

117TH CONGRESS
1ST SESSION

H. R. 2254

To amend the Internal Revenue Code of 1986 to modify the treatment of foreign corporations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2021

Ms. SCHAKOWSKY 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 modify the treatment of foreign corporations, 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.**

4 This Act may be cited as the “Corporate Tax Dodg-
5 ing Prevention Act”.

6 **SEC. 2. RESTORATION OF PROGRESSIVE CORPORATE TAX**

7 **RATE.**

8 (a) IN GENERAL.—Section 11(b) of the Internal Rev-
9 enue Code of 1986 is amended to read as follows:

10 “(b) AMOUNT OF TAX.—

1 “(1) IN GENERAL.—The amount of the tax im-
2 posed by subsection (a) shall be the sum of—

3 “(A) 15 percent of so much of the taxable
4 income as does not exceed \$50,000,

5 “(B) 25 percent of so much of the taxable
6 income as exceeds \$50,000 but does not exceed
7 \$75,000,

8 “(C) 34 percent of so much of the taxable
9 income as exceeds \$75,000 but does not exceed
10 \$10,000,000, and

11 “(D) 35 percent of so much of the taxable
12 income as exceeds \$10,000,000.

13 In the case of a corporation which has taxable in-
14 come in excess of \$100,000 for any taxable year, the
15 amount of tax determined under the preceding sen-
16 tence for such taxable year shall be increased by the
17 lesser of (i) 5 percent of such excess, or (ii) \$11,750.

18 In the case of a corporation which has taxable in-
19 come in excess of \$15,000,000, the amount of the
20 tax determined under the foregoing provisions of
21 this paragraph shall be increased by an additional
22 amount equal to the lesser of (i) 3 percent of such
23 excess, or (ii) \$100,000.

24 “(2) CERTAIN PERSONAL SERVICE CORPORA-
25 TIONS NOT ELIGIBLE FOR GRADUATED RATES.—

1 Notwithstanding paragraph (1), the amount of the
2 tax imposed by subsection (a) on the taxable income
3 of a qualified personal service corporation (as de-
4 fined in section 448(d)(2)) shall be equal to 35 per-
5 cent of the taxable income.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to taxable years beginning after
8 December 31, 2021.

9 **SEC. 3. EQUALIZATION OF TAX RATES ON DOMESTIC AND**
10 **FOREIGN INCOME.**

11 (a) IN GENERAL.—Section 952 of the Internal Rev-
12 enue Code of 1986 is amended by adding at the end the
13 following new subsection:

14 “(e) SPECIAL APPLICATION OF SUBPART.—

15 “(1) IN GENERAL.—For taxable years begin-
16 ning after December 31, 2021, notwithstanding any
17 other provision of this subpart, the term ‘subpart F
18 income’ means, in the case of any controlled foreign
19 corporation, the income of such corporation derived
20 from any foreign country.

21 “(2) APPLICABLE RULES.—Rules similar to the
22 rules under the last sentence of subsection (a) and
23 subsection (d) shall apply to this subsection.”.

24 (b) TREATMENT OF PREVIOUSLY DEFERRED FOR-
25 EIGN INCOME.—

1 (1) TREATMENT OF INTEREST.—Section 965(h)
2 of the Internal Revenue Code of 1986 is amended by
3 adding at the end the following new paragraph:

4 “(7) RULES RELATING TO INTEREST.—In the
5 case of any amount of the net tax liability prorated
6 to an installment under this subsection which has
7 not been paid before the date of the enactment of
8 this paragraph, the last date prescribed for payment
9 of any such installment for purposes of section 6601
10 shall be the earlier of such last date (determined
11 without regard to this paragraph) or such date of
12 enactment.”.

13 (2) RULES FOR S CORPORATIONS.—Section
14 965(i)(2)(A) of such Code is amended by adding at
15 the end the following new clause:

16 “(iv) The date of the enactment of the
17 Corporate Tax Dodging Prevention Act.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years of foreign corpora-
20 tions beginning after December 31, 2021, and to taxable
21 years of United States shareholders in which or with which
22 such taxable years of foreign corporations end.

1 **SEC. 4. COUNTRY-BY-COUNTRY APPLICATION OF LIMITA-**
2 **TION ON FOREIGN TAX CREDIT BASED ON**
3 **TAXABLE UNITS.**

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

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

8 “(1) IN GENERAL.—The provisions of sub-
9 sections (a), (b), (c), and (d) and sections 907 and
10 960 shall be applied separately with respect to each
11 country and possession by taking into account the
12 aggregate items properly attributable or otherwise
13 allocable to a taxable unit of the taxpayer which is
14 a tax resident of such country or possession.

