

118TH CONGRESS
1ST SESSION

S. 357

To amend the Internal Revenue Code of 1986 to provide for current year inclusion of net CFC tested income, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. WHITEHOUSE (for himself, Mr. DURBIN, Mr. VAN HOLLEN, Ms. DUCKWORTH, Ms. HIRONO, Mr. BOOKER, Ms. WARREN, Mr. REED, Mr. HEINRICH, Mr. BLUMENTHAL, Mr. MURPHY, Ms. BALDWIN, Mr. MARKEY, Mr. CASEY, Mr. MERKLEY, and Mr. SCHATZ) 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 provide for current year inclusion of net CFC tested income, and for other purposes.

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 “No Tax Breaks for Outsourcing 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

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

4 (c) TABLE OF CONTENTS.—The table of contents of
 5 this Act is as follows:

Sec. 1. Short title, etc.

Sec. 2. Current year inclusion of net CFC tested income.

Sec. 3. Country-by-country application of limitation on foreign tax credit based
 on taxable units.

Sec. 4. Limitation on deduction of interest by domestic corporations which are
 members of an international financial reporting group.

Sec. 5. Modifications to rules relating to inverted corporations.

Sec. 6. Treatment of foreign corporations managed and controlled in the United
 States as domestic corporations.

6 **SEC. 2. CURRENT YEAR INCLUSION OF NET CFC TESTED IN-**
 7 **COME.**

8 (a) REPEAL OF TAX-FREE DEEMED RETURN ON IN-
 9 VESTMENTS.—

10 (1) IN GENERAL.—Section 951A(a) is amended
 11 by striking “global intangible low-taxed income” and
 12 inserting “net CFC tested income”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 951A is amended by striking
 15 subsections (b) and (d).

16 (B) Section 951A(e)(1) is amended by
 17 striking “subsections (b), (c)(1)(A), and” and
 18 inserting “subsections (c)(1)(A) and”.

19 (C) Section 951A(f) is amended by strik-
 20 ing “global intangible low-taxed income” each

1 place it appears and inserting “net CFC tested
2 income”.

3 (D) Section 960(d)(2)(A) is amended by
4 striking “global intangible low-taxed income (as
5 defined in section 951A(b))” and inserting “net
6 CFC tested income (as defined in section
7 951A(e))”.

8 (b) COUNTRY-BY-COUNTRY APPLICATION OF SEC-
9 TION BASED ON CFC TAXABLE UNITS.—Section 951A is
10 amended by adding at the end the following new sub-
11 section:

12 “(g) COUNTRY-BY-COUNTRY APPLICATION OF SEC-
13 TION BASED ON CFC TAXABLE UNITS.—

14 “(1) IN GENERAL.—If any CFC taxable unit of
15 a United States shareholder is a tax resident of (or,
16 in the case of a branch, is located in) a country
17 which is different from the country with respect to
18 which any other CFC taxable unit of such United
19 States shareholder is a tax resident (or, in the case
20 of a branch, is located in)—

21 “(A) such shareholder’s net CFC tested in-
22 come for purposes of subsection (a) shall be the
23 sum of the amounts of net CFC tested income
24 determined separately with respect to each such
25 country, and

1 “(B) for purposes of determining such sep-
2 arate amounts of net CFC tested income—

3 “(i) except as otherwise provided by
4 the Secretary, any reference in subsection
5 (c) to a controlled foreign corporation of
6 such shareholder shall be treated as ref-
7 erence to a CFC taxable unit of such
8 shareholder, and

9 “(ii) net CFC tested income and such
10 other items and amounts as the Secretary
11 may provide, shall be determined sepa-
12 rately with respect to each such country by
13 determining such amounts with respect to
14 the CFC taxable units of such shareholder
15 which are a tax resident of such country.

16 “(2) DEFINITIONS.—For purposes of this sub-
17 section—

18 “(A) CFC TAXABLE UNIT.—The term
19 ‘CFC taxable unit’ means any taxable unit de-
20 scribed in clause (ii), (iii), or (iv) of section
21 904(e)(2)(B), determined—

22 “(i) by substituting ‘controlled foreign
23 corporation’ for ‘foreign corporation’ each
24 place it appears in such clauses, and

1 “(ii) without regard to the references
2 to the taxpayer in clauses (iii) and (iv) of
3 such section.

4 “(B) APPLICATION OF OTHER DEFINI-
5 TIONS.—Terms used in this subsection which
6 are also used in section 904(e) shall have the
7 same meaning as when used in section 904(e).

8 “(3) SPECIAL RULES.—For purposes of this
9 subsection—

10 “(A) APPLICATION OF CERTAIN RULES.—
11 Except as otherwise provided by the Secretary,
12 rules similar to the rules of section 904(e) shall
13 apply.

14 “(B) ALLOCATION OF NET CFC TESTED
15 INCOME TO CONTROLLED FOREIGN CORPORA-
16 TIONS.—Except as otherwise provided by the
17 Secretary, subsection (f)(2) shall be applied
18 separately with respect to each CFC taxable
19 unit.”.

