

112TH CONGRESS
2D SESSION

S. 2091

To amend the Internal Revenue Code of 1986 to reform the international tax system of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2012

Mr. ENZI 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 reform the international tax system of the United States, 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “United States Job Creation and International Tax Re-
7 form Act of 2012”.

8 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
9 wise expressly provided, whenever in this Act an amend-
10 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; amendment of 1986 Code; table of contents.

TITLE I—PARTICIPATION EXEMPTION SYSTEM FOR TAXATION OF FOREIGN INCOME

Sec. 101. Deduction for dividends received by domestic corporations from cer-
tain foreign corporations.

Sec. 102. Application of dividends received deduction to certain sales and ex-
changes of stock.

Sec. 103. Deduction for foreign intangible income derived from trade or busi-
ness within the United States.

Sec. 104. Treatment of deferred foreign income upon transition to participation
exemption system of taxation.

TITLE II—OTHER INTERNATIONAL TAX REFORMS

Subtitle A—Modifications of Subpart F

Sec. 201. Treatment of low-taxed foreign income as subpart F income.

Sec. 202. Permanent extension of look-thru rule for controlled foreign corpora-
tions.

Sec. 203. Permanent extension of exceptions for active financing income.

Sec. 204. Foreign base company income not to include sales or services income.

Subtitle B—Modifications Related to Foreign Tax Credit

Sec. 211. Modification of application of sections 902 and 960 with respect to
post-2012 earnings.

Sec. 212. Separate foreign tax credit basket for foreign intangible income.

Sec. 213. Inventory property sales source rule exceptions not to apply for for-
eign tax credit limitation.

Subtitle C—Allocation of Interest on Worldwide Basis

Sec. 221. Acceleration of election to allocate interest on a worldwide basis.

1 **TITLE I—PARTICIPATION EX-**
 2 **EMPTION SYSTEM FOR TAX-**
 3 **ATION OF FOREIGN INCOME**

4 **SEC. 101. DEDUCTION FOR DIVIDENDS RECEIVED BY DO-**
 5 **MESTIC CORPORATIONS FROM CERTAIN FOR-**
 6 **EIGN CORPORATIONS.**

7 (a) ALLOWANCE OF DEDUCTION.—Part VIII of sub-
 8 chapter B of chapter 1 is amended by inserting after sec-
 9 tion 245 the following new section:

10 **“SEC. 245A. DIVIDENDS RECEIVED BY DOMESTIC CORPORA-**
 11 **TIONS FROM CERTAIN FOREIGN CORPORA-**
 12 **TIONS.**

13 “(a) IN GENERAL.—In the case of any dividend re-
 14 ceived from a controlled foreign corporation by a domestic
 15 corporation which is a United States shareholder with re-
 16 spect to such controlled foreign corporation, there shall be
 17 allowed as a deduction an amount equal to 95 percent of
 18 the qualified foreign-source portion of the dividend.

19 “(b) TREATMENT OF ELECTING NONCONTROLLED
 20 SECTION 902 CORPORATIONS AS CONTROLLED FOREIGN
 21 CORPORATIONS.—

22 “(1) IN GENERAL.—If a domestic corporation
 23 elects the application of this subsection for any non-
 24 controlled section 902 corporation with respect to

1 the domestic corporation, then, for purposes of this
2 title—

3 “(A) the noncontrolled section 902 cor-
4 poration shall be treated as a controlled foreign
5 corporation with respect to the domestic cor-
6 poration, and

7 “(B) the domestic corporation shall be
8 treated as a United States shareholder with re-
9 spect to the noncontrolled section 902 corpora-
10 tion.

11 “(2) ELECTION.—

12 “(A) TIME OF ELECTION.—Any election
13 under this subsection with respect to any non-
14 controlled section 902 corporation shall be
15 made not later than the due date for filing the
16 return of tax for the first taxable year of the
17 taxpayer with respect to which the foreign cor-
18 poration is a noncontrolled section 902 corpora-
19 tion with respect to the taxpayer (or, if later,
20 the first taxable year of the taxpayer for which
21 this section is in effect).

22 “(B) REVOCATION OF ELECTION.—Any
23 election under this subsection, once made, may
24 be revoked only with the consent of the Sec-
25 retary.

1 “(C) CONTROLLED GROUPS.—If a domes-
2 tic corporation making an election under this
3 subsection with respect to any noncontrolled
4 section 902 corporation is a member of a con-
5 trolled group of corporations (within the mean-
6 ing of section 1563(a), except that ‘more than
7 50 percent’ shall be substituted for ‘at least 80
8 percent’ each place it appears therein), then,
9 except as otherwise provided by the Secretary,
10 such election shall apply to all members of such
11 group.

12 “(c) QUALIFIED FOREIGN-SOURCE PORTION OF
13 DIVIDENDS.—For purposes of this section—

14 “(1) QUALIFIED FOREIGN-SOURCE PORTION.—

15 “(A) IN GENERAL.—The qualified foreign-
16 source portion of any dividend is an amount
17 which bears the same ratio to such dividend
18 as—

19 “(i) the post-2012 undistributed
20 qualified foreign earnings, bears to

21 “(ii) the total post-2012 undistributed
22 earnings.

23 “(B) POST-2012 UNDISTRIBUTED EARN-
24 INGS.—The term ‘post-2012 undistributed
25 earnings’ means the amount of the earnings

1 and profits of a controlled foreign corporation
2 (computed in accordance with sections 964(a)
3 and 986) accumulated in taxable years begin-
4 ning after December 31, 2012—

5 “(i) as of the close of the taxable year
6 of the controlled foreign corporation in
7 which the dividend is distributed, and

8 “(ii) without diminution by reason of
9 dividends distributed during such taxable
10 years.