15 “(2) TAXABLE UNITS.—

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

1 “(B) DETERMINATION OF TAXABLE
2 UNITS.—Except as otherwise provided by the
3 Secretary, the taxable units of a taxpayer are
4 as follows:

5 “(i) IN GENERAL.—The general tax-
6 able unit of the taxpayer which is not oth-
7 erwise described in a separate clause of
8 this subparagraph.

9 “(ii) FOREIGN BRANCHES.—Each for-
10 eign branch the activities of which are car-
11 ried on directly or indirectly (through one
12 or more pass-through entities) by the tax-
13 payer.

14 “(iii) CONTROLLED FOREIGN COR-
15 PORATIONS.—Each controlled foreign cor-
16 poration with respect to which the tax-
17 payer is a United States shareholder.

18 “(iv) BRANCHES OF CONTROLLED
19 FOREIGN CORPORATIONS.—Each branch
20 the activities of which are carried on di-
21 rectly or indirectly (through one or more
22 pass-through entities) by a controlled for-
23 eign corporation referred to in clause (iii).

24 “(v) INTERESTS IN PASS-THROUGH
25 ENTITIES.—

1 “(I) IN GENERAL.—Each interest
2 in a pass-through entity held directly
3 or indirectly by the taxpayer or a con-
4 trolled foreign corporation referred to
5 in clause (iii) if such entity is a tax
6 resident of a foreign country.

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

20 “(3) TAX RESIDENT.—For purposes of this
21 subsection, a taxable unit shall be treated as a tax
22 resident of a country or possession if such taxable
23 unit is liable to tax under the tax law of such coun-
24 try or possession as a resident.

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

6 “(5) REGULATIONS.—The Secretary shall issue
7 such regulations or other guidance as the Secretary
8 determines necessary or appropriate to carry out the
9 purposes of this subsection, including regulations or
10 other guidance—

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

14 “(i) determining such country or pos-
15 session on the basis of location if such tax-
16 able unit would not otherwise be a tax resi-
17 dent of any country or possession, and

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

21 “(B) applying this section to hybrid enti-
22 ties, passive foreign investment companies,
23 tiered structures, and branches, including
24 branches that do not give rise to a taxable pres-

1 ence under the tax law of the country where the
2 branch is located, and

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

6 (b) APPLICATION OF FOREIGN TAX CREDIT LIMITA-
7 TION WITH RESPECT TO FOREIGN BRANCHES.—Section
8 904(d)(2)(J)(i) is amended—

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

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

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 2021.

18 **SEC. 5. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN**
19 **FOREIGN ENTITIES AND CFC LOOK-THRU**
20 **RULES.**

21 (a) CHECK-THE-BOX RULES.—Paragraph (3) of sec-
22 tion 7701(a) of the Internal Revenue Code of 1986 is
23 amended—

24 (1) by striking “and”, and

1 (2) by inserting after “insurance companies”
2 the following: “, and any foreign business entity that
3 has one or more owners all of which have limited li-
4 ability.”.

5 (b) LOOK-THRU RULE.—Subparagraph (C) of sec-
6 tion 954(c)(6) of such Code is amended to read as follows:

7 “(C) TERMINATION.—Subparagraph (A)
8 shall not apply to dividends, interest, rents, and
9 royalties received or accrued after the date of
10 the enactment of the Corporate Tax Dodging
11 Prevention Act.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act.

15 **SEC. 6. LIMITATION ON DEDUCTION OF INTEREST BY DO-**
16 **MESTIC CORPORATIONS WHICH ARE MEM-**
17 **BERS OF AN INTERNATIONAL FINANCIAL RE-**
18 **PORTING GROUP.**

19 (a) IN GENERAL.—Section 163 of the Internal Rev-
20 enue Code of 1986 is amended by redesignating subsection
21 (n) as subsection (o) and by inserting after subsection (m)
22 the following new subsection:

23 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
24 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
25 CIAL REPORTING GROUPS.—

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

6 “(A) the allowable percentage of 105 per-
7 cent of the excess (if any) of—

8 “(i) the amount of such interest so
9 paid or accrued, over

10 “(ii) the amount described in subpara-
11 graph (B), plus

12 “(B) the amount of interest includible in
13 gross income of such corporation for such tax-
14 able year.

15 “(2) INTERNATIONAL FINANCIAL REPORTING
16 GROUP.—

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

21 “(i) includes—

22 “(I) at least one foreign corpora-
23 tion engaged in a trade or business
24 within the United States, or

1 “(II) at least one domestic cor-
2 poration and one foreign corporation,
3 “(ii) prepares consolidated financial
4 statements with respect to such year, and
5 “(iii) reports in such statements aver-
6 age annual gross receipts (determined in
7 the aggregate with respect to all entities
8 which are part of such group) for the 3-re-
9 porting-year period ending with such re-
10 porting year in excess of \$25,000,000.

