

117TH CONGRESS  
1ST SESSION

# S. 714

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

MARCH 11, 2021

Mr. WHITEHOUSE (for himself, Mr. DURBIN, Mr. VAN HOLLEN, Ms. WARREN, Mrs. GILLIBRAND, Mr. MERKLEY, and Mr. REED) 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  
9 to, or repeal of, a section or other provision, the reference

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

3 (c) TABLE OF CONTENTS.—The table of contents of  
 4 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.

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

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

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

12 (2) CONFORMING AMENDMENTS.—

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

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

18 (C) Section 951A(f) is amended by strik-  
 19 ing “global intangible low-taxed income” each  
 20 place it appears and inserting “net CFC tested  
 21 income”.

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

6 (b) REPEAL OF REDUCED RATE OF TAX ON NET  
7 CFC TESTED INCOME AND FOREIGN-DERIVED INTAN-  
8 GIBLE INCOME.—

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

13 (2) CONFORMING AMENDMENTS.—

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

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

19 (C) Section 246(b)(1) is amended—

20 (i) by striking “subsection (a) and (b)  
21 of section 245, and section 250” and in-  
22 serting “and subsection (a) and (b) of sec-  
23 tion 245”, and

24 (ii) by striking “subsection (a) and  
25 (b) of section 245, and 250” and inserting

1           “and subsection (a) and (b) of section  
2           245”.

3           (D) Section 469(i)(3)(F)(iii) is amended  
4           by striking “222, and 250” and inserting “and  
5           222”.

6           (c) REPEAL OF CERTAIN EXCLUSIONS FROM THE  
7 DETERMINATION OF TESTED INCOME.—Section  
8 951A(c)(2)(A)(i) is amended—

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

10          (2) by redesignating subclause (IV) as sub-  
11          clause (III),

12          (3) by adding “and” at the end of subclause  
13          (II), and

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

16          (d) INCREASE IN DEEMED PAID CREDIT FOR TAXES  
17 PROPERLY ATTRIBUTABLE TO TESTED INCOME.—

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

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

24          (e) REPEAL OF HIGH TAX EXCLUSION FOR FOREIGN  
25 BASE COMPANY INCOME AND INSURANCE INCOME.—

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

3           (2) CONFORMING AMENDMENT.—Section  
4 904(d)(3)(E) is amended by striking the last sen-  
5 tence.

6           (f) ELIMINATION OF CARRYBACK OF FOREIGN TAX  
7 CREDIT.—Section 904(c) is amended—

8           (1) by striking “in the first preceding taxable  
9 year, and in any of the first 10 succeeding taxable  
10 years, in that order” and inserting “in any of the  
11 first 10 succeeding taxable years, in order”,

12           (2) by striking “preceding or” each place it ap-  
13 pears, and

14           (3) by striking “CARRYBACK AND” in the head-  
15 ing thereof.

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

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

23           “(4) the foreign base company oil related in-  
24 come for the taxable year (determined under sub-

1 section (g) and reduced as provided in subsection  
2 (b)(5)).”.

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

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

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

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

19 Such term shall not include any foreign personal holding  
20 company income (as defined in subsection (e)).”.

21 (3) CONFORMING AMENDMENTS.—

22 (A) Section 952(c)(1)(B)(iii) is amended  
23 by redesignating subclauses (III) and (IV) as  
24 subclauses (IV) and (V), respectively, and by

1 inserting after subclause (II) the following new  
2 subclause:

3 “(III) foreign base company oil  
4 related income.”.

5 (B) Section 954(b) is amended—

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

11 (ii) by adding at the end the following  
12 new paragraph:

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

20 (h) EFFECTIVE DATES.—

21 (1) IN GENERAL.—Except as otherwise pro-  
22 vided in this subsection, the amendments made by  
23 this section shall apply to taxable years of foreign  
24 corporations beginning after December 31, 2020,  
25 and to taxable years of United States shareholders

1 in which or with which such taxable years of foreign  
2 corporations end.

3 (2) REPEAL OF REDUCED RATE OF TAX; IN-  
4 CREASE IN DEEMED PAID CREDIT.—The amend-  
5 ments made by subsection (b) and (d) shall apply to  
6 taxable years beginning after December 31, 2020.

7 (3) REPEAL OF HIGH TAX EXCLUSION FOR  
8 FOREIGN BASE COMPANY INCOME AND INSURANCE  
9 INCOME.—The amendment made by subsection (e)  
10 shall apply to taxable years of foreign corporations  
11 beginning after December 31, 2020, and to taxable  
12 years of United States shareholders in which or with  
13 which such taxable years of foreign corporations  
14 end.

