

118TH CONGRESS
1ST SESSION

H. R. 884

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 HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2023

Mr. DOGGETT (for himself, Ms. ADAMS, Ms. BARRAGÁN, Mrs. BEATTY, Mr. BLUMENAUER, Ms. BONAMICI, Mr. BOWMAN, Mr. BOYLE of Pennsylvania, Ms. BROWN, Ms. BUDZINSKI, Ms. BUSH, Mr. CARSON, Mr. CARTER of Louisiana, Mr. CARTWRIGHT, Mr. CASAR, Mr. CASE, Ms. CHU, Mr. CICILLINE, Ms. CLARKE of New York, Mr. CLEAVER, Mr. COHEN, Mr. COURTNEY, Mr. CROW, Mr. DAVIS of Illinois, Ms. DEAN of Pennsylvania, Ms. DEGETTE, Ms. DELAURO, Mr. DELUZIO, Mr. DESAULNIER, Mrs. DINGELL, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. EVANS, Ms. LEGER FERNANDEZ, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. FROST, Mr. GALLEGO, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Mr. ROBERT GARCIA of California, Ms. GARCIA of Texas, Mr. GOLDEN of Maine, Mr. GOMEZ, Mr. GREEN of Texas, Mr. GRIJALVA, Mrs. HAYES, Mr. HIGGINS of New York, Ms. HOYLE of Oregon, Mr. HUFFMAN, Mr. IVEY, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. KHANNA, Mr. KIM of New Jersey, Mr. LARSON of Connecticut, Ms. LEE of California, Mr. LIEU, Mr. LYNCH, Ms. MCCOLLUM, Mr. MCGOVERN, Mr. MEEKS, Ms. MENG, Mr. MFUME, Mr. MOULTON, Mr. MRVAN, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEGUSE, Mr. NICKEL, Mr. NORCROSS, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. OMAR, Mr. PALLONE, Ms. PINGREE, Mr. POCAN, Ms. PORTER, Mr. VARGAS, Ms. VELÁZQUEZ, Ms. WATERS, Mrs. WATSON COLEMAN, Ms. WILD, Ms. WILLIAMS of Georgia, and Ms. WILSON of Florida) 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

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
9 to, or repeal of, a section or other provision, the reference
10 shall be considered to be made to a section or other provi-
11 sion of the Internal Revenue Code of 1986.

12 (c) **TABLE OF CONTENTS.**—The table of contents of
13 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.

14 **SEC. 2. CURRENT YEAR INCLUSION OF NET CFC TESTED IN-**
15 **COME.**

16 (a) **REPEAL OF TAX-FREE DEEMED RETURN ON IN-**
17 **VESTMENTS.**—

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

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 951A is amended by striking
6 subsections (b) and (d).

7 (B) Section 951A(e)(1) is amended by
8 striking “subsections (b), (c)(1)(A), and” and
9 inserting “subsections (c)(1)(A) and”.

10 (C) Section 951A(f) is amended by strik-
11 ing “global intangible low-taxed income” each
12 place it appears and inserting “net CFC tested
13 income”.

14 (D) Section 960(d)(2)(A) is amended by
15 striking “global intangible low-taxed income (as
16 defined in section 951A(b))” and inserting “net
17 CFC tested income (as defined in section
18 951A(c))”.

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

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

1 “(1) IN GENERAL.—If any CFC taxable unit of
2 a United States shareholder is a tax resident of (or,
3 in the case of a branch, is located in) a country
4 which is different from the country with respect to
5 which any other CFC taxable unit of such United
6 States shareholder is a tax resident (or, in the case
7 of a branch, is located in)—

8 “(A) such shareholder’s net CFC tested in-
9 come for purposes of subsection (a) shall be the
10 sum of the amounts of net CFC tested income
11 determined separately with respect to each such
12 country, and

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

15 “(i) except as otherwise provided by
16 the Secretary, any reference in subsection
17 (c) to a controlled foreign corporation of
18 such shareholder shall be treated as ref-
19 erence to a CFC taxable unit of such
20 shareholder, and

21 “(ii) net CFC tested income and such
22 other items and amounts as the Secretary
23 may provide, shall be determined sepa-
24 rately with respect to each such country by
25 determining such amounts with respect to

1 the CFC taxable units of such shareholder
2 which are a tax resident of such country.