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

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

17 “(A) IN GENERAL.—The term ‘allowable
18 percentage’ means, with respect to any domestic
19 corporation for any taxable year, the ratio (ex-
20 pressed as a percentage and not greater than
21 100 percent) of—

22 “(i) such corporation’s allocable share
23 of the international financial reporting
24 group’s reported net interest expense for
25 the reporting year of such group which

1 ends in or with such taxable year of such
2 corporation, over

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

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

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

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

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

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

23 “(I) the amount of interest ex-
24 pense of such corporation reported in
25 the books and records of the inter-

1 national financial reporting group
2 which are used in preparing such
3 group's consolidated financial state-
4 ments for such taxable year, over

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

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

16 “(i) the EBITDA of such corporation
17 for such reporting year, bears to

18 “(ii) the EBITDA of such group for
19 such reporting year.

20 “(D) EBITDA.—

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

1 “(I) as determined in the inter-
2 national financial reporting group’s
3 consolidated financial statements for
4 such year, or

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

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

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

23 “(E) SPECIAL RULES FOR NON-POSITIVE
24 EBITDA.—

1 “(i) NON-POSITIVE GROUP EBITDA.—

2 In the case of any international financial
3 reporting group the EBITDA of which is
4 zero or less, paragraph (1) shall not apply
5 to any member of such group the EBITDA
6 of which is above zero.

7 “(ii) NON-POSITIVE ENTITY

8 EBITDA.—In the case of any group mem-
9 ber the EBITDA of which is zero or less,
10 paragraph (1) shall be applied without re-
11 gard to subparagraph (A) thereof.

12 “(4) CONSOLIDATED FINANCIAL STATEMENT.—

13 For purposes of this subsection, the term ‘consoli-
14 dated financial statement’ means any consolidated
15 financial statement described in paragraph (2)(A)(ii)
16 if such statement is—

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

23 “(i) a 10-K (or successor form) or
24 annual statement to shareholders required

1 to be filed with the United States Securi-
2 ties and Exchange Commission,

3 “(ii) an audited financial statement
4 which is used for—

5 “(I) credit purposes,

6 “(II) reporting to shareholders,
7 partners, or other proprietors, or to
8 beneficiaries, or

9 “(III) any other substantial
10 nontax purpose,

11 but only if there is no statement described
12 in clause (i), or

13 “(iii) filed with any other Federal or
14 State agency for nontax purposes, but only
15 if there is no statement described in clause
16 (i) or (ii), or

17 “(B) a financial statement which—

18 “(i) is used for a purpose described in
19 subclause (I), (II), or (III) of subpara-
20 graph (A)(ii), or

21 “(ii) filed with any regulatory or gov-
22 ernmental body (whether domestic or for-
23 eign) specified by the Secretary,

24 but only if there is no statement described in
25 subparagraph (A).

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

6 “(6) APPLICATION TO CERTAIN ENTITIES.—

7 “(A) PARTNERSHIPS.—The secretary shall
8 prescribe rules for application of this subsection
9 to any partnership which is a member of any
10 international financial reporting group. Such
11 rules shall treat any such partnership in a man-
12 ner similar to the way such partnership would
13 be treated under this subsection if it were a do-
14 mestic corporation which is a member of any
15 international financial reporting group.

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

24 “(C) CONSOLIDATED GROUPS.—For pur-
25 poses of this subsection, the members of any

1 group that file (or are required to file) a con-
2 solidated return with respect to the tax imposed
3 by chapter 1 for a taxable year shall be treated
4 as a single corporation.

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

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 the date of the enactment of this Act.

12 **SEC. 7. MODIFICATIONS TO RULES RELATING TO IN-**
13 **VERTED CORPORATIONS.**

14 (a) IN GENERAL.—Subsection (b) of section 7874 of
15 the Internal Revenue Code of 1986 is amended to read
16 as follows:

17 “(b) INVERTED CORPORATIONS TREATED AS DO-
18 MESTIC CORPORATIONS.—

19 “(1) IN GENERAL.—Notwithstanding section
20 7701(a)(4), a foreign corporation shall be treated for
21 purposes of this title as a domestic corporation if—

22 “(A) such corporation would be a surro-
23 gate foreign corporation if subsection (a)(2)
24 were applied by substituting ‘80 percent’ for
25 ‘60 percent’, or

1 “(B) such corporation is an inverted do-
2 mestic corporation.