15 (4) ELIMINATION OF CARRYBACK OF FOREIGN  
16 TAX CREDIT.—The amendment made by subsection  
17 (f) shall apply to credits arising in taxable years be-  
18 ginning after December 31, 2020.

19 **SEC. 3. COUNTRY-BY-COUNTRY APPLICATION OF LIMITA-**  
20 **TION ON FOREIGN TAX CREDIT BASED ON**  
21 **TAXABLE UNITS.**

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

24 “(e) COUNTRY-BY-COUNTRY APPLICATION OF SEC-  
25 TION BASED ON TAXABLE UNITS.—



1           “(1) IN GENERAL.—The provisions of sub-  
2 sections (a), (b), (c), and (d) and sections 907 and  
3 960 shall be applied separately with respect to each  
4 country and possession by taking into account the  
5 aggregate items properly attributable or otherwise  
6 allocable to a taxable unit of the taxpayer which is  
7 a tax resident of such country or possession.

8           “(2) TAXABLE UNITS.—

9           “(A) IN GENERAL.—Unless otherwise pro-  
10 vided by the Secretary, to the extent an item  
11 may be properly attributable or otherwise allo-  
12 cable to more than one taxable unit under para-  
13 graph (1), such item shall be treated as prop-  
14 erly attributable or otherwise allocable to the  
15 lowest-tier taxable unit of the taxpayer to which  
16 such item may be properly attributable or oth-  
17 erwise allocable. No item shall be attributable  
18 or otherwise allocable to more than one taxable  
19 unit of the taxpayer.

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

24           “(i) IN GENERAL.—The general tax-  
25 able unit of the taxpayer which is not oth-

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

3 “(ii) FOREIGN BRANCHES.—Each for-  
4 eign branch the activities of which are car-  
5 ried on directly or indirectly (through one  
6 or more pass-through entities) by the tax-  
7 payer.

8 “(iii) CONTROLLED FOREIGN COR-  
9 PORATIONS.—Each controlled foreign cor-  
10 poration with respect to which the tax-  
11 payer is a United States shareholder.

12 “(iv) BRANCHES OF CONTROLLED  
13 FOREIGN CORPORATIONS.—Each branch  
14 the activities of which are carried on di-  
15 rectly or indirectly (through one or more  
16 pass-through entities) by a controlled for-  
17 eign corporation referred to in clause (iii).

18 “(v) INTERESTS IN PASS-THROUGH  
19 ENTITIES.—

20 “(I) IN GENERAL.—Each interest  
21 in a pass-through entity held directly  
22 or indirectly by the taxpayer or a con-  
23 trolled foreign corporation referred to  
24 in clause (iii) if such entity is a tax  
25 resident of a foreign country.

1                   “(II) CERTAIN INTERESTS HELD  
2                   BY CONTROLLED FOREIGN CORPORA-  
3                   TIONS.—Each interest in a pass-  
4                   through entity held directly or indi-  
5                   rectly by a controlled foreign corpora-  
6                   tion referred to in clause (iii) if such  
7                   entity is a tax resident of a foreign  
8                   country or such entity is treated as a  
9                   corporation (or other entity that is  
10                  not fiscally transparent) for purposes  
11                  of the tax law of a foreign country in  
12                  which such controlled foreign corpora-  
13                  tion is a tax resident.

14                  “(3) TAX RESIDENT.—For purposes of this  
15                  subsection, a taxable unit shall be treated as a tax  
16                  resident of a country or possession if such taxable  
17                  unit is liable to tax under the tax law of such coun-  
18                  try or possession as a resident.

19                  “(4) PASS-THROUGH ENTITY.—For purposes of  
20                  this subsection, the term ‘pass-through entity’ means  
21                  any partnership and any other type of entity (other  
22                  than a corporation) identified by the Secretary as a  
23                  pass-through entity for purposes of this subsection.

24                  “(5) REGULATIONS.—The Secretary shall issue  
25                  such regulations or other guidance as the Secretary

1 determines necessary or appropriate to carry out the  
2 purposes of this subsection, including regulations or  
3 other guidance—

4 “(A) for determining the country or pos-  
5 session with respect to which any taxable unit  
6 is a tax resident, including—

7 “(i) determining such country or pos-  
8 session on the basis of location if such tax-  
9 able unit would not otherwise be a tax resi-  
10 dent of any country or possession, and

11 “(ii) ensuring that such taxable unit  
12 is a tax resident of not more than 1 coun-  
13 try or possession,

14 “(B) applying this section to hybrid enti-  
15 ties, passive foreign investment companies,  
16 tiered structures, and branches, including  
17 branches that do not give rise to a taxable pres-  
18 ence under the tax law of the country where the  
19 branch is located, and

20 “(C) determining whether any entity is not  
21 fiscally transparent within the meaning of para-  
22 graph (2)(B)(v)(II).”.