3 “(2) DEFINITIONS.—For purposes of this sub-
4 section—

5 “(A) CFC TAXABLE UNIT.—The term
6 ‘CFC taxable unit’ means any taxable unit de-
7 scribed in clause (ii), (iii), or (iv) of section
8 904(e)(2)(B), determined—

9 “(i) by substituting ‘controlled foreign
10 corporation’ for ‘foreign corporation’ each
11 place it appears in such clauses, and

12 “(ii) without regard to the references
13 to the taxpayer in clauses (iii) and (iv) of
14 such section.

15 “(B) APPLICATION OF OTHER DEFINI-
16 TIONS.—Terms used in this subsection which
17 are also used in section 904(e) shall have the
18 same meaning as when used in section 904(e).

19 “(3) SPECIAL RULES.—For purposes of this
20 subsection—

21 “(A) APPLICATION OF CERTAIN RULES.—
22 Except as otherwise provided by the Secretary,
23 rules similar to the rules of section 904(e) shall
24 apply.

1 “(B) ALLOCATION OF NET CFC TESTED
2 INCOME TO CONTROLLED FOREIGN CORPORA-
3 TIONS.—Except as otherwise provided by the
4 Secretary, subsection (f)(2) shall be applied
5 separately with respect to each CFC taxable
6 unit.”.

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

10 “(h) REGULATIONS.—The Secretary shall issue such
11 regulations or other guidance as may be necessary or ap-
12 propriate to carry out, or prevent the avoidance of, the
13 purposes of this section, including regulations or guidance
14 which provide for—

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

17 “(2) the treatment of property if the avoidance
18 of the purposes of this section is a factor in the
19 transfer or holding of such property,

20 “(3) appropriate adjustments to the basis of
21 stock and other ownership interests, and to earnings
22 and profits, to reflect tested losses (whether or not
23 taken into account in determining net CFC tested
24 income),

1 “(4) rules similar to the rules provided under
2 the regulations or guidance issued under section
3 904(e)(4),

4 “(5) other appropriate basis adjustments,

5 “(6) appropriate adjustments to be made, and
6 appropriate tax attributes and records to be main-
7 tained, separately with respect to CFC taxable units,
8 and

9 “(7) appropriate adjustments in determining
10 tested income or tested loss if property is trans-
11 ferred between related parties or amounts are paid
12 or accrued between related parties.”.

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

16 “(C) TREATMENT OF CERTAIN REF-
17 ERENCES.—Except as otherwise provided by the
18 Secretary, references to section 951 or section
19 951(a) in sections 959, 961, 962, and such
20 other provisions as the Secretary may identify
21 shall include references to section 951A or sec-
22 tion 951A(a), respectively.”.

23 (e) REPEAL OF REDUCED RATE OF TAX ON NET
24 CFC TESTED INCOME AND FOREIGN-DERIVED INTAN-
25 GIBLE INCOME.—

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

5 (2) CONFORMING AMENDMENTS.—

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

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

11 (C) Section 246(b)(1) is amended—

12 (i) by striking “subsection (a) and (b)
13 of section 245, and section 250” and in-
14 serting “and subsection (a) and (b) of sec-
15 tion 245”; and

16 (ii) by striking “subsection (a) and
17 (b) of section 245, and 250” and inserting
18 “and subsection (a) and (b) of section
19 245”.

20 (D) Section 469(i)(3)(E)(iii) is amended
21 by striking “, 221, and 250” and inserting
22 “and 221”.

23 (f) REPEAL OF CERTAIN EXCLUSIONS FROM THE
24 DETERMINATION OF TESTED INCOME.—Section
25 951A(c)(2)(A)(i) is amended—

- 1 (1) by striking subclauses (III) and (V),
2 (2) by redesignating subclause (IV) as sub-
3 clause (III),
4 (3) by adding “and” at the end of subclause
5 (II), and
6 (4) by striking “and” at the end of subclause
7 (III) (as so redesignated) and inserting “over”.

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

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

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

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

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

20 (2) CONFORMING AMENDMENT.—Section
21 904(d)(3)(E) is amended by striking the last sen-
22 tence.

23 (i) ELIMINATION OF CARRYBACK OF FOREIGN TAX
24 CREDIT.—

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

1 (A) by striking “in the first preceding tax-
2 able year and in any of the first 10 succeeding
3 taxable years, in that order” and inserting “in
4 any of the first 10 succeeding taxable years, in
5 order”,

6 (B) by striking “preceding or” each place
7 it appears, and

8 (C) by striking “CARRYBACK AND” in the
9 heading thereof.

