

117TH CONGRESS
2D SESSION

S. 5349

To amend the Internal Revenue Code of 1986 to modify certain provisions relating to the taxation of international entities.

IN THE SENATE OF THE UNITED STATES

DECEMBER 21, 2022

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to modify certain provisions relating to the taxation of international entities.

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, ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “International Competition for American Jobs Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. PERMANENT EXTENSION OF LOOK-THRU RULE FOR**
 4 **CONTROLLED FOREIGN CORPORATIONS.**

5 (a) IN GENERAL.—Section 954(c)(6)(C) is amended
 6 by striking “and before January 1, 2026,”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 this section shall apply to taxable years of foreign corpora-
 9 tions beginning after December 31, 2022, and to taxable
 10 years of United States shareholders with or within which
 11 such taxable years of foreign corporations end.

12 **SEC. 3. MODIFICATION OF DEDUCTION FOR FOREIGN-DE-**
 13 **RIVED INTANGIBLE INCOME AND GLOBAL IN-**
 14 **TANGIBLE LOW-TAXED INCOME.**

15 (a) IN GENERAL.—Section 250(a) is amended to
 16 read as follows:

17 “(a) ALLOWANCE OF DEDUCTION.—In the case of a
 18 domestic corporation for any taxable year, there shall be
 19 allowed as a deduction an amount equal to the sum of—

20 “(1) 37.5 percent of the foreign-derived intan-
 21 gible income of such domestic corporation for such
 22 taxable year, plus

23 “(2) 50 percent of—

24 “(A) the global intangible low-taxed income
 25 amount (if any) which is included in the gross

1 income of such domestic corporation under sec-
 2 tion 951A for such taxable year, and

3 “(B) the amount treated as a dividend re-
 4 ceived by such corporation under section 78
 5 which is attributable to the amount described in
 6 subparagraph (A).”.

7 (b) DEDUCTION TAKEN INTO ACCOUNT IN DETER-
 8 MINING NET OPERATING LOSS DEDUCTION.—Section
 9 172(d) is amended by striking paragraph (9).

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2022.

13 **SEC. 4. MODIFICATIONS TO BASE EROSION MINIMUM TAX.**

14 (a) BASE EROSION MINIMUM TAX AMOUNT DETER-
 15 MINED WITHOUT REGARD TO CREDITS.—

16 (1) IN GENERAL.—Section 59A(b)(1)(B) is
 17 amended to read as follows:

18 “(B) an amount equal to the regular tax li-
 19 ability (as defined in section 26(b)) of the tax-
 20 payer for the taxable year.”.

21 (2) CONFORMING AMENDMENT.—Section
 22 59A(b) is amended by striking paragraph (4).

23 (b) ELIMINATION OF MODIFICATIONS FOR TAXABLE
 24 YEARS AFTER 2025.—

1 (1) IN GENERAL.—Section 59A(b) is amended
 2 by striking paragraph (2) and redesignating para-
 3 graph (3) as paragraph (2).

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 59A(b)(1) is amended by strik-
 6 ing “paragraphs (2) and (3)” and inserting
 7 “paragraph (2)”.

8 (B) Paragraph (2) of section 59A(b), as
 9 redesignated by paragraph (1), is amended by
 10 striking “under paragraphs (1)(A) and (2)(A)
 11 shall each be increased” and inserting “under
 12 paragraph (1)(A) shall be increased”.

13 (C) Section 59A(e)(1)(C) is amended by
 14 striking “subsection (b)(3)(B)” and inserting
 15 “subsection (b)(2)(B)”.

16 (c) EXPANSION AND CONSOLIDATION OF RULES TO
 17 EXEMPT CERTAIN PAYMENTS FROM TREATMENT AS
 18 BASE EROSION PAYMENTS.—

19 (1) IN GENERAL.—Section 59A is amended by
 20 redesignating subsection (i) as subsection (j) and by
 21 inserting after subsection (h) the following new sub-
 22 section:

23 “(i) CERTAIN PAYMENT NOT TREATED AS BASE
 24 EROSION PAYMENTS.—

1 “(1) EXCEPTION FOR PAYMENTS ON WHICH
2 TAX IS IMPOSED.—

3 “(A) IN GENERAL.—An amount shall not
4 be treated as a base erosion payment if tax is
5 (or was at the time of payment or accrual) im-
6 posed by this chapter with respect to such
7 amount (other than by this section).