11 “(C) POST-2012 UNDISTRIBUTED QUALI-
12 FIED FOREIGN EARNINGS.—The term ‘post-
13 2012 undistributed qualified foreign earnings’
14 means the portion of the post-2012 undistrib-
15 uted earnings which is attributable to income
16 other than—

17 “(i) income described in section
18 245(a)(5)(A), or

19 “(ii) dividends described in section
20 245(a)(5)(B).

21 “(2) ORDERING RULE FOR DISTRIBUTIONS OF
22 EARNINGS AND PROFITS.—Distributions shall be
23 treated as first made out of earnings and profits of
24 a controlled foreign corporation which are not post-

1 2012 undistributed earnings and then out of post-
2 2012 undistributed earnings.

3 “(d) DISALLOWANCE OF FOREIGN TAX CREDIT,
4 ETC.—

5 “(1) IN GENERAL.—No credit shall be allowed
6 under section 901 for any taxes paid or accrued (or
7 treated as paid or accrued) with respect to the quali-
8 fied foreign-source portion of any dividend.

9 “(2) DENIAL OF DEDUCTION.—No deduction
10 shall be allowed under this chapter for any tax for
11 which credit is not allowable under section 901 by
12 reason of paragraph (1).

13 “(3) COORDINATION WITH SECTION 78.—Sec-
14 tion 78 shall not apply to any tax for which credit
15 is not allowable under section 901 by reason of para-
16 graph (1).

17 “(4) TREATMENT OF NONDEDUCTIBLE POR-
18 TION IN APPLYING FOREIGN TAX CREDIT LIMIT.—
19 For purposes of applying the limitation under sec-
20 tion 904(a), the remaining 5 percent of the qualified
21 foreign-source portion of any dividend with respect
22 to which a deduction is not allowable to the domestic
23 corporation under subsection (a) shall be treated as
24 income from sources within the United States.

25 “(e) SPECIAL RULES FOR HYBRID DIVIDENDS.—

1 “(1) IN GENERAL.—Subsection (a) shall not
2 apply to any dividend received by a United States
3 shareholder from a controlled foreign corporation if
4 the dividend is a hybrid dividend.

5 “(2) HYBRID DIVIDENDS OF TIERED CON-
6 TROLLED FOREIGN CORPORATIONS.—If a controlled
7 foreign corporation with respect to which a domestic
8 corporation is a United States shareholder receives
9 a hybrid dividend from any other controlled foreign
10 corporation with respect to which such domestic cor-
11 poration is also a United States shareholder, then,
12 notwithstanding any other provision of this title—

13 “(A) the hybrid dividend shall be treated
14 for purposes of section 951(a)(1)(A) as subpart
15 F income of the receiving controlled foreign cor-
16 poration for the taxable year of the controlled
17 foreign corporation in which the dividend was
18 received, and

19 “(B) the United States shareholder shall
20 include in gross income an amount equal to the
21 shareholder’s pro rata share (determined in the
22 same manner as under section 951(a)(2)) of the
23 subpart F income described in subparagraph
24 (A).

1 “(3) DENIAL OF FOREIGN TAX CREDIT, ETC.—

2 The rules of subsection (d) shall apply to any hybrid
3 dividend received by, or any amount included under
4 paragraph (2) in the gross income of, a United
5 States shareholder, except that, for purposes of ap-
6 plying subsection (d)(4), all of such dividend or
7 amount shall be treated as income from sources
8 within the United States.

9 “(4) HYBRID DIVIDEND.—The term ‘hybrid
10 dividend’ means an amount received from a con-
11 trolled foreign corporation—

12 “(A) which is treated as a dividend for
13 purposes of this title, and

14 “(B) for which the controlled foreign cor-
15 poration received a deduction (or similar tax
16 benefit) under the laws of the country in which
17 the controlled foreign corporation was created
18 or organized.

19 “(f) DEFINITIONS.—For purposes of this section—

20 “(1) UNITED STATES SHAREHOLDER.—The
21 term ‘United States shareholder’ has the meaning
22 given such term in section 951(b).

23 “(2) CONTROLLED FOREIGN CORPORATION.—
24 The term ‘controlled foreign corporation’ has the
25 meaning given such term in section 957(a).

1 “(3) NONCONTROLLED SECTION 902 CORPORA-
 2 TION.—The term ‘noncontrolled section 902 corpora-
 3 tion’ has the meaning given such term in section
 4 904(d)(2)(E)(i).

5 “(g) REGULATIONS.—The Secretary shall prescribe
 6 such regulations as may be necessary or appropriate to
 7 carry out the provisions of this section.”.

8 (b) APPLICATION OF HOLDING PERIOD REQUIRE-
 9 MENT.—Subsection (c) of section 246 is amended—

10 (1) by striking “or 245” in paragraph (1) and
 11 inserting “245, or 245A”, and

12 (2) by adding at the end the following new
 13 paragraph:

14 “(5) SPECIAL RULES FOR QUALIFIED FOREIGN-
 15 SOURCE PORTION OF DIVIDENDS RECEIVED FROM
 16 CONTROLLED FOREIGN CORPORATIONS.—

17 “(A) 1-YEAR HOLDING PERIOD REQUIRE-
 18 MENT.—For purposes of section 245A—

19 “(i) paragraph (1)(A) shall be ap-
 20 plied—

21 “(I) by substituting ‘365 days’
 22 for ‘45 days’ each place it appears,
 23 and

24 “(II) by substituting ‘731-day pe-
 25 riod’ for ‘91-day period’, and

1 “(ii) paragraph (2) shall not apply.