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

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

14 (B) in paragraph (2), by striking “pre-
15 ceding or” in the matter preceding subpara-
16 graph (A),

17 (C) in paragraph (3)(B)—

18 (i) by striking “in a preceding or suc-
19 ceeding” and inserting “in a succeeding”,
20 and

21 (ii) by striking “in such preceding or
22 succeeding” both places it appears and in-
23 serting “in such succeeding”, and

24 (D) in the heading, by striking
25 “CARRYBACK AND”.

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

3 (1) IN GENERAL.—Section 954(a) is amended
4 by striking “and” at the end of paragraph (2), by
5 striking the period at the end of paragraph (3) and
6 inserting “, and”, and by adding at the end the fol-
7 lowing new paragraph:

8 “(4) the foreign base company oil related in-
9 come for the taxable year (determined under sub-
10 section (f) and reduced as provided in subsection
11 (b)(5)).”.

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

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

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

23 “(2) oil, gas, or a primary product of oil or gas
24 which is sold by the foreign corporation or a related
25 person for use or consumption within such country

1 or is loaded in such country on a vessel or aircraft
2 as fuel for such vessel or aircraft.

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

5 (3) CONFORMING AMENDMENTS.—

6 (A) Section 952(c)(1)(B)(iii) is amended
7 by redesignating subclauses (III) and (IV) as
8 subclauses (IV) and (V), respectively, and by
9 inserting after subclause (II) the following new
10 subclause:

11 “(III) foreign base company oil
12 related income.”.

13 (B) Section 954(b) is amended—

14 (i) by striking “and the foreign base
15 company services income” in paragraph
16 (5) and inserting “the foreign base com-
17 pany services income, and the foreign base
18 company oil related income”, and

19 (ii) by adding at the end the following
20 new paragraph:

21 “(6) FOREIGN BASE COMPANY OIL RELATED IN-
22 COME NOT TREATED AS ANOTHER KIND OF FOREIGN
23 BASE COMPANY INCOME.—Income of a corporation
24 which is foreign base company oil related income
25 shall not be considered foreign base company income

1 of such corporation under paragraph (2) or (3) of
2 subsection (a).”.

3 (k) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this subsection, the amendments made by
6 this section shall apply to taxable years of foreign
7 corporations beginning after December 31, 2022,
8 and to taxable years of United States shareholders
9 in which or with which such taxable years of foreign
10 corporations end.

11 (2) REGULATORY AUTHORITY AND COORDINA-
12 TION WITH OTHER PROVISIONS.—The amendments
13 made by subsections (c) and (d) shall apply to tax-
14 able years of foreign corporations beginning after
15 the date of the enactment of this Act, and to taxable
16 years of United States shareholders in which or with
17 which such taxable years of foreign corporations
18 end.

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

23 (4) ELIMINATION OF CARRYBACK OF FOREIGN
24 TAX CREDIT.—The amendment made by subsection

1 (i) shall apply to credits arising in taxable years be-
 2 ginning after December 31, 2022.

3 (l) NO INFERENCE REGARDING CERTAIN MODIFICA-
 4 TIONS.—The amendments made by subsections (c) and
 5 (d) shall not be construed to create any inference with re-
 6 spect to the proper application of any provision of the In-
 7 ternal Revenue Code of 1986 with respect to any taxable
 8 year beginning before the taxable years to which such
 9 amendments apply.

10 **SEC. 3. COUNTRY-BY-COUNTRY APPLICATION OF LIMITA-**
 11 **TION ON FOREIGN TAX CREDIT BASED ON**
 12 **TAXABLE UNITS.**

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

15 “(e) COUNTRY-BY-COUNTRY APPLICATION BASED ON
 16 TAXABLE UNITS.—

17 “(1) IN GENERAL.—Subsection (d) (and the
 18 provisions of this title referred to in paragraph (1)
 19 of such subsection) shall be applied separately with
 20 respect to each country by taking into account the
 21 aggregate income properly attributable or otherwise
 22 allocable to a taxable unit of the taxpayer which is
 23 a tax resident of (or, in the case of a branch, is lo-
 24 cated in) such country.

25 “(2) TAXABLE UNITS.—

1 “(A) IN GENERAL.—Except as otherwise
2 provided by the Secretary, each item shall be
3 attributable or otherwise allocable to exactly
4 one taxable unit of the taxpayer.