8 “(B) TREATMENT OF CERTAIN DEDUC-
9 TIONS.—For purposes of subparagraph (A), tax
10 shall be treated as imposed by this chapter
11 without regard to any deduction allowed under
12 part VIII of subchapter B.

13 “(C) APPLICATION OF CERTAIN RULES.—
14 The amount not treated as a base erosion pay-
15 ment by reason of this paragraph shall be de-
16 termined under rules similar to the rules of sec-
17 tion 163(j)(5) (as in effect before the date of
18 the enactment of Public Law 115–97).

19 “(2) EXCEPTION FOR CERTAIN PAYMENTS SUB-
20 JECT TO SUFFICIENT FOREIGN TAX.—

21 “(A) IN GENERAL.—An amount shall not
22 be treated as a base erosion payment if the tax-
23 payer establishes to the satisfaction of the Sec-
24 retary that such amount was made to a foreign
25 person which is a related party of the taxpayer

1 that is subject to an effective rate of foreign in-
2 come tax (as defined in section 904(d)(2)(F))
3 which is not less than 18.9 percent.

4 “(B) CERTAIN PAYMENTS TO RELATED
5 PARTIES.—To the extent provided by the Sec-
6 retary in regulations, an amount paid to a for-
7 eign person which is a related party of the tax-
8 payer shall be treated as paid to another for-
9 eign person which is a related party of the tax-
10 payer if such second foreign person is subject to
11 an effective rate of foreign income tax (as de-
12 fined in section 904(d)(2)(F)) which is less
13 than 18.9 percent, to the extent the amount so
14 paid directly or indirectly funds a payment to
15 such second foreign person.

16 “(C) DETERMINATION ON BASIS OF APPLI-
17 CABLE FINANCIAL STATEMENTS.—Except as
18 otherwise provided by the Secretary under sub-
19 paragraph (D), the effective rate of foreign in-
20 come tax with respect to any amount may be
21 established on the basis of applicable financial
22 statements (as defined in section 451(b)(3)).

23 “(D) REGULATIONS.—The Secretary shall
24 issue such regulations or other guidance as may
25 be necessary or appropriate to carry out the

1 purposes of this paragraph, including regula-
 2 tions or other guidance providing procedures for
 3 determining the effective rate of foreign income
 4 tax to which any amount is subject. Such proce-
 5 dures may require that any transaction or se-
 6 ries of transactions among multiple parties be
 7 recharacterized as one or more transactions di-
 8 rectly among any 2 or more of such parties
 9 where the Secretary determines that such re-
 10 characterization is appropriate to carry out, or
 11 prevent avoidance of, the purposes of this sec-
 12 tion.

13 “(3) EXCEPTION FOR CERTAIN AMOUNTS WITH
 14 RESPECT TO SERVICES.—Subsections (d)(1) and
 15 (d)(2) shall not apply to so much of any amount
 16 paid or accrued by a taxpayer for services as does
 17 not exceed the total services cost of such services.
 18 The preceding sentence shall not apply unless such
 19 services meet the requirements for eligibility for use
 20 of the services cost method under section 482 (deter-
 21 mined without regard to the requirement that the
 22 services not contribute significantly to fundamental
 23 risks of business success or failure).”.

24 (2) CONFORMING AMENDMENT.—Section
 25 59A(d) is amended by striking paragraph (5).

1 (d) OTHER MODIFICATIONS.—

2 (1) Section 59A(b)(3)(B)(ii) is amended by
3 striking “registered securities dealer” and inserting
4 “securities dealer registered”.

5 (2) Section 59A(h)(2)(B) is amended by strik-
6 ing “section 6038B(b)(2)” and inserting “section
7 6038A(b)(2)”.

8 (3) Section 59A(j)(2), as redesignated by sub-
9 section (b), is amended by striking “subsection
10 (g)(3)” and inserting “subsection (h)(3)”.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 2022.