2 “(B) STATUS MUST BE MAINTAINED DUR-
3 ING HOLDING PERIOD.—For purposes of section
4 245A, the holding period requirement of this
5 subsection shall be treated as met only if—

6 “(i) the controlled foreign corporation
7 referred to in section 245A(a) is a con-
8 trolled foreign corporation at all times dur-
9 ing such period, and

10 “(ii) the taxpayer is a United States
11 shareholder (as defined in section 951)
12 with respect to such controlled foreign cor-
13 poration at all times during such period.

14 “(C) SPECIAL RULES FOR ELECTING NON-
15 CONTROLLED SECTION 902 CORPORATIONS.—In
16 the case of an election under section 245A(b) to
17 treat a noncontrolled section 902 corporation as
18 a controlled foreign corporation, the require-
19 ments of subparagraph (B) shall be treated as
20 met for any continuous period ending on the
21 day before the effective date of the election for
22 which the taxpayer met the ownership require-
23 ments of section 904(d)(2)(E) with respect to
24 such corporation.”.

1 (c) APPLICATION OF RULES GENERALLY APPLICA-
2 BLE TO DEDUCTIONS FOR DIVIDENDS RECEIVED.—

3 (1) TREATMENT OF DIVIDENDS FROM TAX-EX-
4 EMPT CORPORATIONS.—Paragraph (1) of section
5 246(a) is amended by striking “and 245” and in-
6 serting “245, and 245A”.

7 (2) ASSETS GENERATING TAX-EXEMPT PORTION
8 OF DIVIDEND NOT TAKEN INTO ACCOUNT IN ALLO-
9 CATING AND APPORTIONING DEDUCTIBLE EX-
10 PENSES.—Paragraph (3) of section 864(e) is amend-
11 ed by striking “or 245(a)” and inserting “, 245(a),
12 or 245A”.

13 (3) COORDINATION WITH SECTION 1059.—Sub-
14 paragraph (B) of section 1059(b)(2) is amended by
15 striking “or 245” and inserting “245, or 245A”.

16 (d) CONFORMING AMENDMENTS.—

17 (1) Clause (vi) of section 56(g)(4)(C) is amend-
18 ed by inserting “245A or” before “965”.

19 (2) Subsection (b) of section 951 is amended—

20 (A) by striking “subpart” and inserting
21 “title”, and

22 (B) by adding at the end the following:
23 “Such term shall include, with respect to any
24 entity treated as a controlled foreign corpora-
25 tion under section 245A(b), any domestic cor-

1 poration treated as a United States shareholder
2 with respect to such entity under such sec-
3 tion.”.

4 (3) Subsection (a) of section 957 is amended—

5 (A) by striking “subpart” in the matter
6 preceding paragraph (1) and inserting “title”,
7 and

8 (B) by adding at the end the following:

9 “Such term shall include any entity treated as
10 a controlled foreign corporation under section
11 245A(b).”.

12 (4) The table of sections for part VIII of sub-
13 chapter B of chapter 1 is amended by inserting after
14 the item relating to section 245 the following new
15 item:

 “Sec. 245A. Dividends received by domestic corporations from certain foreign
 corporations.”.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years of foreign corpora-
18 tions beginning after December 31, 2012, and to taxable
19 years of United States shareholders with or within which
20 such taxable years of foreign corporations end.

1 **SEC. 102. APPLICATION OF DIVIDENDS RECEIVED DEDUC-**
2 **TION TO CERTAIN SALES AND EXCHANGES**
3 **OF STOCK.**

4 (a) SALES BY UNITED STATES PERSONS OF STOCK
5 IN CFC.—Section 1248 is amended by redesignating sub-
6 section (j) as subsection (k) and by inserting after sub-
7 section (i) the following new subsection:

8 “(j) COORDINATION WITH DIVIDENDS RECEIVED
9 DEDUCTION.—

10 “(1) IN GENERAL.—In the case of the sale or
11 exchange by a domestic corporation of stock in a for-
12 eign corporation held for 1 year or more, any
13 amount received by the domestic corporation which
14 is treated as a dividend by reason of this section
15 shall be treated as a dividend for purposes of apply-
16 ing section 245A.

17 “(2) LOSSES DISALLOWED.—If a domestic cor-
18 poration—

19 “(A) sells or exchanges stock in a foreign
20 corporation in a taxable year of the domestic
21 corporation with or within which a taxable year
22 of the foreign corporation beginning after De-
23 cember 31, 2012, ends, and

24 “(B) met the ownership requirements of
25 subsection (a)(2) with respect to such stock,

1 no deduction shall be allowed to the domestic cor-
2 poration with respect to any loss from the sale or ex-
3 change.”.

4 (b) SALE BY A CFC OF A LOWER TIER CFC.—Sec-
5 tion 964(e) is amended by adding at the end the following
6 new paragraph:

7 “(4) COORDINATION WITH DIVIDENDS RE-
8 CEIVED DEDUCTION.—

9 “(A) IN GENERAL.—If, for any taxable
10 year of a controlled foreign corporation begin-
11 ning after December 31, 2012, any amount is
12 treated as a dividend under paragraph (1) by
13 reason of a sale or exchange by the controlled
14 foreign corporation of stock in another foreign
15 corporation held for 1 year or more, then, not-
16 withstanding any other provision of this title—

17 “(i) the qualified foreign-source por-
18 tion of such dividend shall be treated for
19 purposes of section 951(a)(1)(A) as sub-
20 part F income of the selling controlled for-
21 eign corporation for such taxable year,

22 “(ii) a United States shareholder with
23 respect to the selling controlled foreign cor-
24 poration shall include in gross income for
25 the taxable year of the shareholder with or

1 within which such taxable year of the con-
2 trolled foreign corporation ends an amount
3 equal to the shareholder's pro rata share
4 (determined in the same manner as under
5 section 951(a)(2)) of the amount treated
6 as subpart F income under clause (i), and

7 “(iii) the deduction under section
8 245A(a) shall be allowable to the United
9 States shareholder with respect to the sub-
10 part F income included in gross income
11 under clause (ii) in the same manner as if
12 such subpart F income were a dividend re-
13 ceived by the shareholder from the selling
14 controlled foreign corporation.