23 (b) APPLICATION OF FOREIGN TAX CREDIT LIMITA-  
24 TION WITH RESPECT TO FOREIGN BRANCHES.—Section  
25 904(d)(2)(J)(i) is amended—

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

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

7           (c) EFFECTIVE DATE.—The amendments made by  
8           this section shall apply to taxable years beginning after  
9           December 31, 2020.

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

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

17           “(n) LIMITATION ON DEDUCTION OF INTEREST BY  
18           DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-  
19           CIAL REPORTING GROUPS.—

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

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

3                   “(i) the amount of such interest so  
4 paid or accrued, over

5                   “(ii) the amount described in subpara-  
6 graph (B), plus

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

10           “(2) INTERNATIONAL FINANCIAL REPORTING  
11 GROUP.—

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

16                   “(i) includes—

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

20                           “(II) at least one domestic cor-  
21 poration and one foreign corporation,

22                   “(ii) prepares consolidated financial  
23 statements with respect to such year, and

24                   “(iii) reports in such statements aver-  
25 age annual gross receipts (determined in

1 the aggregate with respect to all entities  
2 which are part of such group) for the 3-re-  
3 porting-year period ending with such re-  
4 porting year in excess of \$100,000,000.

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

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

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

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

22 “(ii) such corporation’s reported net  
23 interest expense for such reporting year of  
24 such group.

1           “(B) REPORTED NET INTEREST EX-  
2 PENSE.—The term ‘reported net interest ex-  
3 pense’ means—

4           “(i) with respect to any international  
5 financial reporting group for any reporting  
6 year, the excess of—

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

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

15           “(ii) with respect to any domestic cor-  
16 poration for any reporting year, the excess  
17 of—

18           “(I) the amount of interest ex-  
19 pense of such corporation reported in  
20 the books and records of the inter-  
21 national financial reporting group  
22 which are used in preparing such  
23 group’s consolidated financial state-  
24 ments for such taxable year, over



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

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

12                  “(i) the EBITDA of such corporation  
13                  for such reporting year, bears to

14                  “(ii) the EBITDA of such group for  
15                  such reporting year.

16                  “(D) EBITDA.—

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

21                  “(I) as determined in the inter-  
22                  national financial reporting group’s  
23                  consolidated financial statements for  
24                  such year, or

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

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

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

19                  “(E) SPECIAL RULES FOR NON-POSITIVE  
20                  EBITDA.—

21                  “(i) NON-POSITIVE GROUP EBITDA.—  
22                  In the case of any international financial  
23                  reporting group the EBITDA of which is  
24                  zero or less, paragraph (1) shall not apply

1 to any member of such group the EBITDA  
2 of which is above zero.

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

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

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

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

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

25 “(I) credit purposes,

1                   “(II) reporting to shareholders,  
2                   partners, or other proprietors, or to  
3                   beneficiaries, or

4                   “(III) any other substantial  
5                   nontax purpose,

6                   but only if there is no statement described  
7                   in clause (i), or

8                   “(iii) filed with any other Federal or  
9                   State agency for nontax purposes, but only  
10                  if there is no statement described in clause  
11                  (i) or (ii), or

12                  “(B) a financial statement which—

13                         “(i) is used for a purpose described in  
14                         subclause (I), (II), or (III) of subpara-  
15                         graph (A)(ii), or

16                         “(ii) filed with any regulatory or gov-  
17                         ernmental body (whether domestic or for-  
18                         eign) specified by the Secretary,

19                  but only if there is no statement described in  
20                  subparagraph (A).

21                  “(5) REPORTING YEAR.—For purposes of this  
22                  subsection, the term ‘reporting year’ means, with re-  
23                  spect to any international financial reporting group,  
24                  the year with respect to which the consolidated fi-  
25                  nancial statements are prepared.

1 “(6) APPLICATION TO CERTAIN ENTITIES.—

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

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

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

23 “(7) REGULATIONS.—The Secretary may issue  
24 such regulations or other guidance as are necessary

1 or appropriate to carry out the purposes of this sub-  
2 section.”.