20 (c) REGULATORY AUTHORITY.—Section 951A, as
21 amended by subsection (b), is amended by adding at the
22 end the following new subsection:

23 “(h) REGULATIONS.—The Secretary shall issue such
24 regulations or other guidance as may be necessary or ap-
25 propriate to carry out, or prevent the avoidance of, the

1 purposes of this section, including regulations or guidance
2 which provide for—

3 “(1) the treatment of property if such property
4 is transferred, or held, temporarily,

5 “(2) the treatment of property if the avoidance
6 of the purposes of this section is a factor in the
7 transfer or holding of such property,

8 “(3) appropriate adjustments to the basis of
9 stock and other ownership interests, and to earnings
10 and profits, to reflect tested losses (whether or not
11 taken into account in determining net CFC tested
12 income),

13 “(4) rules similar to the rules provided under
14 the regulations or guidance issued under section
15 904(e)(4),

16 “(5) other appropriate basis adjustments,

17 “(6) appropriate adjustments to be made, and
18 appropriate tax attributes and records to be main-
19 tained, separately with respect to CFC taxable units,
20 and

21 “(7) appropriate adjustments in determining
22 tested income or tested loss if property is trans-
23 ferred between related parties or amounts are paid
24 or accrued between related parties.”.

1 (d) COORDINATION WITH OTHER PROVISIONS.—Sec-
2 tion 951A(f)(1) is amended by adding at the end the fol-
3 lowing new subparagraph:

4 “(C) TREATMENT OF CERTAIN REF-
5 ERENCES.—Except as otherwise provided by the
6 Secretary, references to section 951 or section
7 951(a) in sections 959, 961, 962, and such
8 other provisions as the Secretary may identify
9 shall include references to section 951A or sec-
10 tion 951A(a), respectively.”.

11 (e) REPEAL OF REDUCED RATE OF TAX ON NET
12 CFC TESTED INCOME AND FOREIGN-DERIVED INTAN-
13 GIBLE INCOME.—

14 (1) IN GENERAL.—Part VIII of subchapter B
15 of chapter 1 is amended by striking section 250 (and
16 by striking the item relating to such section in the
17 table of sections of such part).

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 59A(c)(4)(B)(i) is amended by
20 striking “section 172, 245A, or 250” and in-
21 serting “section 172 or 245A”.

22 (B) Section 172(d) is amended by striking
23 paragraph (9).

24 (C) Section 246(b)(1) is amended—

1 (i) by striking “subsection (a) and (b)
2 of section 245, and section 250” and in-
3 serting “and subsection (a) and (b) of sec-
4 tion 245”; and

5 (ii) by striking “subsection (a) and
6 (b) of section 245, and 250” and inserting
7 “and subsection (a) and (b) of section
8 245”.

9 (D) Section 469(i)(3)(E)(iii) is amended
10 by striking “, 221, and 250” and inserting
11 “and 221”.

12 (f) REPEAL OF CERTAIN EXCLUSIONS FROM THE
13 DETERMINATION OF TESTED INCOME.—Section
14 951A(c)(2)(A)(i) is amended—

15 (1) by striking subclauses (III) and (V),

16 (2) by redesignating subclause (IV) as sub-
17 clause (III),

18 (3) by adding “and” at the end of subclause
19 (II), and

20 (4) by striking “and” at the end of subclause
21 (III) (as so redesignated) and inserting “over”.

22 (g) INCREASE IN DEEMED PAID CREDIT FOR TAXES
23 PROPERLY ATTRIBUTABLE TO TESTED INCOME.—

24 (1) IN GENERAL.—Section 960(d) is amended
25 by striking “80 percent of”.

1 (2) CONFORMING AMENDMENT.—Section 78 is
2 amended by striking “(determined without regard to
3 the phrase “80 percent of” in subsection (d)(1)
4 thereof)”.

5 (h) REPEAL OF HIGH TAX EXCLUSION FOR FOREIGN
6 BASE COMPANY INCOME AND INSURANCE INCOME.—

7 (1) IN GENERAL.—Section 954(b) is amended
8 by striking paragraph (4).

9 (2) CONFORMING AMENDMENT.—Section
10 904(d)(3)(E) is amended by striking the last sen-
11 tence.

12 (i) ELIMINATION OF CARRYBACK OF FOREIGN TAX
13 CREDIT.—

14 (1) IN GENERAL.—Section 904(c) is amended—

15 (A) by striking “in the first preceding tax-
16 able year, and in any of the first 10 succeeding
17 taxable years, in that order” and inserting “in
18 any of the first 10 succeeding taxable years, in
19 order”,

20 (B) by striking “preceding or” each place
21 it appears, and

22 (C) by striking “CARRYBACK AND” in the
23 heading thereof.

24 (2) APPLICATION TO LIMITATION ON FOREIGN
25 OIL AND GAS TAXES.—Section 907(f) is amended—

1 (A) in paragraph (1), by striking “in the
2 first preceding taxable year and”,

3 (B) in paragraph (2), by striking “pre-
4 ceding or” in the matter preceding subpara-
5 graph (A),

6 (C) in paragraph (3)(B)—

7 (i) by striking “in a preceding or suc-
8 ceeding” and inserting “in a succeeding”,
9 and

10 (ii) by striking “in such preceding or
11 succeeding” both places it appears and in-
12 serting “in such succeeding”, and

13 (D) in the heading, by striking
14 “CARRYBACK AND”.