15 “(B) EFFECT OF LOSS ON EARNINGS AND
16 PROFITS.—For purposes of this title, in the
17 case of a sale or exchange by a controlled for-
18 eign corporation of stock in another foreign cor-
19 poration in a taxable year of the selling con-
20 trolled foreign corporation beginning after De-
21 cember 31, 2012, to which this paragraph
22 would apply if gain were recognized, the earn-
23 ings and profits of the selling controlled foreign
24 corporation shall not be reduced by reason of
25 any loss from such sale or exchange.

1 “(C) QUALIFIED FOREIGN-SOURCE POR-
 2 TION.—For purposes of this paragraph, the
 3 qualified foreign-source portion of any amount
 4 treated as a dividend under paragraph (1) shall
 5 be determined in the same manner as under
 6 section 245A(c).”.

7 **SEC. 103. DEDUCTION FOR FOREIGN INTANGIBLE INCOME**
 8 **DERIVED FROM TRADE OR BUSINESS WITHIN**
 9 **THE UNITED STATES.**

10 (a) IN GENERAL.—Part VIII of subchapter B of
 11 chapter 1 is amended by adding at the end the following
 12 new section:

13 **“SEC. 250. FOREIGN INTANGIBLE INCOME DERIVED FROM**
 14 **TRADE OR BUSINESS WITHIN THE UNITED**
 15 **STATES.**

16 “(a) IN GENERAL.—In the case of a domestic cor-
 17 poration, there shall be allowed as a deduction an amount
 18 equal to 50 percent of the qualified foreign intangible in-
 19 come of such domestic corporation for the taxable year.

20 “(b) QUALIFIED FOREIGN INTANGIBLE INCOME.—

21 “(1) IN GENERAL.—The term ‘qualified foreign
 22 intangible income’ means, with respect to any do-
 23 mestic corporation, foreign intangible income which
 24 is derived by the domestic corporation from the ac-
 25 tive conduct of a trade or business within the United

1 States with respect to the intangible property giving
2 rise to the income.

3 “(2) REQUIREMENTS RELATING TO TRADE OR
4 BUSINESS WITHIN THE UNITED STATES.—For pur-
5 poses of this section, foreign intangible income shall
6 be treated as derived by a domestic corporation from
7 the active conduct of a trade or business within the
8 United States only if—

9 “(A) the domestic corporation developed,
10 created, or produced within the United States
11 the intangible property giving rise to the in-
12 come, or

13 “(B) in any case in which the domestic
14 corporation acquired such intangible property,
15 the domestic corporation added substantial
16 value to the property through the active con-
17 duct of such trade or business within the
18 United States.

19 “(c) FOREIGN INTANGIBLE INCOME.—For purposes
20 of this section—

21 “(1) IN GENERAL.—The term ‘foreign intan-
22 gible income’ means any intangible income which is
23 derived in connection with—

24 “(A) property which is sold, leased, li-
25 censed, or otherwise disposed of for use, con-

1 sumption, or disposition outside the United
2 States, or

3 “(B) services provided with respect to per-
4 sons or property located outside the United
5 States.

6 “(2) EXCEPTIONS FOR CERTAIN INCOME.—The
7 following amounts shall not be taken into account in
8 computing foreign intangible income:

9 “(A) Any amount treated as received by
10 the domestic corporation under section
11 367(d)(2) with respect to any intangible prop-
12 erty.

13 “(B) Any payment under a cost-sharing
14 arrangement entered into under section 482.

15 “(C) Any amount received from a con-
16 trolled foreign corporation with respect to which
17 the domestic corporation is a United States
18 shareholder to the extent such amount is attrib-
19 utable or properly allocable to income which
20 is—

21 “(i) effectively connected with the con-
22 duct of a trade or business within the
23 United States and subject to tax under
24 this chapter, or

25 “(ii) subpart F income.

1 For purposes of clause (ii), amounts not other-
2 wise treated as subpart F income shall be so
3 treated if the amount creates (or increases) a
4 deficit which under section 952(c) may reduce
5 the subpart F income of the payor or any other
6 controlled foreign corporation.

7 “(3) INTANGIBLE INCOME.—The term ‘intan-
8 gible income’ means gross income from—

9 “(A) the sale, lease, license, or other dis-
10 position of property in which intangible prop-
11 erty is used directly or indirectly, or

12 “(B) the provision of services related to in-
13 tangible property or in connection with property
14 in which intangible property is used directly or
15 indirectly,

16 to the extent that such gross income is properly at-
17 tributable to such intangible property.

18 “(4) DEDUCTIONS TO BE TAKEN INTO AC-
19 COUNT.—The gross income of a domestic corpora-
20 tion taken into account under this subsection shall
21 be reduced, under regulations prescribed by the Sec-
22 retary, so as to take into account deductions prop-
23 erly allocable to such income.

1 lowed as a deduction for the taxable year of the United
2 States shareholder with or within which the first taxable
3 year of the controlled foreign corporation beginning after
4 December 31, 2012, ends an amount equal to 70 percent
5 of the amount determined under subsection (b) for the
6 taxable year.