5 “(B) DETERMINATION OF TAXABLE
6 UNITS.—Except as otherwise provided by the
7 Secretary, the taxable units of a taxpayer are
8 as follows:

9 “(i) GENERAL TAXABLE UNIT.—The
10 person that is the taxpayer and that is not
11 otherwise described in a separate clause of
12 this subparagraph.

13 “(ii) CERTAIN FOREIGN CORPORA-
14 TIONS.—Each foreign corporation with re-
15 spect to which the taxpayer is a United
16 States shareholder.

17 “(iii) INTERESTS IN PASS-THROUGH
18 ENTITIES.—Each interest held (directly or
19 indirectly) by the taxpayer or any foreign
20 corporation referred to in clause (ii) in a
21 pass-through entity if such pass-through
22 entity is a tax resident of a country other
23 than the country with respect to which
24 such taxpayer or foreign corporation (as
25 the case may be) is a tax resident.

1 “(iv) BRANCHES.—Each branch (or
2 portion thereof) the activities of which are
3 directly or indirectly carried on by the tax-
4 payer or any foreign corporation referred
5 to in clause (ii) and which give rise to a
6 taxable presence in a country other than
7 the country with respect to which such tax-
8 payer or foreign corporation (as the case
9 may be) is a tax resident.

10 “(3) DEFINITIONS AND SPECIAL RULES.—For
11 purposes of this subsection—

12 “(A) TAX RESIDENT.—Except as otherwise
13 provided by the Secretary, the term ‘tax resi-
14 dent’ means a person or entity subject to tax
15 under the tax law of a country as a resident. If
16 an entity is organized under the law of a coun-
17 try, or resident in a country, that does not im-
18 pose an income tax with respect to such enti-
19 ties, such entity shall, except as provided by the
20 Secretary, be treated as subject to tax under
21 the tax law of such country for the purposes of
22 the preceding sentence.

23 “(B) PASS-THROUGH ENTITY.—Except as
24 otherwise provided by the Secretary, the term
25 ‘pass-through entity’ includes any partnership

1 or other entity to the extent that income, gain,
2 deduction, or loss of the entity is taken into ac-
3 count in determining the income or loss of a
4 person that owns (directly or indirectly) an in-
5 terest in such entity.

6 “(C) BRANCH.—Except as otherwise pro-
7 vided by the Secretary, the term ‘branch’ means
8 a taxable presence of a tax resident in a coun-
9 try other than its country of residence as deter-
10 mined under such other country’s tax law. The
11 Secretary shall provide regulations or other
12 guidance applying such term to activities in a
13 country that do not give rise to a taxable pres-
14 ence.

15 “(D) TREATMENT OF FISCALLY AUTONO-
16 MOUS JURISDICTIONS.—Any fiscally autono-
17 mous jurisdiction shall be treated as a separate
18 country. Any possession of the United States
19 shall also be treated as a separate country.

20 “(E) POSSESSION OF THE UNITED
21 STATES.—The term ‘possession of the United
22 States’ means each of American Samoa, the
23 Commonwealth of the Northern Mariana Is-
24 lands, the Commonwealth of Puerto Rico,
25 Guam, and the Virgin Islands.

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

6 “(A) providing for the application of this
7 subsection to an entity or arrangement that is
8 considered a tax resident of more than one
9 country or of no country,

10 “(B) providing for the application of this
11 subsection to hybrid entities or hybrid trans-
12 actions (as such terms are used for purposes of
13 section 267A), pass-through entities, passive
14 foreign investment companies, trusts, and other
15 entities or arrangements not otherwise de-
16 scribed in this subsection, and

17 “(C) providing for the assignment of any
18 item (including foreign taxes and deductions) to
19 taxable units, including in the case of amounts
20 not otherwise taken into account in determining
21 taxable income under this chapter.”.

22 (b) TREATMENT OF INADEQUATE SUBSTAN-
23 TIALION.—Section 904(d)(4)(C)(ii) is amended by strik-
24 ing “paragraph (1)(A)” and inserting “paragraph
25 (1)(C)”.