14 **SEC. 5. RULES FOR ALLOCATION OF CERTAIN DEDUCTIONS**
15 **TO FOREIGN SOURCE GLOBAL INTANGIBLE**
16 **LOW-TAXED INCOME FOR PURPOSES OF FOR-**
17 **EIGN TAX CREDIT LIMITATION.**

18 (a) IN GENERAL.—Section 904(b) is amended by
19 adding at the end the following new paragraph:

20 “(5) DEDUCTIONS TREATED AS ALLOCABLE TO
21 FOREIGN SOURCE GLOBAL INTANGIBLE LOW-TAXED
22 INCOME.—In the case of a domestic corporation and
23 solely for purposes of the application of subsection
24 (a) with respect to amounts described in subsection
25 (d)(1)(A), the taxpayer’s taxable income from

1 sources without the United States shall be deter-
 2 mined—

3 “(A) by allocating and apportioning any
 4 deduction allowed under section 250(a)(2) (and
 5 any deduction allowed under section 164(a)(3)
 6 for taxes imposed on amounts described in sec-
 7 tion 250(a)(2)) to such income, and

8 “(B) by allocating and apportioning any
 9 other deduction to such income only if the Sec-
 10 retary determines that such deduction is di-
 11 rectly allocable to such income.

12 Any deduction which would (but for subparagraph
 13 (B)) have been allocated or apportioned to such in-
 14 come shall only be allocated or apportioned to in-
 15 come which is from sources within the United
 16 States.”.

17 (b) APPLICATION OF SEPARATE LIMITATION LOSSES
 18 WITH RESPECT TO GLOBAL INTANGIBLE LOW-TAXED IN-
 19 COME.—

20 (1) IN GENERAL.—Section 904(f)(5)(B) is
 21 amended to read as follows:

22 “(B) ALLOCATION OF LOSSES.—Except as
 23 otherwise provided in this subparagraph, the
 24 separate limitation losses for any taxable year
 25 (to the extent such losses do not exceed the sep-

arate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. In the case of a separate limitation loss for any taxable year in any category other than subparagraph (d)(1)(A), the amount of such separate limitation loss shall be allocated among (and operate to reduce) separate limitation income in any category other than income described in subparagraph (d)(1)(A) on a proportionate basis (without regard to income described in subparagraph (d)(1)(A)). The remaining separate limitation losses may reduce separate limitation income described in subparagraph (d)(1)(A) only to the extent that the aggregate amount of such losses exceeds the aggregate amount of separate limitation incomes (other than income described in subparagraph (d)(1)(A)) for such taxable year.”.

(2) INCOME CATEGORY.—Section 904(f)(5)(E)(i) is amended to read as follows:

“(i) INCOME CATEGORY.—The term ‘income category’ means each category of income with respect to which this section is

1 required to be applied separately by reason
2 of any provision of this title.”.

3 (3) SEPARATE LIMITATION LOSS.—Section
4 904(f)(5)(E)(iii) is amended to read as follows:

5 “(iii) SEPARATE LIMITATION LOSS.—
6 The term ‘separate limitation loss’ means,
7 with respect to any income category, the
8 amount by which the gross income from
9 sources outside the United States is ex-
10 ceeded by the sum of the deductions prop-
11 erly allocated and apportioned thereto.”.

12 (c) APPLICATION OF CARRYFORWARD TO TAXES ON
13 GLOBAL INTANGIBLE LOW-TAXED INCOME.—Section
14 904(c) is amended by striking the last sentence.

15 (d) EFFECTIVE DATE.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply to taxable years beginning after Decem-
19 ber 31, 2022.

20 (2) MODIFICATION OF FOREIGN TAX CREDIT
21 CARRYBACK AND CARRYFORWARD.—The amendment
22 made by subsection (c) shall apply to taxes paid or
23 accrued in taxable years beginning after December
24 31, 2022.

1 **SEC. 6. RESTORATION OF LIMITATION ON DOWNWARD AT-**
 2 **TRIBUTION OF STOCK OWNERSHIP IN APPLY-**
 3 **ING CONSTRUCTIVE OWNERSHIP RULES.**

4 (a) IN GENERAL.—Section 958(b) is amended—

5 (1) by inserting after paragraph (3) the fol-
 6 lowing:

7 “(4) Subparagraphs (A), (B), and (C) of sec-
 8 tion 318(a)(3) shall not be applied so as to consider
 9 a United States person as owning stock which is
 10 owned by a person who is not a United States per-
 11 son.”, and

12 (2) by striking “Paragraph (1)” in the last sen-
 13 tence and inserting “Paragraphs (1) and (4)”.