7 “(b) ELIGIBLE AMOUNT.—For purposes of sub-
8 section (a)—

9 “(1) IN GENERAL.—The amount determined
10 under this subsection for a United States share-
11 holder with respect to any controlled foreign cor-
12 poration for the taxable year of the shareholder de-
13 scribed in subsection (a) is the lesser of—

14 “(A) the shareholder’s pro rata share of
15 the earnings and profits of the controlled for-
16 eign corporation described in section 959(e)(3)
17 as of the close of the taxable year preceding the
18 first taxable year of the controlled foreign cor-
19 poration beginning after December 31, 2012, or

20 “(B) an amount equal to the sum of—

21 “(i) the dividends received by the
22 shareholder during such taxable year from
23 the controlled foreign corporation which
24 are attributable to the earnings and profits
25 described in subparagraph (A), plus

1 “(ii) the increase in subpart F income
2 required to be included in gross income of
3 the shareholder for the taxable year by
4 reason of the election under paragraph (2).

5 “(2) ELECTION OF DEEMED SUBPART F INCLU-
6 SION.—A United States shareholder may elect for
7 purposes of paragraph (1)(B)(ii) to treat all (or any
8 portion) of the shareholder’s pro rata share of the
9 earnings and profits of a controlled foreign corpora-
10 tion described in paragraph (1)(A) as subpart F in-
11 come includible in the gross income of the share-
12 holder for the taxable year of the shareholder de-
13 scribed in subsection (a).

14 “(3) ORDERING RULE.—For purposes of para-
15 graph (1)(B)(i), distributions shall be treated as
16 first made out of earnings and profits of a controlled
17 foreign corporation described in paragraph (1)(A).

18 “(4) DIVIDEND.—The term ‘dividend’ shall not
19 include amounts includible in gross income as a divi-
20 dend under section 78.

21 “(c) DISALLOWANCE OF FOREIGN TAX CREDIT,
22 ETC.—In the case of a domestic corporation making an
23 election under subsection (a) with respect to any con-
24 trolled foreign corporation—

1 “(1) IN GENERAL.—No credit shall be allowed
2 under section 901 for any taxes paid or accrued (or
3 treated as paid or accrued) with respect to the earn-
4 ings and profits taken into account in determining
5 the amount under subsection (b).

6 “(2) DENIAL OF DEDUCTION.—No deduction
7 shall be allowed under this chapter for any tax for
8 which credit is not allowable under section 901 by
9 reason of paragraph (1).

10 “(3) COORDINATION WITH SECTION 78.—Sec-
11 tion 78 shall not apply to any tax for which credit
12 is not allowable under section 901 by reason of para-
13 graph (1).

14 “(4) TREATMENT OF NONDEDUCTIBLE POR-
15 TION IN APPLYING FOREIGN TAX CREDIT LIMIT.—
16 For purposes of applying the limitation under sec-
17 tion 904(a), the remaining 30 percent of the amount
18 determined under subsection (b) with respect to
19 which a deduction is not allowable under subsection
20 (a) shall be treated as income from sources within
21 the United States.

22 “(d) ELECTION TO PAY LIABILITY FOR DEEMED
23 SUBPART F INCOME IN INSTALLMENTS.—

24 “(1) IN GENERAL.—In the case of a United
25 States shareholder with respect to 1 or more con-

1 trolled foreign corporations to which elections under
2 subsections (a) and (b)(2) apply, such United States
3 shareholder may elect to pay the net tax liability de-
4 termined with respect to its deemed subpart F inclu-
5 sions with respect to such corporations under sub-
6 section (b)(2) for the taxable year described in sub-
7 section (a) in 2 or more (but not exceeding 8) equal
8 installments.

9 “(2) DATE FOR PAYMENT OF INSTALLMENTS.—

10 If an election is made under paragraph (1), the first
11 installment shall be paid on the due date (deter-
12 mined without regard to any extension of time for
13 filing the return) for the return of tax for the tax-
14 able year for which the election was made and each
15 succeeding installment shall be paid on the due date
16 (as so determined) for the return of tax for the tax-
17 able year following the taxable year with respect to
18 which the preceding installment was made.

19 “(3) ACCELERATION OF PAYMENT.—If there is

20 an addition to tax for failure to pay timely assessed
21 with respect to any installment required under this
22 subsection, a liquidation or sale of substantially all
23 the assets of the taxpayer (including in a title 11 or
24 similar case), a cessation of business by the tax-
25 payer, or any similar circumstance, then the unpaid

1 portion of all remaining installments shall be due on
2 the date of such event (or in the case of a title 11
3 or similar case, the day before the petition is filed).

4 “(4) PRORATION OF DEFICIENCY TO INSTALL-
5 MENTS.—If an election is made under paragraph (1)
6 to pay the net tax liability described in paragraph
7 (1) in installments and a deficiency has been as-
8 sessed which increases such net tax liability, the in-
9 crease shall be prorated to the installments payable
10 under paragraph (1). The part of the increase so
11 prorated to any installment the date for payment of
12 which has not arrived shall be collected at the same
13 time as, and as a part of, such installment. The part
14 of the increase so prorated to any installment the
15 date for payment of which has arrived shall be paid
16 upon notice and demand from the Secretary. This
17 subsection shall not apply if the deficiency is due to
18 negligence, to intentional disregard of rules and reg-
19 ulations, or to fraud with intent to evade tax.

20 “(5) TIME FOR PAYMENT OF INTEREST.—Inter-
21 est payable under section 6601 on the unpaid por-
22 tion of any amount of tax the time for payment of
23 which as been extended under this subsection shall
24 be paid annually at the same time as, and as part
25 of, each installment payment of such tax. In the case

1 of a deficiency to which paragraph (4) applies, inter-
2 est with respect to such deficiency which is assigned
3 under the preceding sentence to any installment the
4 date for payment of which has arrived on or before
5 the date of the assessment of the deficiency, shall be
6 paid upon notice and demand from the Secretary.