15 (j) TREATMENT OF FOREIGN BASE COMPANY OIL
16 RELATED INCOME AS SUBPART F INCOME.—

17 (1) IN GENERAL.—Section 954(a) is amended
18 by striking “and” at the end of paragraph (2), by
19 striking the period at the end of paragraph (3) and
20 inserting “, and”, and by adding at the end the fol-
21 lowing new paragraph:

22 “(4) the foreign base company oil related in-
23 come for the taxable year (determined under sub-
24 section (f) and reduced as provided in subsection
25 (b)(5)).”.

1 (2) FOREIGN BASE COMPANY OIL RELATED IN-
2 COME.—Section 954 is amended by inserting after
3 subsection (e) the following new subsection:

4 “(f) FOREIGN BASE COMPANY OIL RELATED IN-
5 COME.—For purposes of this section, the term ‘foreign
6 base company oil related income’ means foreign oil related
7 income (within the meaning of paragraphs (2) and (3) of
8 section 907(c)) other than income derived from a source
9 within a foreign country in connection with—

10 “(1) oil or gas which was extracted from an oil
11 or gas well located in such foreign country, or

12 “(2) oil, gas, or a primary product of oil or gas
13 which is sold by the foreign corporation or a related
14 person for use or consumption within such country
15 or is loaded in such country on a vessel or aircraft
16 as fuel for such vessel or aircraft.

17 Such term shall not include any foreign personal holding
18 company income (as defined in subsection (c)).”.

19 (3) CONFORMING AMENDMENTS.—

20 (A) Section 952(c)(1)(B)(iii) is amended
21 by redesignating subclauses (III) and (IV) as
22 subclauses (IV) and (V), respectively, and by
23 inserting after subclause (II) the following new
24 subclause:

1 “(III) foreign base company oil
2 related income.”.

3 (B) Section 954(b) is amended—

4 (i) by striking “and the foreign base
5 company services income” in paragraph
6 (5) and inserting “the foreign base com-
7 pany services income, and the foreign base
8 company oil related income”, and

9 (ii) by adding at the end the following
10 new paragraph:

11 “(6) FOREIGN BASE COMPANY OIL RELATED IN-
12 COME NOT TREATED AS ANOTHER KIND OF FOREIGN
13 BASE COMPANY INCOME.—Income of a corporation
14 which is foreign base company oil related income
15 shall not be considered foreign base company income
16 of such corporation under paragraph (2) or (3) of
17 subsection (a).”.

18 (k) EFFECTIVE DATES.—

19 (1) IN GENERAL.—Except as otherwise pro-
20 vided in this subsection, the amendments made by
21 this section shall apply to taxable years of foreign
22 corporations beginning after December 31, 2022,
23 and to taxable years of United States shareholders
24 in which or with which such taxable years of foreign
25 corporations end.

1 (2) REGULATORY AUTHORITY AND COORDINA-
2 TION WITH OTHER PROVISIONS.—The amendments
3 made by subsections (c) and (d) shall apply to tax-
4 able years of foreign corporations beginning after
5 the date of the enactment of this Act, and to taxable
6 years of United States shareholders in which or with
7 which such taxable years of foreign corporations
8 end.

9 (3) REPEAL OF REDUCED RATE OF TAX; IN-
10 CREASE IN DEEMED PAID CREDIT.—The amend-
11 ments made by subsections (e) and (g) shall apply
12 to taxable years beginning after December 31, 2022.

13 (4) ELIMINATION OF CARRYBACK OF FOREIGN
14 TAX CREDIT.—The amendment made by subsection
15 (i) shall apply to credits arising in taxable years be-
16 ginning after December 31, 2022.

17 (l) NO INFERENCE REGARDING CERTAIN MODIFICA-
18 TIONS.—The amendments made by subsections (c) and
19 (d) shall not be construed to create any inference with re-
20 spect to the proper application of any provision of the In-
21 ternal Revenue Code of 1986 with respect to any taxable
22 year beginning before the taxable years to which such
23 amendments apply.

1 **SEC. 3. COUNTRY-BY-COUNTRY APPLICATION OF LIMITA-**
2 **TION ON FOREIGN TAX CREDIT BASED ON**
3 **TAXABLE UNITS.**

4 (a) IN GENERAL.—Section 904 is amended by insert-
5 ing after subsection (d) the following new subsection:

6 “(e) COUNTRY-BY-COUNTRY APPLICATION BASED ON
7 TAXABLE UNITS.—

8 “(1) IN GENERAL.—Subsection (d) (and the
9 provisions of this title referred to in paragraph (1)
10 of such subsection) shall be applied separately with
11 respect to each country by taking into account the
12 aggregate income properly attributable or otherwise
13 allocable to a taxable unit of the taxpayer which is
14 a tax resident of (or, in the case of a branch, is lo-
15 cated in) such country.

16 “(2) TAXABLE UNITS.—

17 “(A) IN GENERAL.—Except as otherwise
18 provided by the Secretary, each item shall be
19 attributable or otherwise allocable to exactly
20 one taxable unit of the taxpayer.