1 (c) APPLICATION OF FOREIGN TAX CREDIT LIMITA-
2 TION WITH RESPECT TO FOREIGN BRANCHES.—Section
3 904(d)(2)(J)(i) is amended—

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

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

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

13 **SEC. 4. LIMITATION ON DEDUCTION OF INTEREST BY DO-**
14 **MESTIC CORPORATIONS WHICH ARE MEM-**
15 **BERS OF AN INTERNATIONAL FINANCIAL RE-**
16 **PORTING GROUP.**

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

20 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
21 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
22 CIAL REPORTING GROUPS.—

23 “(1) IN GENERAL.—In the case of any domestic
24 corporation which is a member of any international
25 financial reporting group, the deduction under this

1 chapter for interest paid or accrued during the tax-
2 able year shall not exceed the sum of—

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

5 “(i) the amount of such interest so
6 paid or accrued, over

7 “(ii) the amount described in subpara-
8 graph (B), plus

9 “(B) the amount of interest includible in
10 gross income of such corporation for such tax-
11 able year.

12 “(2) INTERNATIONAL FINANCIAL REPORTING
13 GROUP.—

14 “(A) For purposes of this subsection, the
15 term ‘international financial reporting group’
16 means, with respect to any reporting year, any
17 group of entities which—

18 “(i) includes—

19 “(I) at least one foreign corpora-
20 tion engaged in a trade or business
21 within the United States, or

22 “(II) at least one domestic cor-
23 poration and one foreign corporation,

24 “(ii) prepares consolidated financial
25 statements with respect to such year, and

1 “(iii) reports in such statements aver-
2 age annual gross receipts (determined in
3 the aggregate with respect to all entities
4 which are part of such group) for the 3-re-
5 porting-year period ending with such re-
6 porting year in excess of \$100,000,000.

7 “(B) RULES RELATING TO DETERMINA-
8 TION OF AVERAGE GROSS RECEIPTS.—For pur-
9 poses of subparagraph (A)(iii), rules similar to
10 the rules of section 448(c)(3) shall apply.

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

13 “(A) IN GENERAL.—The term ‘allowable
14 percentage’ means, with respect to any domestic
15 corporation for any taxable year, the ratio (ex-
16 pressed as a percentage and not greater than
17 100 percent) of—

18 “(i) such corporation’s allocable share
19 of the international financial reporting
20 group’s reported net interest expense for
21 the reporting year of such group which
22 ends in or with such taxable year of such
23 corporation, over

1 “(ii) such corporation’s reported net
2 interest expense for such reporting year of
3 such group.

4 “(B) REPORTED NET INTEREST EX-
5 PENSE.—The term ‘reported net interest ex-
6 pense’ means—

7 “(i) with respect to any international
8 financial reporting group for any reporting
9 year, the excess of—

10 “(I) the aggregate amount of in-
11 terest expense reported in such
12 group’s consolidated financial state-
13 ments for such taxable year, over

14 “(II) the aggregate amount of in-
15 terest income reported in such group’s
16 consolidated financial statements for
17 such taxable year, and

18 “(ii) with respect to any domestic cor-
19 poration for any reporting year, the excess
20 of—

21 “(I) the amount of interest ex-
22 pense of such corporation reported in
23 the books and records of the inter-
24 national financial reporting group
25 which are used in preparing such

1 group's consolidated financial state-
2 ments for such taxable year, over

3 “(II) the amount of interest in-
4 come of such corporation reported in
5 such books and records.

6 “(C) ALLOCABLE SHARE OF REPORTED
7 NET INTEREST EXPENSE.—With respect to any
8 domestic corporation which is a member of any
9 international financial reporting group, such
10 corporation's allocable share of such group's re-
11 ported net interest expense for any reporting
12 year is the portion of such expense which bears
13 the same ratio to such expense as—

14 “(i) the EBITDA of such corporation
15 for such reporting year, bears to

16 “(ii) the EBITDA of such group for
17 such reporting year.

18 “(D) EBITDA.—

19 “(i) IN GENERAL.—The term
20 ‘EBITDA’ means, with respect to any re-
21 porting year, earnings before interest,
22 taxes, depreciation, and amortization—

23 “(I) as determined in the inter-
24 national financial reporting group's

1 consolidated financial statements for
2 such year, or

3 “(II) for purposes of subpara-
4 graph (A)(i), as determined in the
5 books and records of the international
6 financial reporting group which are
7 used in preparing such statements if
8 not determined in such statements.

9 “(ii) TREATMENT OF DISREGARDED
10 ENTITIES.—The EBITDA of any domestic
11 corporation shall not fail to include the
12 EBITDA of any entity which is dis-
13 regarded for purposes of this chapter.