7 “(6) NET TAX LIABILITY FOR DEEMED SUB-
8 PART F INCLUSIONS.—For purposes of this sub-
9 section—

10 “(A) IN GENERAL.—The net tax liability
11 described in paragraph (1) with respect to any
12 United States shareholder for any taxable year
13 is the excess (if any) of—

14 “(i) such taxpayer’s net income tax
15 for the taxable year, over

16 “(ii) such taxpayer’s net income tax
17 for such taxable year determined as if the
18 elections under subsection (b)(2) with re-
19 spect to 1 or more controlled foreign cor-
20 porations had not been made.

21 “(B) NET INCOME TAX.—The term ‘net
22 income tax’ means the net income tax (as de-
23 fined in section 38(c)(1)) reduced by the credit
24 allowed under section 38.

1 “(e) SPECIAL RULES.—For purposes of this sec-
2 tion—

3 “(1) ELECTIONS.—Any election under sub-
4 section (a), (b)(2), or (d)(1) shall be made not later
5 than the due date (including extensions) for the re-
6 turn of tax for the taxable year for which made and
7 shall be made in such manner as the Secretary may
8 provide.

9 “(2) SECTION NOT TO APPLY TO NONCON-
10 TROLLED SECTION 902 CORPORATIONS TREATED AS
11 CFCS.—No election may be made under subsection
12 (a) with respect to a controlled foreign corporation
13 which was a noncontrolled section 902 corporation
14 which a United States shareholder elected under sec-
15 tion 245A(b) to treat as a controlled foreign cor-
16 poration.

17 “(3) PRO RATA SHARE.—A shareholder’s pro
18 rata share of any earnings and profits shall be deter-
19 mined in the same manner as under section
20 951(a)(2).”

21 (b) CONFORMING AMENDMENTS.—

22 (1) Clause (vi) of section 56(g)(4)(C), as
23 amended by this Act, is amended—

24 (A) by striking “965” and inserting
25 “965(b)”, and

1 (B) by inserting “AND INCLUSIONS” after
2 “CERTAIN DISTRIBUTIONS” in the heading
3 thereof.

4 (2) Paragraph (2) of section 6601(b) is amend-
5 ed—

6 (A) by striking “section 6156(a)” in the
7 matter preceding subparagraph (A) and insert-
8 ing “section 965(d)(1) or 6156(a)”, and

9 (B) by striking “section 6156(b)” in sub-
10 subparagraph (A) and inserting “section 965(d)(2)
11 or 6156(b), as the case may be”.

12 (3) The table of section for subpart F of part
13 III of subchapter N of chapter 1 is amended by
14 striking the item relating to section 965 and insert-
15 ing the following:

“Sec. 965. Treatment of deferred foreign income upon transition to participa-
tion exemption system of taxation.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years of foreign corpora-
18 tions beginning after December 31, 2012, and to taxable
19 years of United States shareholders with or within which
20 such taxable years of foreign corporations end.

1 **TITLE II—OTHER**
2 **INTERNATIONAL TAX REFORMS**
3 **Subtitle A—Modifications of**
4 **Subpart F**

5 **SEC. 201. TREATMENT OF LOW-TAXED FOREIGN INCOME AS**
6 **SUBPART F INCOME.**

7 (a) **IN GENERAL.**—Subsection (a) of section 952 is
8 amended by redesignating paragraphs (3), (4), and (5) as
9 paragraphs (4), (5), and (6), respectively, and by inserting
10 after paragraph (2) the following new paragraph:

11 “(3) low-taxed income (as defined under sub-
12 section (e)),”.

13 (b) **LOW-TAXED INCOME.**—Section 952 is amended
14 by adding at the end the following new subsection:

15 “(e) **LOW-TAXED INCOME.**—

16 “(1) **IN GENERAL.**—For purposes of subsection
17 (a), except as provided in paragraph (2), the term
18 ‘low-taxed income’ means, with respect to any tax-
19 able year of a controlled foreign corporation, the en-
20 tire gross income of the controlled foreign corpora-
21 tion unless the taxpayer establishes to the satisfac-
22 tion of the Secretary that such income was subject
23 to an effective rate of income tax (determined under
24 rules similar to the rules of section 954(b)(4)) im-
25 posed by a foreign country in excess of one-half of

1 the highest rate of tax under section 11(b) for tax-
2 able years of United States corporations beginning
3 in the same calendar year as the taxable year of the
4 controlled foreign corporation begins.

5 “(2) EXCEPTION FOR QUALIFIED BUSINESS IN-
6 COME.—For purposes of paragraph (1), qualified
7 business income—

8 “(A) shall be taken into account in deter-
9 mining the effective rate of income tax at which
10 the entire gross income of the controlled foreign
11 corporation is taxed, but

12 “(B) the amount of gross income treated
13 as low-taxed income under paragraph (1) shall
14 be reduced by the amount of the qualified busi-
15 ness income.

16 “(3) QUALIFIED BUSINESS INCOME.—For pur-
17 poses of this subsection—

18 “(A) IN GENERAL.—The term ‘qualified
19 business income’ means, with respect to any
20 controlled foreign corporation, income derived
21 by the controlled foreign corporation in a for-
22 eign country but only if—

23 “(i) such income is attributable to the
24 active conduct of a trade or business of
25 such corporation in such foreign country,

1 “(ii) the corporation maintains an of-
2 fice or fixed place of business in such for-
3 eign country, and

4 “(iii) officers and employees of the
5 corporation physically located at such of-
6 fice or place of business in such foreign
7 country conducted (or significantly contrib-
8 uted to the conduct of) activities within the
9 foreign country which are substantial in re-
10 lation to the activities necessary for the ac-
11 tive conduct of the trade or business to
12 which such income is attributable.