21 “(B) DETERMINATION OF TAXABLE
22 UNITS.—Except as otherwise provided by the
23 Secretary, the taxable units of a taxpayer are
24 as follows:

25 “(i) GENERAL TAXABLE UNIT.—The
26 person that is the taxpayer and that is not

1 otherwise described in a separate clause of
2 this subparagraph.

3 “(ii) CERTAIN FOREIGN CORPORATIONS.—Each foreign corporation with re-
4 spect to which the taxpayer is a United
5 States shareholder.
6

7 “(iii) INTERESTS IN PASS-THROUGH
8 ENTITIES.—Each interest held (directly or
9 indirectly) by the taxpayer or any foreign
10 corporation referred to in clause (ii) in a
11 pass-through entity if such pass-through
12 entity is a tax resident of a country other
13 than the country with respect to which
14 such taxpayer or foreign corporation (as
15 the case may be) is a tax resident.

16 “(iv) BRANCHES.—Each branch (or
17 portion thereof) the activities of which are
18 directly or indirectly carried on by the tax-
19 payer or any foreign corporation referred
20 to in clause (ii) and which give rise to a
21 taxable presence in a country other than
22 the country with respect to which such tax-
23 payer or foreign corporation (as the case
24 may be) is a tax resident.

1 “(3) DEFINITIONS AND SPECIAL RULES.—For
2 purposes of this subsection—

3 “(A) TAX RESIDENT.—Except as otherwise
4 provided by the Secretary, the term ‘tax resi-
5 dent’ means a person or entity subject to tax
6 under the tax law of a country as a resident. If
7 an entity is organized under the law of a coun-
8 try, or resident in a country, that does not im-
9 pose an income tax with respect to such enti-
10 ties, such entity shall, except as provided by the
11 Secretary, be treated as subject to tax under
12 the tax law of such country for the purposes of
13 the preceding sentence.

14 “(B) PASS-THROUGH ENTITY.—Except as
15 otherwise provided by the Secretary, the term
16 ‘pass-through entity’ includes any partnership
17 or other entity to the extent that income, gain,
18 deduction, or loss of the entity is taken into ac-
19 count in determining the income or loss of a
20 person that owns (directly or indirectly) an in-
21 terest in such entity.

22 “(C) BRANCH.—Except as otherwise pro-
23 vided by the Secretary, the term ‘branch’ means
24 a taxable presence of a tax resident in a coun-
25 try other than its country of residence as deter-

1 mined under such other country’s tax law. The
2 Secretary shall provide regulations or other
3 guidance applying such term to activities in a
4 country that do not give rise to a taxable pres-
5 ence.

6 “(D) TREATMENT OF FISCALLY AUTONO-
7 MOUS JURISDICTIONS.—Any fiscally autono-
8 mous jurisdiction shall be treated as a separate
9 country. Any possession of the United States
10 shall also be treated as a separate country.

11 “(E) POSSESSION OF THE UNITED
12 STATES.—The term ‘possession of the United
13 States’ means each of American Samoa, the
14 Commonwealth of the Northern Mariana Is-
15 lands, the Commonwealth of Puerto Rico,
16 Guam, and the Virgin Islands.

17 “(4) REGULATIONS.—The Secretary shall issue
18 such regulations or other guidance as may be nec-
19 essary or appropriate to carry out, or prevent avoid-
20 ance of, the purposes of this subsection, including
21 regulations or other guidance—

22 “(A) providing for the application of this
23 subsection to an entity or arrangement that is
24 considered a tax resident of more than one
25 country or of no country,

1 “(B) providing for the application of this
 2 subsection to hybrid entities or hybrid trans-
 3 actions (as such terms are used for purposes of
 4 section 267A), pass-through entities, passive
 5 foreign investment companies, trusts, and other
 6 entities or arrangements not otherwise de-
 7 scribed in this subsection, and

8 “(C) providing for the assignment of any
 9 item (including foreign taxes and deductions) to
 10 taxable units, including in the case of amounts
 11 not otherwise taken into account in determining
 12 taxable income under this chapter.”.

13 (b) TREATMENT OF INADEQUATE SUBSTAN-
 14 TIATION.—Section 904(d)(4)(C)(ii) is amended by strik-
 15 ing “paragraph (1)(A)” and inserting “paragraph
 16 (1)(C)”.

17 (c) APPLICATION OF FOREIGN TAX CREDIT LIMITA-
 18 TION WITH RESPECT TO FOREIGN BRANCHES.—Section
 19 904(d)(2)(J)(i) is amended—

20 (1) by striking “qualified business units (as de-
 21 fined in section 989(a)) in 1 or more foreign coun-
 22 tries” and inserting “foreign branches described in
 23 section 904(e)(2)(B)(iv)”, and

24 (2) by striking “a qualified business unit” and
 25 inserting “a foreign branch”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 2022.