14 “(iii) TREATMENT OF INTRA-GROUP
15 DISTRIBUTIONS.—The EBITDA of any do-
16 mestic corporation shall be determined
17 without regard to any distribution received
18 by such corporation from any other mem-
19 ber of the international financial reporting
20 group.

21 “(E) SPECIAL RULES FOR NON-POSITIVE
22 EBITDA.—

23 “(i) NON-POSITIVE GROUP EBITDA.—
24 In the case of any international financial
25 reporting group the EBITDA of which is

1 zero or less, paragraph (1) shall not apply
2 to any member of such group the EBITDA
3 of which is above zero.

4 “(ii) NON-POSITIVE ENTITY
5 EBITDA.—In the case of any group mem-
6 ber the EBITDA of which is zero or less,
7 paragraph (1) shall be applied without re-
8 gard to subparagraph (A) thereof.

9 “(4) CONSOLIDATED FINANCIAL STATEMENT.—
10 For purposes of this subsection, the term ‘consoli-
11 dated financial statement’ means any consolidated
12 financial statement described in paragraph (2)(A)(ii)
13 if such statement is—

14 “(A) a financial statement which is cer-
15 tified as being prepared in accordance with gen-
16 erally accepted accounting principles, inter-
17 national financial reporting standards, or any
18 other comparable method of accounting identi-
19 fied by the Secretary, and which is—

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

24 “(ii) an audited financial statement
25 which is used for—

1 “(I) credit purposes,
2 “(II) reporting to shareholders,
3 partners, or other proprietors, or to
4 beneficiaries, or
5 “(III) any other substantial
6 nontax purpose,
7 but only if there is no statement described
8 in clause (i), or
9 “(iii) filed with any other Federal or
10 State agency for nontax purposes, but only
11 if there is no statement described in clause
12 (i) or (ii), or
13 “(B) a financial statement which—
14 “(i) is used for a purpose described in
15 subclause (I), (II), or (III) of subpara-
16 graph (A)(ii), or
17 “(ii) filed with any regulatory or gov-
18 ernmental body (whether domestic or for-
19 eign) specified by the Secretary,
20 but only if there is no statement described in
21 subparagraph (A).
22 “(5) REPORTING YEAR.—For purposes of this
23 subsection, the term ‘reporting year’ means, with re-
24 spect to any international financial reporting group,

1 the year with respect to which the consolidated fi-
2 nancial statements are prepared.

3 “(6) APPLICATION TO CERTAIN ENTITIES.—

4 “(A) PARTNERSHIPS.—Except as other-
5 wise provided by the Secretary in paragraph
6 (7), this subsection and subsection (o) shall
7 apply to any partnership which is a member of
8 any international financial reporting group
9 under rules similar to the rules of section
10 163(j)(4).

11 “(B) FOREIGN CORPORATIONS ENGAGED
12 IN TRADE OR BUSINESS WITHIN THE UNITED
13 STATES.—Except as otherwise provided by the
14 Secretary in paragraph (7), any deduction for
15 interest paid or accrued by a foreign corpora-
16 tion engaged in a trade or business within the
17 United States shall be limited in a manner con-
18 sistent with the principles of this subsection.

19 “(C) CONSOLIDATED GROUPS.—For pur-
20 poses of this subsection, the members of any
21 group that file (or are required to file) a con-
22 solidated return with respect to the tax imposed
23 by chapter 1 for a taxable year shall be treated
24 as a single corporation.

1 “(7) REGULATIONS.—The Secretary may issue
2 such regulations or other guidance as are necessary
3 or appropriate to carry out the purposes of this sub-
4 section.”.

5 (b) CARRYFORWARD OF DISALLOWED INTEREST.—

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

9 “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-
10 TEREST.—The amount of any interest not allowed as a
11 deduction for any taxable year by reason of subsection
12 (j)(1) or (n)(1) (whichever imposes the lower limitation
13 with respect to such taxable year) shall be treated as inter-
14 est (and as business interest for purposes of subsection
15 (j)(1)) paid or accrued (and as interest expense reported
16 as described in clause (i)(I) or (ii)(I) of subsection
17 (n)(3)(B), as the case may be) in the succeeding taxable
18 year. Interest paid or accrued in any taxable year (deter-
19 mined without regard to the preceding sentence) shall not
20 be carried past the fifth taxable year following such tax-
21 able year, determined by treating interest as allowed as
22 a deduction on a first-in, first-out basis.”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 163(j)(2) is amended to read
25 as follows:

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

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

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

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

12 (D) Section 382(d)(3) is amended to read
13 as follows:

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

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

22 **SEC. 5. MODIFICATIONS TO RULES RELATING TO IN-**
23 **VERTED CORPORATIONS.**

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

1 “(b) INVERTED CORPORATIONS TREATED AS DO-
2 MESTIC CORPORATIONS.—

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

6 “(A) such corporation would be a surro-
7 gate foreign corporation if subsection (a)(2)
8 were applied by substituting ‘80 percent’ for
9 ‘60 percent’, or

10 “(B) such corporation is an inverted do-
11 mestic corporation.