13 “(B) EXCEPTION FOR INTANGIBLE IN-
14 COME.—For purposes of subparagraph (A),
15 qualified business income of a controlled foreign
16 corporation shall not include intangible income
17 (as defined in section 250(c)(3)).

18 “(4) DETERMINATION OF EFFECTIVE RATE OF
19 FOREIGN INCOME TAX AND QUALIFIED BUSINESS IN-
20 COME.—

21 “(A) COUNTRY-BY-COUNTRY DETERMINA-
22 TION.—For purposes of determining the effec-
23 tive rate of income tax imposed by any foreign
24 country under paragraph (1) and qualified busi-
25 ness income under paragraph (3), each such

1 paragraph shall be applied separately with re-
2 spect to—

3 “(i) each foreign country in which a
4 controlled foreign corporation conducts any
5 trade or business, and

6 “(ii) the entire gross income and
7 qualified business income derived with re-
8 spect to such foreign country.

9 “(B) TREATMENT OF LOSSES.—For pur-
10 poses of determining the effective rate of in-
11 come tax imposed by any foreign country under
12 paragraph (1)—

13 “(i) such effective rate shall be deter-
14 mined without regard to any losses carried
15 to the relevant taxable year, and

16 “(ii) to the extent the income of the
17 controlled foreign corporation reduces
18 losses in the relevant taxable year, such ef-
19 fective rate shall be treated as being the
20 effective rate which would have been im-
21 posed on such income without regard to
22 such losses.

23 “(5) DEDUCTIONS TO BE TAKEN INTO AC-
24 COUNT.—The gross income of a controlled foreign
25 corporation taken into account under this subsection

1 shall be reduced, under regulations prescribed by the
2 Secretary, so as to take into account deductions (in-
3 cluding taxes) properly allocable to such income.”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Subsection (a) of section 952 is amended—

6 (A) by striking “paragraph (4)” in the
7 next to last sentence and inserting “paragraph
8 (5)”, and

9 (B) by striking “paragraph (5)” in the last
10 sentence and inserting “paragraph (6)”.

11 (2) Subsection (d) of section 952 is amended by
12 striking “subsection (a)(5)” and inserting “sub-
13 section (a)(6)”.

14 (3) Paragraphs (1) and (2) of section 999(c)
15 are each amended by striking “section 952(a)(3)”
16 and inserting “section 952(a)(4)”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning after December 31, 2012, and to taxable
20 years of United States shareholders with or within which
21 such taxable years of foreign corporations end.

22 **SEC. 202. PERMANENT EXTENSION OF LOOK-THRU RULE**
23 **FOR CONTROLLED FOREIGN CORPORATIONS.**

24 (a) IN GENERAL.—Section 954(c)(6)(C) is amended
25 by striking “and before January 1, 2012,”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years of foreign corpora-
3 tions beginning after December 31, 2011, and to taxable
4 years of United States shareholders with or within which
5 such taxable years of foreign corporations end.

6 **SEC. 203. PERMANENT EXTENSION OF EXCEPTIONS FOR**
7 **ACTIVE FINANCING INCOME.**

8 (a) EXCEPTION FROM INSURANCE INCOME.—Section
9 953(e)(10) is amended—

10 (1) by striking “and before January 1, 2012,”

11 and

12 (2) by striking the last sentence.

13 (b) EXCEPTION FROM FOREIGN PERSONAL HOLD-
14 ING COMPANY INCOME.—Section 954(h)(9) is amended by
15 striking “and before January 1, 2012,”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years of foreign corpora-
18 tions beginning after December 31, 2011, and to taxable
19 years of United States shareholders with or within which
20 such taxable years of foreign corporations end.

21 **SEC. 204. FOREIGN BASE COMPANY INCOME NOT TO IN-**
22 **CLUDE SALES OR SERVICES INCOME.**

23 (a) REPEAL.—Paragraphs (2) and (3) of section
24 954(a) are repealed.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 954(d) is amended by adding at the
2 end the following new paragraph:

3 “(5) TERMINATION.—This subsection shall not
4 apply to taxable years of foreign corporations begin-
5 ning after December 31, 2012, and to taxable years
6 of United States shareholders with or within which
7 such taxable years of foreign corporations end.”.

8 (2) Section 954(e) is amended by adding at the
9 end the following new paragraph:

10 “(3) TERMINATION.—This subsection shall not
11 apply to taxable years of foreign corporations begin-
12 ning after December 31, 2012, and to taxable years
13 of United States shareholders with or within which
14 such taxable years of foreign corporations end.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years of foreign corpora-
17 tions beginning after December 31, 2012, and to taxable
18 years of United States shareholders with or within which
19 such taxable years of foreign corporations end.

1 **Subtitle B—Modifications Related**
2 **to Foreign Tax Credit**

3 **SEC. 211. MODIFICATION OF APPLICATION OF SECTIONS**
4 **902 AND 960 WITH RESPECT TO POST-2012**
5 **EARNINGS.**

6 (a) SECTION 902 NOT TO APPLY TO DIVIDENDS
7 FROM POST-2012 EARNINGS.—Section 902 is amended
8 by redesignating subsection (d) as subsection (e) and by
9 inserting after subsection (c) the following new subsection:

10 “(d) SECTION NOT TO APPLY TO DIVIDENDS FROM
11 POST-2012 EARNINGS.—

12 “(1) IN GENERAL.—This section shall not apply
13 to the portion of any dividend paid by a foreign cor-
14 poration to the extent such portion is made out of
15 earnings and profits of the foreign corporation (com-
16 puted in accordance with sections 964(a) and 986)
17 accumulated in taxable years beginning after Decem-
18 ber 31, 2012.