14 (b) FOREIGN CONTROLLED UNITED STATES SHARE-
 15 HOLDERS.—Subpart F of part III of subchapter N of
 16 chapter 1 is amended by inserting after section 951A the
 17 following new section:

18 **“SEC. 951B. AMOUNTS INCLUDED IN GROSS INCOME OF**
 19 **FOREIGN CONTROLLED UNITED STATES**
 20 **SHAREHOLDERS.**

21 “(a) IN GENERAL.—In the case of any foreign con-
 22 trolled United States shareholder of a foreign controlled
 23 foreign corporation—

24 “(1) this subpart (other than sections 951A,
 25 951(b), and 957) shall be applied with respect to
 26 such shareholder (separately from, and in addition

1 to, the application of this subpart without regard to
2 this section)—

3 “(A) by substituting ‘foreign controlled
4 United States shareholder’ for ‘United States
5 shareholder’ each place it appears therein, and

6 “(B) by substituting ‘foreign controlled
7 foreign corporation’ for ‘controlled foreign cor-
8 poration’ each place it appears therein, and

9 “(2) section 951A shall be applied with respect
10 to such shareholder—

11 “(A) by treating each reference to ‘United
12 States shareholder’ in such section as including
13 a reference to such shareholder, and

14 “(B) by treating each reference to ‘con-
15 trolled foreign corporation’ in such section as
16 including a reference to such foreign controlled
17 foreign corporation.

18 “(b) FOREIGN CONTROLLED UNITED STATES
19 SHAREHOLDER.—For purposes of this section, the term
20 ‘foreign controlled United States shareholder’ means, with
21 respect to any foreign corporation, any United States per-
22 son which would be a United States shareholder with re-
23 spect to such foreign corporation if—

24 “(1) section 951(b) were applied by substituting
25 ‘more than 50 percent’ for ‘10 percent or more’, and

1 “(2) section 958(b) were applied without regard
2 to paragraph (4) thereof.

3 “(c) FOREIGN CONTROLLED FOREIGN CORPORA-
4 TION.—For purposes of this section, the term ‘foreign con-
5 trolled foreign corporation’ means a foreign corporation,
6 other than a controlled foreign corporation, which would
7 be a controlled foreign corporation if section 957(a) were
8 applied—

9 “(1) by substituting ‘foreign controlled United
10 States shareholders’ for ‘United States share-
11 holders’, and

12 “(2) by substituting ‘section 958(b) (other than
13 paragraph (4) thereof)’ for ‘section 958(b)’.

14 “(d) REGULATIONS.—The Secretary shall prescribe
15 such regulations or other guidance as may be necessary
16 or appropriate to carry out the purposes of this section,
17 including regulations or other guidance—

18 “(1) to treat a foreign controlled United States
19 shareholder or a foreign controlled foreign corpora-
20 tion as a United States shareholder or as a con-
21 trolled foreign corporation, respectively, for purposes
22 of provisions of this title other than this subpart,
23 and

24 “(2) to prevent the avoidance of the purposes of
25 this section.”.

1 (c) CLERICAL AMENDMENT.—The table of sections
 2 for subpart F of part III of subchapter N of chapter 1
 3 is amended by inserting after the item relating to section
 4 951A the following new item:

“Sec. 951B. Amounts included in gross income of foreign controlled United States shareholders.”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to—

7 (1) the last taxable year of foreign corporations
 8 beginning before January 1, 2023, and each subse-
 9 quent taxable year of such foreign corporations, and

10 (2) taxable years of United States persons in
 11 which or with which such taxable years of foreign
 12 corporations end.

13 (e) NO INFERENCE.—The amendments made by this
 14 section shall not be construed to create any inference with
 15 respect to the proper application of any provision of the
 16 Internal Revenue Code of 1986 with respect to taxable
 17 years beginning before the taxable years to which such
 18 amendments apply.

