable year period, and

“(III) taxes paid or accrued for such 5-taxable year period.

“(B) Exception for certain foreign testing.—Such term shall not include any research and development expenditures for any testing conducted outside the United States if such testing is so conducted because there is an insufficient testing population in the United States or is required by law to be so conducted.

“(5) Qualified property.—The term ‘qualified property’ means property which is—

“(A) intangible property described in section 936(h)(3)(B)(i),

“(B) property described in section 168(f)(3),

“(C) computer software (as defined in section 197(e)(3)(B)), or

“(D) a product which is produced using property described in subparagraph (A).

“(c) Definitions and Special Rules.—For purposes of this section—
“(1) Determination of costs.—

“(A) In general.—Cost of goods sold shall be determined under the methods of accounting that the taxpayer uses to compute taxable income in accordance with the principles of sections 263A, 471, and 472. In the case of non-inventory property, cost of goods for purposes of this section includes the adjusted basis of the property.

“(B) Items brought into United States.—For purposes of determining cost of goods sold, any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to qualified gross receipts.

“(C) Exports for further manufacture.—In the case of any property described in subparagraph (B) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (B) shall not exceed the difference be-
between the value of the property when exported
and the value of the property when brought
back into the United States after the further
manufacture.

“(2) SPECIAL RULE FOR AFFILIATED
GROUPS.—

“(A) IN GENERAL.—All members of an ex-
panded affiliated group shall be treated as a
single corporation for purposes of this section.

“(B) EXPANDED AFFILIATED GROUP.—
For purposes of this section, the term ‘ex-
panded affiliated group’ means an affiliated
group as defined in section 1504(a), determined
by substituting ‘more than 50 percent’ for ‘at
least 80 percent’ each place it appears.

“(C) ALLOCATION OF DEDUCTION.—Ex-
cept as provided in regulations, the deduction
under subsection (a) shall be allocated among
the members of the expanded affiliated group in
proportion to each member’s respective amount
(if any) of innovation box profit.

“(3) RULES FOR TAXPAYERS NOT IN EXIST-
ENCE FOR ENTIRE APPLICABLE TAXABLE YEAR PE-
RIOD.—
“(A) IN GENERAL.—If the taxpayer was not in existence for the entire taxable-year period applicable under paragraphs (3) and (4) of subsection (b), such paragraphs shall be applied on the basis of the period during which such taxpayer was in existence.

“(B) TREATMENT OF PREDECESSORS.—Any reference in this paragraph to a taxpayer shall include a reference to any predecessor of such taxpayer.

“(4) COORDINATION WITH MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55—

“(A) innovation box profit shall be determined without regard to any adjustments under sections 56 through 59, and

“(B) subsection (a)(2) shall be applied by substituting ‘alternative minimum taxable income’ for ‘taxable income’.

“(5) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.
“(6) UNITED STATES.—The term ‘United States’ includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section, including regulations which prevent the abuse of the purposes of this section.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 56(d)(1)(A) of such Code is amended by striking “deduction under section 199” both places it appears and inserting “deductions under sections 199 and 250”.

(2) Section 56(g)(4)(C) of such Code is amended by adding at the end the following new clause:

“(vii) DEDUCTION FOR DOMESTIC BUSINESS INCOME.—Clause (i) shall not apply to any amount allowable as a deduction under section 250.”.

(3) The following provisions of such Code are each amended by inserting “250,” after “222,“.

(A) Section 86(b)(2)(A).

(B) Section 135(c)(4)(A).

(C) Section 137(b)(3)(A).
(D) Section 219(g)(3)(A)(ii).

(E) Section 221(b)(2)(C)(i).

(4) Section 222(b)(2)(C)(i) of such Code is amended by inserting “250,” after “221,”.

(5) Section 246(b)(1) of such Code is amended by striking “and subsection (a) or (b) of section 245,” and inserting “subsection (a) or (b) of section 245, and section 250”.

(6) Section 469(i)(3)(F)(iii) of such Code is amended by striking “and 222” and inserting “222, and 250”.

(7) Section 163(j)(6)(A)(i) of such Code is amended by striking “and” at the end of subclause (III) and by inserting after subclause (IV) the following new subclause:

“(V) any deduction allowable under section 250, and”.

(8) Section 170(b)(2)(C) of such Code is amended by redesignating clause (v) as clause (vi) and by inserting after clause (iv) the following new clause:

“(v) section 250.”.

(9) Section 172(d) of such Code is amended by adding at the end the following new paragraph:
“(8) INNOVATION BOX PROFITS DEDUCTION.—
The deduction under section 250 shall not be al-
lowed.”.

(10) Section 199(d)(2)(B) of such Code is
amended by striking “this section” and inserting
“this section and section 250”.

(11) Section 613(a) of such Code is amended
by striking “deduction under section 199” and in-
serting “deductions under sections 199 and 250”.

(12) Section 613A(d)(1) of such Code is
amended by redesignating subparagraphs (C), (D),
and (E) as subparagraphs (D), (E), and (F), respec-
tively, and by inserting after subparagraph (B) the
following new subparagraph:

“(C) any deduction allowable under section
250,”.