12 “(2) INVERTED DOMESTIC CORPORATION.—For
13 purposes of this subsection, a foreign corporation
14 shall be treated as an inverted domestic corporation
15 if, pursuant to a plan (or a series of related trans-
16 actions)—

17 “(A) the entity completes after December
18 22, 2017, the direct or indirect acquisition of—

19 “(i) substantially all of the properties
20 held directly or indirectly by a domestic
21 corporation, or

22 “(ii) substantially all of the assets of,
23 or substantially all of the properties consti-
24 tuting a trade or business of, a domestic
25 partnership, and

1 “(B) after the acquisition, either—

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

4 “(I) in the case of an acquisition
5 with respect to a domestic corpora-
6 tion, by former shareholders of the
7 domestic corporation by reason of
8 holding stock in the domestic corpora-
9 tion, or

10 “(II) in the case of an acquisition
11 with respect to a domestic partner-
12 ship, by former partners of the do-
13 mestic partnership by reason of hold-
14 ing a capital or profits interest in the
15 domestic partnership, or

16 “(ii) the management and control of
17 the expanded affiliated group which in-
18 cludes the entity occurs, directly or indi-
19 rectly, primarily within the United States,
20 and such expanded affiliated group has
21 significant domestic business activities.

22 “(3) EXCEPTION FOR CORPORATIONS WITH
23 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
24 COUNTRY OF ORGANIZATION.—A foreign corporation
25 described in paragraph (2) shall not be treated as an

1 inverted domestic corporation if after the acquisition
2 the expanded affiliated group which includes the en-
3 tity has substantial business activities in the foreign
4 country in which or under the law of which the enti-
5 ty is created or organized when compared to the
6 total business activities of such expanded affiliated
7 group. For purposes of subsection (a)(2)(B)(iii) and
8 the preceding sentence, the term ‘substantial busi-
9 ness activities’ shall have the meaning given such
10 term under regulations in effect on December 22,
11 2017, except that the Secretary may issue regula-
12 tions increasing the threshold percent in any of the
13 tests under such regulations for determining if busi-
14 ness activities constitute substantial business activi-
15 ties for purposes of this paragraph.

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

18 “(A) IN GENERAL.—The Secretary shall
19 prescribe regulations for purposes of deter-
20 mining cases in which the management and
21 control of an expanded affiliated group is to be
22 treated as occurring, directly or indirectly, pri-
23 marily within the United States. The regula-
24 tions prescribed under the preceding sentence
25 shall apply to periods after December 22, 2017.

1 “(B) EXECUTIVE OFFICERS AND SENIOR
2 MANAGEMENT.—Such regulations shall provide
3 that the management and control of an ex-
4 panded affiliated group shall be treated as oc-
5 curring, directly or indirectly, primarily within
6 the United States if substantially all of the ex-
7 ecutive officers and senior management of the
8 expanded affiliated group who exercise day-to-
9 day responsibility for making decisions involving
10 strategic, financial, and operational policies of
11 the expanded affiliated group are based or pri-
12 marily located within the United States. Indi-
13 viduals who in fact exercise such day-to-day re-
14 sponsibilities shall be treated as executive offi-
15 cers and senior management regardless of their
16 title.

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

21 “(A) the employees of the group are based
22 in the United States,

23 “(B) the employee compensation incurred
24 by the group is incurred with respect to employ-
25 ees based in the United States,

1 “(C) the assets of the group are located in
2 the United States, or

3 “(D) the income of the group is derived in
4 the United States,

5 determined in the same manner as such determina-
6 tions are made for purposes of determining substan-
7 tial business activities under regulations referred to
8 in paragraph (3) as in effect on December 22, 2017,
9 but applied by treating all references in such regula-
10 tions to ‘foreign country’ and ‘relevant foreign coun-
11 try’ as references to ‘the United States’. The Sec-
12 retary may issue regulations decreasing the thresh-
13 old percent in any of the tests under such regula-
14 tions for determining if business activities constitute
15 significant domestic business activities for purposes
16 of this paragraph.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) Clause (i) of section 7874(a)(2)(B) is
19 amended by striking “after March 4, 2003,” and in-
20 serting “after March 4, 2003, and before December
21 23, 2017,”.