19 **SEC. 7. CARRYOVER OF NET CFC TESTED LOSS.**

20 (a) IN GENERAL.—Section 951A(c) is amended by
 21 adding at the end the following new paragraph:

22 “(3) CARRYOVER OF NET CFC TESTED LOSS.—

23 “(A) IN GENERAL.—If the amount de-
 24 scribed in paragraph (1)(B) with respect to any

1 United States shareholder for any taxable year
 2 of such United States shareholder (determined
 3 after the application of this paragraph with re-
 4 spect to amounts arising in preceding taxable
 5 years) exceeds the amount described in para-
 6 graph (1)(A) with respect to such shareholder
 7 of such taxable year, the amount otherwise de-
 8 scribed in paragraph (1)(B) with respect to
 9 such shareholder for the succeeding taxable
 10 year shall be increased by the amount of such
 11 excess.

12 “(B) PROPER ADJUSTMENT IN ALLOCA-
 13 TIONS OF GLOBAL INTANGIBLE LOW-TAXED IN-
 14 COME TO CONTROLLED FOREIGN CORPORA-
 15 TIONS.—Proper adjustments shall be made in
 16 the application of subsection (f)(2)(B) to take
 17 into account any decrease in global intangible
 18 low-taxed income by reason of the application of
 19 subparagraph (A).”.

20 (b) APPLICATION OF RULES WITH RESPECT TO
 21 OWNERSHIP CHANGES.—Section 382(d) is amended by
 22 adding at the end the following new paragraph:

23 “(4) APPLICATION TO CARRYOVER OF NET CFC
 24 TESTED LOSS.—The term ‘pre-change loss’ shall in-
 25 clude any excess carried over under section

1 951A(c)(3) under rules similar to the rules of para-
2 graph (1).”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years of foreign corpora-
5 tions beginning after December 31, 2022, and to taxable
6 years of United States shareholders in which or with which
7 such taxable years of foreign corporations end.

8 **SEC. 8. REDETERMINATION OF FOREIGN TAXES AND RE-**
9 **LATED CLAIMS.**

10 (a) IN GENERAL.—Section 905(c) is amended—

11 (1) in paragraph (1), by striking “or” at the
12 end of subparagraph (B) and by inserting after sub-
13 paragraph (C) the following new subparagraphs:

14 “(D) the taxpayer makes a timely change
15 in its choice to claim a credit or deduction for
16 taxes paid or accrued, or

17 “(E) there is any other change in the
18 amount, or treatment, of taxes, which affects
19 the taxpayer’s tax liability under this chapter,”

20 (2) in paragraph (2)(B)(i), by inserting “, ex-
21 cept as otherwise provided by the Secretary,” after
22 “shall”, and

23 (3) by striking “ACCRUED” in the heading
24 thereof.

1 (b) MODIFICATION TO TIME FOR CLAIMING CREDIT
 2 OR DEDUCTION.—Section 901(a) is amended by striking
 3 the second sentence and inserting the following: “Such
 4 choice for any taxable year may be made or changed at
 5 any time before the expiration of the applicable period pre-
 6 scribed by section 6511 for making a claim for credit or
 7 refund of an overpayment of the tax imposed by this chap-
 8 ter for such taxable year that is attributable to such
 9 amounts.”.

10 (c) MODIFICATION TO SPECIAL PERIOD OF LIMITA-
 11 TION.—Section 6511(d)(3) is amended—

12 (1) in subparagraph (A)—

13 (A) by inserting “a change in the liability
 14 for” before “any taxes paid or accrued”,

15 (B) by striking “actually paid” and insert-
 16 ing “paid (or deemed paid under section 960)”,
 17 and

18 (C) by inserting “CHANGE IN THE LIABIL-
 19 ITY FOR” before “FOREIGN TAXES” in the head-
 20 ing thereof, and

21 (2) in subparagraph (B), by striking “the allow-
 22 ance of a credit for the taxes” and inserting “the al-
 23 lowance of an additional credit by reason of the
 24 change in liability for the taxes”.

25 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, the amendments made by
3 this section shall apply to taxes paid or accrued in
4 taxable years beginning after December 31, 2022.

5 (2) CERTAIN CHANGES.—The amendments
6 made by paragraphs (1) and (3) of subsection (a)
7 shall apply to changes that occur on or after the
8 date which is 60 days after the date of the enact-
9 ment of this Act.

10 (3) MODIFICATION TO SPECIAL PERIOD OF LIM-
11 ITATION.—The amendments made by subsection (c)
12 shall apply to taxes paid, accrued, or deemed paid
13 in taxable years beginning after December 31, 2022.

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