19 “(2) COORDINATION WITH DISTRIBUTIONS
20 FROM PRE-2013 EARNINGS AND PROFITS.—For pur-
21 poses of this section—

22 “(A) ORDERING RULE.—Any distribution
23 in a taxable year beginning after December 31,
24 2012, shall be treated as first made out of
25 earnings and profits of the foreign corporation

1 (computed in accordance with sections 964(a)
2 and 986) accumulated in taxable years begin-
3 ning before January 1, 2013.

4 “(B) POST-1986 UNDISTRIBUTED EARN-
5 INGS.—Post-1986 undistributed earnings shall
6 not include earnings and profits described in
7 paragraph (1).”

8 (b) DETERMINATION OF SECTION 960 CREDIT ON
9 CURRENT YEAR BASIS.—Section 960 is amended by add-
10 ing at the end the following new subsection:

11 “(d) DEEMED PAID CREDIT FOR SUBPART F INCLU-
12 SIONS ATTRIBUTABLE TO POST-2012 EARNINGS.—

13 “(1) IN GENERAL.—For purposes of this sub-
14 part, if there is included in the gross income of a do-
15 mestic corporation any amount under section
16 951(a)—

17 “(A) with respect to any controlled foreign
18 corporation with respect to which such domestic
19 corporation is a United States shareholder, and

20 “(B) which is attributable to the earnings
21 and profits of the controlled foreign corporation
22 (computed in accordance with sections 964(a)
23 and 986) accumulated in taxable years begin-
24 ning after December 31, 2012,

1 then subsections (a), (b), and (c) shall not apply and
2 such domestic corporation shall be deemed to have
3 paid so much of such foreign corporation's foreign
4 income taxes as are properly attributable to the
5 amount so included.

6 “(2) FOREIGN INCOME TAXES.—For purposes
7 of this subsection, the term ‘foreign income taxes’
8 means any income, war profits, or excess profits
9 taxes paid or accrued by the controlled foreign cor-
10 poration to any foreign country or possession of the
11 United States.

12 “(3) REGULATIONS.—The Secretary shall pro-
13 vide such regulations as may be necessary or appro-
14 priate to carry out the provisions of this sub-
15 section.”.

16 **SEC. 212. SEPARATE FOREIGN TAX CREDIT BASKET FOR**
17 **FOREIGN INTANGIBLE INCOME.**

18 (a) IN GENERAL.—Paragraph (1) of section 904(d)
19 is amended by striking “and” at the end of subparagraph
20 (A), by striking the period at the end of subparagraph
21 (B) and inserting “, and”, and by adding at the end the
22 following:

23 “(C) foreign intangible income (as defined
24 in paragraph (2)(J)).”.

25 (b) FOREIGN INTANGIBLE INCOME.—

1 (1) IN GENERAL.—Section 904(d)(2) is amend-
2 ed by redesignating subparagraphs (J) and (K) as
3 subparagraphs (K) and (L) and by inserting after
4 subparagraph (I) the following:

5 “(J) FOREIGN INTANGIBLE INCOME.—For
6 purposes of this section—

7 “(i) IN GENERAL.—The term ‘foreign
8 intangible income’ has the meaning given
9 such term by section 250(c).

10 “(ii) COORDINATION.—Passive cat-
11 egory income and general category income
12 shall not include foreign intangible in-
13 come.”

14 (2) GENERAL CATEGORY INCOME.—Section
15 904(d)(2)(A)(ii) is amended by inserting “or foreign
16 intangible income” after “passive category income”.
17 (c) EFFECTIVE DATES.—

18 (1) IN GENERAL.—The amendments made by
19 this section shall apply to taxable years beginning
20 after December 31, 2012.

21 (2) TRANSITIONAL RULE.—For purposes of sec-
22 tion 904(d)(1) of the Internal Revenue Code of 1986
23 (as amended by this Act)—

24 (A) taxes carried from any taxable year be-
25 ginning before January 1, 2013, to any taxable

1 year beginning on or after such date, with re-
2 spect to any item of income, shall be treated as
3 described in the subparagraph of such section
4 904(d)(1) in which such income would be de-
5 scribed without regard to the amendments
6 made by this section, and

7 (B) any carryback of taxes with respect to
8 foreign intangible income from a taxable year
9 beginning on or after January 1, 2013, to a
10 taxable year beginning before such date shall be
11 allocated to the general income category.

12 **SEC. 213. INVENTORY PROPERTY SALES SOURCE RULE EX-**
13 **CEPTIONS NOT TO APPLY FOR FOREIGN TAX**
14 **CREDIT LIMITATION.**

15 (a) IN GENERAL.—Section 904 is amended by redess-
16 ignating subsection (l) as subsection (m) and by inserting
17 after subsection (k) the following new subsection:

18 “(l) INVENTORY PROPERTY SALES SOURCE RULE
19 EXCEPTIONS NOT TO APPLY.—Any amount which would
20 be treated as derived from sources without the United
21 States by reason of the application of section 862(a)(6)
22 or 863(b)(2) for any taxable year shall be treated as de-
23 rived from sources within the United States for purposes
24 of this section.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2012.

4 **Subtitle C—Allocation of Interest**
5 **on Worldwide Basis**

6 **SEC. 221. ACCELERATION OF ELECTION TO ALLOCATE IN-**
7 **TEREST ON A WORLDWIDE BASIS.**

8 Section 864(f)(6) is amended by striking “December
9 31, 2020” and inserting “December 31, 2012”.

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