4 **SEC. 4. LIMITATION ON DEDUCTION OF INTEREST BY DO-**
 5 **MESTIC CORPORATIONS WHICH ARE MEM-**
 6 **BERS OF AN INTERNATIONAL FINANCIAL RE-**
 7 **PORTING GROUP.**

8 (a) IN GENERAL.—Section 163 is amended by redес-
 9 ignating subsection (n) as subsection (p) and by inserting
 10 after subsection (m) the following new subsection:

11 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
 12 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
 13 CIAL REPORTING GROUPS.—

14 “(1) IN GENERAL.—In the case of any domestic
 15 corporation which is a member of any international
 16 financial reporting group, the deduction under this
 17 chapter for interest paid or accrued during the tax-
 18 able year shall not exceed the sum of—

19 “(A) the allowable percentage of 110 per-
 20 cent of the excess (if any) of—

21 “(i) the amount of such interest so
 22 paid or accrued, over

23 “(ii) the amount described in subpara-
 24 graph (B), plus

1 “(B) the amount of interest includible in
2 gross income of such corporation for such tax-
3 able year.

4 “(2) INTERNATIONAL FINANCIAL REPORTING
5 GROUP.—

6 “(A) For purposes of this subsection, the
7 term ‘international financial reporting group’
8 means, with respect to any reporting year, any
9 group of entities which—

10 “(i) includes—

11 “(I) at least one foreign corpora-
12 tion engaged in a trade or business
13 within the United States, or

14 “(II) at least one domestic cor-
15 poration and one foreign corporation,

16 “(ii) prepares consolidated financial
17 statements with respect to such year, and

18 “(iii) reports in such statements aver-
19 age annual gross receipts (determined in
20 the aggregate with respect to all entities
21 which are part of such group) for the 3-re-
22 porting-year period ending with such re-
23 porting year in excess of \$100,000,000.

24 “(B) RULES RELATING TO DETERMINA-
25 TION OF AVERAGE GROSS RECEIPTS.—For pur-

1 poses of subparagraph (A)(iii), rules similar to
2 the rules of section 448(c)(3) shall apply.

3 “(3) ALLOWABLE PERCENTAGE.—For purposes
4 of this subsection—

5 “(A) IN GENERAL.—The term ‘allowable
6 percentage’ means, with respect to any domestic
7 corporation for any taxable year, the ratio (ex-
8 pressed as a percentage and not greater than
9 100 percent) of—

10 “(i) such corporation’s allocable share
11 of the international financial reporting
12 group’s reported net interest expense for
13 the reporting year of such group which
14 ends in or with such taxable year of such
15 corporation, over

16 “(ii) such corporation’s reported net
17 interest expense for such reporting year of
18 such group.

19 “(B) REPORTED NET INTEREST EX-
20 PENSE.—The term ‘reported net interest ex-
21 pense’ means—

22 “(i) with respect to any international
23 financial reporting group for any reporting
24 year, the excess of—

1 “(I) the aggregate amount of in-
2 terest expense reported in such
3 group’s consolidated financial state-
4 ments for such taxable year, over

5 “(II) the aggregate amount of in-
6 terest income reported in such group’s
7 consolidated financial statements for
8 such taxable year, and

9 “(ii) with respect to any domestic cor-
10 poration for any reporting year, the excess
11 of—

12 “(I) the amount of interest ex-
13 pense of such corporation reported in
14 the books and records of the inter-
15 national financial reporting group
16 which are used in preparing such
17 group’s consolidated financial state-
18 ments for such taxable year, over

19 “(II) the amount of interest in-
20 come of such corporation reported in
21 such books and records.

22 “(C) ALLOCABLE SHARE OF REPORTED
23 NET INTEREST EXPENSE.—With respect to any
24 domestic corporation which is a member of any
25 international financial reporting group, such

1 corporation's allocable share of such group's re-
2 ported net interest expense for any reporting
3 year is the portion of such expense which bears
4 the same ratio to such expense as—

5 “(i) the EBITDA of such corporation
6 for such reporting year, bears to

7 “(ii) the EBITDA of such group for
8 such reporting year.

9 “(D) EBITDA.—

10 “(i) IN GENERAL.—The term
11 ‘EBITDA’ means, with respect to any re-
12 porting year, earnings before interest,
13 taxes, depreciation, and amortization—

14 “(I) as determined in the inter-
15 national financial reporting group's
16 consolidated financial statements for
17 such year, or

18 “(II) for purposes of subpara-
19 graph (A)(i), as determined in the
20 books and records of the international
21 financial reporting group which are
22 used in preparing such statements if
23 not determined in such statements.

24 “(ii) TREATMENT OF DISREGARDED
25 ENTITIES.—The EBITDA of any domestic

1 corporation shall not fail to include the
2 EBITDA of any entity which is dis-
3 regarded for purposes of this chapter.

4 “(iii) TREATMENT OF INTRA-GROUP
5 DISTRIBUTIONS.—The EBITDA of any do-
6 mestic corporation shall be determined
7 without regard to any distribution received
8 by such corporation from any other mem-
9 ber of the international financial reporting
10 group.

11 “(E) SPECIAL RULES FOR NON-POSITIVE
12 EBITDA.—

13 “(i) NON-POSITIVE GROUP EBITDA.—
14 In the case of any international financial
15 reporting group the EBITDA of which is
16 zero or less, paragraph (1) shall not apply
17 to any member of such group the EBITDA
18 of which is above zero.