22 (2) Subsection (c) of section 7874 is amend-
23 ed—

24 (A) in paragraph (2)—

1 (i) by striking “subsection
2 (a)(2)(B)(ii)” and inserting “subsections
3 (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

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

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

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

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

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

18 (d) EXTENSION OF LIMITATION ON ASSESSMENT.—
19 If the period of limitation on assessment of tax resulting
20 from the amendments made by subsection (a) expires be-
21 fore the end of the 3-year period beginning on the date
22 of the enactment of this Act, such assessment (to the ex-
23 tent attributable to such amendments) may, nevertheless,
24 be made before the close of such 3-year period.

1 **SEC. 6. TREATMENT OF FOREIGN CORPORATIONS MAN-**
2 **AGED AND CONTROLLED IN THE UNITED**
3 **STATES AS DOMESTIC CORPORATIONS.**

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

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

10 “(1) IN GENERAL.—Notwithstanding subsection
11 (a)(4), in the case of a corporation described in
12 paragraph (2) if—

13 “(A) the corporation would not otherwise
14 be treated as a domestic corporation for pur-
15 poses of this title, but

16 “(B) the management and control of the
17 corporation occurs, directly or indirectly, pri-
18 marily within the United States,

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

22 “(2) CORPORATION DESCRIBED.—

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

1 “(i) the stock of such corporation is
2 regularly traded on an established securi-
3 ties market, or

4 “(ii) the aggregate gross assets of
5 such corporation (or any predecessor there-
6 of), including assets under management
7 for investors, whether held directly or indi-
8 rectly, at any time during the taxable year
9 or any preceding taxable year is
10 \$50,000,000 or more.

11 “(B) GENERAL EXCEPTION.—A corpora-
12 tion shall not be treated as described in this
13 paragraph if—

14 “(i) such corporation was treated as a
15 corporation described in this paragraph in
16 a preceding taxable year,

17 “(ii) such corporation—

18 “(I) is not regularly traded on an
19 established securities market, and

20 “(II) has, and is reasonably ex-
21 pected to continue to have, aggregate
22 gross assets (including assets under
23 management for investors, whether
24 held directly or indirectly) of less than
25 \$50,000,000, and

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

3 “(3) MANAGEMENT AND CONTROL.—

4 “(A) IN GENERAL.—The Secretary shall
5 prescribe regulations for purposes of deter-
6 mining cases in which the management and
7 control of a corporation is to be treated as oc-
8 curring primarily within the United States.

9 “(B) EXECUTIVE OFFICERS AND SENIOR
10 MANAGEMENT.—Such regulations shall provide
11 that—

12 “(i) the management and control of a
13 corporation shall be treated as occurring
14 primarily within the United States if sub-
15 stantially all of the executive officers and
16 senior management of the corporation who
17 exercise day-to-day responsibility for mak-
18 ing decisions involving strategic, financial,
19 and operational policies of the corporation
20 are located primarily within the United
21 States, and

22 “(ii) individuals who are not executive
23 officers and senior management of the cor-
24 poration (including individuals who are of-
25 ficers or employees of other corporations in

1 the same chain of corporations as the cor-
2 poration) shall be treated as executive offi-
3 cers and senior management if such indi-
4 viduals exercise the day-to-day responsibil-
5 ities of the corporation described in clause
6 (i).

7 “(C) CORPORATIONS PRIMARILY HOLDING
8 INVESTMENT ASSETS.—Such regulations shall
9 also provide that the management and control
10 of a corporation shall be treated as occurring
11 primarily within the United States if—

12 “(i) the assets of such corporation (di-
13 rectly or indirectly) consist primarily of as-
14 sets being managed on behalf of investors,
15 and

16 “(ii) decisions about how to invest the
17 assets are made in the United States.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning on or
20 after the date which is 2 years after the date of the enact-
21 ment of this Act, whether or not regulations are issued
22 under section 7701(p)(3) of the Internal Revenue Code
23 of 1986, as added by this section.

○