3 (b) CARRYFORWARD OF DISALLOWED INTEREST.—

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

7 “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-  
8 TEREST.—The amount of any interest not allowed as a  
9 deduction for any taxable year by reason of subsection  
10 (j)(1) or (n)(1) (whichever imposes the lower limitation  
11 with respect to such taxable year) shall be treated as inter-  
12 est (and as business interest for purposes of subsection  
13 (j)(1)) paid or accrued in the succeeding taxable year. In-  
14 terest paid or accrued in any taxable year (determined  
15 without regard to the preceding sentence) shall not be car-  
16 ried past the fifth taxable year following such taxable year,  
17 determined by treating interest as allowed as a deduction  
18 on a first-in, first-out basis.”.

19 (2) CONFORMING AMENDMENTS.—

20 (A) Section 163(j)(2) is amended to read  
21 as follows:

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

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

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

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

10 (D) Section 382(d)(3) is amended to read  
11 as follows:

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

17 (e) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2020.

20 **SEC. 5. MODIFICATIONS TO RULES RELATING TO IN-**  
21 **VERTED CORPORATIONS.**

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

24 “(b) INVERTED CORPORATIONS TREATED AS DO-  
25 MESTIC CORPORATIONS.—

1           “(1) IN GENERAL.—Notwithstanding section  
2           7701(a)(4), a foreign corporation shall be treated for  
3           purposes of this title as a domestic corporation if—

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

8                   “(B) such corporation is an inverted do-  
9                   mestic corporation.

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

15                   “(A) the entity completes after December  
16                   22, 2017, the direct or indirect acquisition of—

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

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

24                   “(B) after the acquisition, either—



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

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

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

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

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

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

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

17 “(A) IN GENERAL.—The Secretary shall  
18 prescribe regulations for purposes of deter-  
19 mining cases in which the management and  
20 control of an expanded affiliated group is to be  
21 treated as occurring, directly or indirectly, pri-  
22 marily within the United States. The regula-  
23 tions prescribed under the preceding sentence  
24 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 **SEC. 6. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
19 **AGED AND CONTROLLED IN THE UNITED**  
20 **STATES AS DOMESTIC CORPORATIONS.**

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

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

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

7           “(A) the corporation would not otherwise  
8 be treated as a domestic corporation for pur-  
9 poses of this title, but

10           “(B) the management and control of the  
11 corporation occurs, directly or indirectly, pri-  
12 marily within the United States,  
13 then, solely for purposes of chapter 1 (and any other  
14 provision of this title relating to chapter 1), the cor-  
15 poration shall be treated as a domestic corporation.

16           “(2) CORPORATION DESCRIBED.—

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

19           “(i) the stock of such corporation is  
20 regularly traded on an established securi-  
21 ties market, or

22           “(ii) the aggregate gross assets of  
23 such corporation (or any predecessor there-  
24 of), including assets under management  
25 for investors, whether held directly or indi-

1           rectly, at any time during the taxable year  
2           or any preceding taxable year is  
3           \$50,000,000 or more.

4           “(B) GENERAL EXCEPTION.—A corpora-  
5           tion shall not be treated as described in this  
6           paragraph if—

7                   “(i) such corporation was treated as a  
8                   corporation described in this paragraph in  
9                   a preceding taxable year,

10                   “(ii) such corporation—

11                           “(I) is not regularly traded on an  
12                           established securities market, and

13                           “(II) has, and is reasonably ex-  
14                           pected to continue to have, aggregate  
15                           gross assets (including assets under  
16                           management for investors, whether  
17                           held directly or indirectly) of less than  
18                           \$50,000,000, and

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

21           “(3) MANAGEMENT AND CONTROL.—

22                   “(A) IN GENERAL.—The Secretary shall  
23                   prescribe regulations for purposes of deter-  
24                   mining cases in which the management and

1 control of a corporation is to be treated as oc-  
2 ccurring primarily within the United States.

3 “(B) EXECUTIVE OFFICERS AND SENIOR  
4 MANAGEMENT.—Such regulations shall provide  
5 that—

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

16 “(ii) individuals who are not executive  
17 officers and senior management of the cor-  
18 poration (including individuals who are of-  
19 ficers or employees of other corporations in  
20 the same chain of corporations as the cor-  
21 poration) shall be treated as executive offi-  
22 cers and senior management if such indi-  
23 viduals exercise the day-to-day responsibil-  
24 ities of the corporation described in clause  
25 (i).



1           “(C) CORPORATIONS PRIMARILY HOLDING  
2 INVESTMENT ASSETS.—Such regulations shall  
3 also provide that the management and control  
4 of a corporation shall be treated as occurring  
5 primarily within the United States if—

6                   “(i) the assets of such corporation (di-  
7 rectly or indirectly) consist primarily of as-  
8 sets being managed on behalf of investors,  
9 and

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

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

○