19 “(ii) NON-POSITIVE ENTITY
20 EBITDA.—In the case of any group mem-
21 ber the EBITDA of which is zero or less,
22 paragraph (1) shall be applied without re-
23 gard to subparagraph (A) thereof.

24 “(4) CONSOLIDATED FINANCIAL STATEMENT.—

25 For purposes of this subsection, the term ‘consoli-

1 dated financial statement’ means any consolidated
2 financial statement described in paragraph (2)(A)(ii)
3 if such statement is—

4 “(A) a financial statement which is cer-
5 tified as being prepared in accordance with gen-
6 erally accepted accounting principles, inter-
7 national financial reporting standards, or any
8 other comparable method of accounting identi-
9 fied by the Secretary, and which is—

10 “(i) a 10-K (or successor form), or
11 annual statement to shareholders, required
12 to be filed with the United States Securi-
13 ties and Exchange Commission,

14 “(ii) an audited financial statement
15 which is used for—

16 “(I) credit purposes,

17 “(II) reporting to shareholders,
18 partners, or other proprietors, or to
19 beneficiaries, or

20 “(III) any other substantial
21 nontax purpose,

22 but only if there is no statement described
23 in clause (i), or

24 “(iii) filed with any other Federal or
25 State agency for nontax purposes, but only

1 if there is no statement described in clause
2 (i) or (ii), or

3 “(B) a financial statement which—

4 “(i) is used for a purpose described in
5 subclause (I), (II), or (III) of subpara-
6 graph (A)(ii), or

7 “(ii) filed with any regulatory or gov-
8 ernmental body (whether domestic or for-
9 eign) specified by the Secretary,

10 but only if there is no statement described in
11 subparagraph (A).

12 “(5) REPORTING YEAR.—For purposes of this
13 subsection, the term ‘reporting year’ means, with re-
14 spect to any international financial reporting group,
15 the year with respect to which the consolidated fi-
16 nancial statements are prepared.

17 “(6) APPLICATION TO CERTAIN ENTITIES.—

18 “(A) PARTNERSHIPS.—Except as other-
19 wise provided by the Secretary in paragraph
20 (7), this subsection and subsection (o) shall
21 apply to any partnership which is a member of
22 any international financial reporting group
23 under rules similar to the rules of section
24 163(j)(4).

1 “(B) FOREIGN CORPORATIONS ENGAGED
2 IN TRADE OR BUSINESS WITHIN THE UNITED
3 STATES.—Except as otherwise provided by the
4 Secretary in paragraph (7), any deduction for
5 interest paid or accrued by a foreign corpora-
6 tion engaged in a trade or business within the
7 United States shall be limited in a manner con-
8 sistent with the principles of this subsection.

9 “(C) CONSOLIDATED GROUPS.—For pur-
10 poses of this subsection, the members of any
11 group that file (or are required to file) a con-
12 solidated return with respect to the tax imposed
13 by chapter 1 for a taxable year shall be treated
14 as a single corporation.

15 “(7) REGULATIONS.—The Secretary may issue
16 such regulations or other guidance as are necessary
17 or appropriate to carry out the purposes of this sub-
18 section.”.

19 (b) CARRYFORWARD OF DISALLOWED INTEREST.—

20 (1) IN GENERAL.—Section 163 is amended by
21 inserting after subsection (n), as added by sub-
22 section (a), the following new subsection:

23 “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-
24 TEREST.—The amount of any interest not allowed as a
25 deduction for any taxable year by reason of subsection

1 (j)(1) or (n)(1) (whichever imposes the lower limitation
2 with respect to such taxable year) shall be treated as inter-
3 est (and as business interest for purposes of subsection
4 (j)(1)) paid or accrued (and as interest expense reported
5 as described in clause (i)(I) or (ii)(I) of subsection
6 (n)(3)(B), as the case may be) in the succeeding taxable
7 year. Interest paid or accrued in any taxable year (deter-
8 mined without regard to the preceding sentence) shall not
9 be carried past the fifth taxable year following such tax-
10 able year, determined by treating interest as allowed as
11 a deduction on a first-in, first-out basis.”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) Section 163(j)(2) is amended to read
14 as follows:

15 “(2) CARRYFORWARD CROSS-REFERENCE.—For
16 carryforward treatment, see subsection (o).”.

17 (B) Section 163(j)(4)(B)(i)(I) is amended
18 by striking “paragraph (2)” and inserting “sub-
19 section (o)”.

20 (C) Section 381(c)(20) is amended to read
21 as follows:

22 “(20) CARRYFORWARD OF DISALLOWED INTER-
23 EST.—The carryover of disallowed interest described
24 in section 163(o) to taxable years ending after the
25 date of distribution or transfer.”.

1 (D) Section 382(d)(3) is amended to read
2 as follows:

3 “(3) APPLICATION TO CARRYFORWARD OF DIS-
4 ALLOWED INTEREST.—The term ‘pre-change loss’
5 shall include any carryover of disallowed interest de-
6 scribed in section 163(o) under rules similar to the
7 rules of paragraph (1).”.