(c) CLERICAL AMENDMENT.—The table of sections
for part VIII of subchapter B of chapter 1 of such Code
is amended by adding at the end the following new item:

“Sec. 250. Innovation box profits.”.

(d) EFFECTIVE DATE.—The amendments made by
this section shall apply to taxable years beginning after
the date of the enactment of this Act.
SEC. 3. SPECIAL RULES FOR TRANSFERS OF INTANGIBLE PROPERTY FROM CONTROLLED FOREIGN CORPORATIONS TO UNITED STATES SHAREHOLDERS.

(a) In General.—Subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

“SEC. 966. TRANSFERS OF INTANGIBLE PROPERTY TO UNITED STATES SHAREHOLDERS.

“(a) In General.—In the case of any distribution of intangible property received from a controlled foreign corporation pursuant to a qualified plan—

“(1) for purposes of part I of subchapter C, the fair market value of such property at the time of such distribution shall be treated as not exceeding the adjusted basis of such property immediately before such distribution,

“(2) if the distribution is to a domestic corporation which is a United States shareholder and—

“(A) such distribution is a dividend, there shall be allowed as a deduction an amount equal to the excess of—

“(i) the amount of such dividend, over
“(ii) the deductions allowable to such domestic corporation under section 245 with respect to such distribution, or

“(B) such distribution is not a dividend—

“(i) the United States shareholder’s adjusted basis in the stock of the controlled foreign corporation with respect to which such distribution is made shall be increased by the amount (if any) of such distribution which would (but for this subparagraph) be includible in gross income, and

“(ii) the adjusted basis of such property in the hands of such United States shareholder immediately after such distribution shall be reduced by the amount of such increase.

“(b) QUALIFIED PLAN.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified plan’ means a contemporaneous written plan which describes the distribution (either directly or through a series of distributions between controlled foreign corporations which is completed during a period of not more than 2 years) of intangible property from a
controlled foreign corporation to a domestic corpora-
tion which is a United States shareholder with re-
spect to such controlled foreign corporation. A dis-
tribution shall be treated as made pursuant to a
qualified plan only if such distribution (and the in-
tangible property of which such distribution con-
sists) is described in such plan and such plan is in
effect before such distribution is made.

“(2) FILING REQUIREMENT.—

“(A) IN GENERAL.—Such term shall not
include any plan unless such plan is filed with
the Secretary (in such manner as the Secretary
may provide) not later than the due date for
the return of tax for the taxable year of the
United States shareholder which includes—

“(i) the date of the distribution to the
United States shareholder, or

“(ii) in the case of a plan which de-
scribes a series of distributions, the earlier
of the date described in clause (i) or the
close of the first taxable year of a con-
trolled foreign corporation which receives
such a distribution.
“(B) Reasonable Cause Exception.—

The Secretary may treat a plan as satisfying the requirement of subparagraph (A) if—

“(i) the Secretary determines that there was reasonable cause for the failure to file the plan as required under subparagraph (A),

“(ii) such plan is filed not later than 3 years after the date that such plan was otherwise required to be filed under subparagraph (A), and

“(iii) the taxpayer has not taken a position on any return filed under this title which is inconsistent with this section applying to the distributions described in such plan.

“(c) Intangible Property.—For purposes of this section, the term ‘intangible property’ means any property which is intangible property described in section 936(h)(3)(B)(i), property described in section 168(f)(3), or computer software (as defined in section 197(e)(3)(B)).

“(d) Disallowance of Foreign Tax Credit.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with re-
(b) Application of Holding Period Requirement.—Section 246(c) of such Code is amended by striking “or 245” in paragraph (1) and inserting “, 245, or 966”.

c) Application of Rules Generally Applicable to Deductions for Dividends Received.—

(1) Allowing deduction for purposes of determining adjusted current earnings.—

Section 56(g)(4)(C)(ii) of such Code is amended by striking “or 245” each place it appears and inserting “, 245, or 250”.

(2) Treatment of dividends from certain corporations.—Section 246(a)(1) of such Code is amended by striking “and 245” and inserting “, 245, and 966”.

(3) Assets generating tax-exempt portion of dividend not taken into account in allocating an apportioning deductible expenses.—Section 864(e)(3) of such Code is amended by striking “or 245(a)” and inserting “, 245(a), or 966”.

spect to any distribution of intangible property to which subsection (a) applies.”.
(4) COORDINATION WITH SECTION 1059.—Section 1059(b)(2)(B) of such Code is amended by striking “or 245” and inserting “, 245, or 966”.

(d) CONFORMING AMENDMENTS.—

(1) Section 197(f)(2)(B)(i) of such Code is amended by inserting “966(a),” after “731,”.

(2) The table of sections for subpart F of part III of subchapter N of chapter 1 of such Code is amended by adding at the end the following new item:

“Sec. 966. Transfers of intangible property to United States shareholders.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made in taxable years of foreign corporations beginning after December 31, 2015, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.