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

11 **SEC. 5. MODIFICATIONS TO RULES RELATING TO IN-**
12 **VERTED CORPORATIONS.**

13 (a) IN GENERAL.—Subsection (b) of section 7874 is
14 amended to read as follows:

15 “(b) INVERTED CORPORATIONS TREATED AS DO-
16 MESTIC CORPORATIONS.—

17 “(1) IN GENERAL.—Notwithstanding section
18 7701(a)(4), a foreign corporation shall be treated for
19 purposes of this title as a domestic corporation if—

20 “(A) such corporation would be a surro-
21 gate foreign corporation if subsection (a)(2)
22 were applied by substituting ‘80 percent’ for
23 ‘60 percent’, or

24 “(B) such corporation is an inverted do-
25 mestic corporation.

1 “(2) INVERTED DOMESTIC CORPORATION.—For
2 purposes of this subsection, a foreign corporation
3 shall be treated as an inverted domestic corporation
4 if, pursuant to a plan (or a series of related trans-
5 actions)—

6 “(A) the entity completes after December
7 22, 2017, the direct or indirect acquisition of—

8 “(i) substantially all of the properties
9 held directly or indirectly by a domestic
10 corporation, or

11 “(ii) substantially all of the assets of,
12 or substantially all of the properties consti-
13 tuting a trade or business of, a domestic
14 partnership, and

15 “(B) after the acquisition, either—

16 “(i) more than 50 percent of the stock
17 (by vote or value) of the entity is held—

18 “(I) in the case of an acquisition
19 with respect to a domestic corpora-
20 tion, by former shareholders of the
21 domestic corporation by reason of
22 holding stock in the domestic corpora-
23 tion, or

24 “(II) in the case of an acquisition
25 with respect to a domestic partner-

1 ship, by former partners of the do-
2 mestic partnership by reason of hold-
3 ing a capital or profits interest in the
4 domestic partnership, or

5 “(ii) the management and control of
6 the expanded affiliated group which in-
7 cludes the entity occurs, directly or indi-
8 rectly, primarily within the United States,
9 and such expanded affiliated group has
10 significant domestic business activities.

11 “(3) EXCEPTION FOR CORPORATIONS WITH
12 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
13 COUNTRY OF ORGANIZATION.—A foreign corporation
14 described in paragraph (2) shall not be treated as an
15 inverted domestic corporation if after the acquisition
16 the expanded affiliated group which includes the en-
17 tity has substantial business activities in the foreign
18 country in which or under the law of which the enti-
19 ty is created or organized when compared to the
20 total business activities of such expanded affiliated
21 group. For purposes of subsection (a)(2)(B)(iii) and
22 the preceding sentence, the term ‘substantial busi-
23 ness activities’ shall have the meaning given such
24 term under regulations in effect on December 22,
25 2017, except that the Secretary may issue regula-

1 tions increasing the threshold percent in any of the
2 tests under such regulations for determining if busi-
3 ness activities constitute substantial business activi-
4 ties for purposes of this paragraph.

5 “(4) MANAGEMENT AND CONTROL.—For pur-
6 poses of paragraph (2)(B)(ii)—

7 “(A) IN GENERAL.—The Secretary shall
8 prescribe regulations for purposes of deter-
9 mining cases in which the management and
10 control of an expanded affiliated group is to be
11 treated as occurring, directly or indirectly, pri-
12 marily within the United States. The regula-
13 tions prescribed under the preceding sentence
14 shall apply to periods after December 22, 2017.

15 “(B) EXECUTIVE OFFICERS AND SENIOR
16 MANAGEMENT.—Such regulations shall provide
17 that the management and control of an ex-
18 panded affiliated group shall be treated as oc-
19 ccurring, directly or indirectly, primarily within
20 the United States if substantially all of the ex-
21 ecutive officers and senior management of the
22 expanded affiliated group who exercise day-to-
23 day responsibility for making decisions involving
24 strategic, financial, and operational policies of
25 the expanded affiliated group are based or pri-

1 marily located within the United States. Indi-
2 viduals who in fact exercise such day-to-day re-
3 sponsibilities shall be treated as executive offi-
4 cers and senior management regardless of their
5 title.

6 “(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
7 TIES.—For purposes of paragraph (2)(B)(ii), an ex-
8 panded affiliated group has significant domestic
9 business activities if at least 25 percent of—

10 “(A) the employees of the group are based
11 in the United States,

12 “(B) the employee compensation incurred
13 by the group is incurred with respect to employ-
14 ees based in the United States,

15 “(C) the assets of the group are located in
16 the United States, or

17 “(D) the income of the group is derived in
18 the United States,

19 determined in the same manner as such determina-
20 tions are made for purposes of determining substan-
21 tial business activities under regulations referred to
22 in paragraph (3) as in effect on December 22, 2017,
23 but applied by treating all references in such regula-
24 tions to ‘foreign country’ and ‘relevant foreign coun-
25 try’ as references to ‘the United States’. The Sec-

1 retary may issue regulations decreasing the thresh-
2 old percent in any of the tests under such regula-
3 tions for determining if business activities constitute
4 significant domestic business activities for purposes
5 of this paragraph.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Clause (i) of section 7874(a)(2)(B) is
8 amended by striking “after March 4, 2003,” and in-
9 serting “after March 4, 2003, and before December
10 23, 2017,”.

11 (2) Subsection (c) of section 7874 is amend-
12 ed—

13 (A) in paragraph (2)—

14 (i) by striking “subsection
15 (a)(2)(B)(ii)” and inserting “subsections
16 (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

17 (ii) by inserting “or (b)(2)(A)” after
18 “(a)(2)(B)(i)” in subparagraph (B);

19 (B) in paragraph (3), by inserting “or
20 (b)(2)(B)(i), as the case may be,” after
21 “(a)(2)(B)(ii)”;

22 (C) in paragraph (5), by striking “sub-
23 section (a)(2)(B)(ii)” and inserting “sub-
24 sections (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

1 (D) in paragraph (6), by inserting “or in-
2 verted domestic corporation, as the case may
3 be,” after “surrogate foreign corporation”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years ending after De-
6 cember 22, 2017.

7 (d) EXTENSION OF LIMITATION ON ASSESSMENT.—
8 If the period of limitation on assessment of tax resulting
9 from the amendments made by subsection (a) expires be-
10 fore the end of the 3-year period beginning on the date
11 of the enactment of this Act, such assessment (to the ex-
12 tent attributable to such amendments) may, nevertheless,
13 be made before the close of such 3-year period.

14 **SEC. 6. TREATMENT OF FOREIGN CORPORATIONS MAN-**
15 **AGED AND CONTROLLED IN THE UNITED**
16 **STATES AS DOMESTIC CORPORATIONS.**

17 (a) IN GENERAL.—Section 7701 is amended by re-
18 designating subsection (p) as subsection (q) and by insert-
19 ing after subsection (o) the following new subsection:

20 “(p) CERTAIN CORPORATIONS MANAGED AND CON-
21 TROLLED IN THE UNITED STATES TREATED AS DOMES-
22 TIC FOR INCOME TAX.—

23 “(1) IN GENERAL.—Notwithstanding subsection
24 (a)(4), in the case of a corporation described in
25 paragraph (2) if—

1 “(A) the corporation would not otherwise
2 be treated as a domestic corporation for pur-
3 poses of this title, but

4 “(B) the management and control of the
5 corporation occurs, directly or indirectly, pri-
6 marily within the United States,

7 then, solely for purposes of chapter 1 (and any other
8 provision of this title relating to chapter 1), the cor-
9 poration shall be treated as a domestic corporation.

10 “(2) CORPORATION DESCRIBED.—

11 “(A) IN GENERAL.—A corporation is de-
12 scribed in this paragraph if—

13 “(i) the stock of such corporation is
14 regularly traded on an established securi-
15 ties market, or

16 “(ii) the aggregate gross assets of
17 such corporation (or any predecessor there-
18 of), including assets under management
19 for investors, whether held directly or indi-
20 rectly, at any time during the taxable year
21 or any preceding taxable year is
22 \$50,000,000 or more.

23 “(B) GENERAL EXCEPTION.—A corpora-
24 tion shall not be treated as described in this
25 paragraph if—

1 “(i) such corporation was treated as a
2 corporation described in this paragraph in
3 a preceding taxable year,

4 “(ii) such corporation—

5 “(I) is not regularly traded on an
6 established securities market, and

7 “(II) has, and is reasonably ex-
8 pected to continue to have, aggregate
9 gross assets (including assets under
10 management for investors, whether
11 held directly or indirectly) of less than
12 \$50,000,000, and

13 “(iii) the Secretary grants a waiver to
14 such corporation under this subparagraph.

15 “(3) MANAGEMENT AND CONTROL.—

16 “(A) IN GENERAL.—The Secretary shall
17 prescribe regulations for purposes of deter-
18 mining cases in which the management and
19 control of a corporation is to be treated as oc-
20 curring primarily within the United States.

21 “(B) EXECUTIVE OFFICERS AND SENIOR
22 MANAGEMENT.—Such regulations shall provide
23 that—

24 “(i) the management and control of a
25 corporation shall be treated as occurring

1 primarily within the United States if sub-
2 stantially all of the executive officers and
3 senior management of the corporation who
4 exercise day-to-day responsibility for mak-
5 ing decisions involving strategic, financial,
6 and operational policies of the corporation
7 are located primarily within the United
8 States, and

9 “(ii) individuals who are not executive
10 officers and senior management of the cor-
11 poration (including individuals who are of-
12 ficers or employees of other corporations in
13 the same chain of corporations as the cor-
14 poration) shall be treated as executive offi-
15 cers and senior management if such indi-
16 viduals exercise the day-to-day responsibil-
17 ities of the corporation described in clause
18 (i).

19 “(C) CORPORATIONS PRIMARILY HOLDING
20 INVESTMENT ASSETS.—Such regulations shall
21 also provide that the management and control
22 of a corporation shall be treated as occurring
23 primarily within the United States if—

24 “(i) the assets of such corporation (di-
25 rectly or indirectly) consist primarily of as-

1 sets being managed on behalf of investors,
2 and
3 “(ii) decisions about how to invest the
4 assets are made in the United States.”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 this section shall apply to taxable years beginning on or
7 after the date which is 2 years after the date of the enact-
8 ment of this Act, whether or not regulations are issued
9 under section 7701(p)(3) of the Internal Revenue Code
10 of 1986, as added by this section.

○