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

8 “(A) the entity completes after May 8,
9 2014, the direct or indirect acquisition of—

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

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

17 “(B) after the acquisition, more than 50
18 percent of the stock (by vote or value) of the
19 entity is held—

20 “(i) in the case of an acquisition with
21 respect to a domestic corporation, by
22 former shareholders of the domestic cor-
23 poration by reason of holding stock in the
24 domestic corporation, or

1 “(ii) in the case of an acquisition with
2 respect to a domestic partnership, by
3 former partners of the domestic partner-
4 ship by reason of holding a capital or prof-
5 its interest in the domestic partnership.

6 “(3) EXCEPTION FOR CORPORATIONS WITH
7 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
8 COUNTRY OF ORGANIZATION.—A foreign corporation
9 described in paragraph (2) shall not be treated as an
10 inverted domestic corporation if after the acquisition
11 the expanded affiliated group which includes the en-
12 tity has substantial business activities in the foreign
13 country in which or under the law of which the enti-
14 ty is created or organized when compared to the
15 total business activities of such expanded affiliated
16 group. For purposes of subsection (a)(2)(B)(iii) and
17 the preceding sentence, the term ‘substantial busi-
18 ness activities’ shall have the meaning given such
19 term under regulations in effect on May 8, 2014, ex-
20 cept that the Secretary may issue regulations in-
21 creasing the threshold percent in any of the tests
22 under such regulations for determining if business
23 activities constitute substantial business activities for
24 purposes of this paragraph.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Clause (i) of section 7874(a)(2)(B) of the
2 Internal Revenue Code of 1986 is amended by strik-
3 ing “after March 4, 2003,” and inserting “after
4 March 4, 2003, and before May 9, 2014,”.

5 (2) Subsection (c) of section 7874 of such Code
6 is amended—

7 (A) in paragraph (2)—

8 (i) by striking “subsection
9 (a)(2)(B)(ii)” and inserting “subsections
10 (a)(2)(B)(ii) and (b)(2)(B)”, and

11 (ii) by inserting “or (b)(2)(A)” after
12 “(a)(2)(B)(i)” in subparagraph (B),

13 (B) in paragraph (3), by inserting “or
14 (b)(2)(B), as the case may be,” after
15 “(a)(2)(B)(ii)”,

16 (C) in paragraph (5), by striking “sub-
17 section (a)(2)(B)(ii)” and inserting “sub-
18 sections (a)(2)(B)(ii) and (b)(2)(B)”, and

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

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years ending after May
24 8, 2014.

1 **SEC. 8. TREATMENT OF FOREIGN CORPORATIONS MAN-**
2 **AGED AND CONTROLLED IN THE UNITED**
3 **STATES AS DOMESTIC CORPORATIONS.**

4 (a) IN GENERAL.—Section 7701 of the Internal Rev-
5 enue Code of 1986 is amended by redesignating subsection
6 (p) as subsection (q) and by inserting after subsection (o)
7 the following new subsection:

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

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

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

17 “(B) the management and control of the
18 corporation occurs, directly or indirectly, pri-
19 marily within the United States,
20 then, solely for purposes of chapter 1 (and any other
21 provision of this title relating to chapter 1), the cor-
22 poration shall be treated as a domestic corporation.

23 “(2) CORPORATION DESCRIBED.—

24 “(A) IN GENERAL.—A corporation is de-
25 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.

1 **SEC. 9. MODIFICATIONS TO BASE EROSION AND ANTI-**
2 **ABUSE TAX.**

3 (a) ACCELERATION OF MODIFICATIONS.—Section
4 59A(b) of the Internal Revenue Code of 1986 is amend-
5 ed—

6 (1) in paragraph (1)(A), by striking “10 per-
7 cent (5 percent in the case of taxable years begin-
8 ning in calendar year 2018)” and inserting “12.5
9 percent”,

10 (2) in paragraph (1)(B), by striking “by the ex-
11 cess of” and all that follows and inserting “by the
12 aggregate amount of the credits allowed under this
13 chapter against such regular tax liability.”,

14 (3) by striking paragraphs (2) and (4) and re-
15 designating paragraph (3) as paragraph (2), and

16 (4) in paragraph (2)(A) (as so redesignated), by
17 striking “paragraphs (1)(A) and (2)(A) shall each”
18 and inserting “paragraph (1)(A) shall”.

19 (b) MODIFICATIONS TO DEFINITION OF APPLICABLE
20 TAXPAYER.—Section 59A(e)(1) of the Internal Revenue
21 Code of 1986 is amended—

22 (1) by striking “\$500,000,000” in subpara-
23 graph (B) and inserting “\$25,000,000”, and

24 (2) by inserting “and” at the end of subpara-
25 graph (A), by striking “, and” at the end of sub-

1 paragraph (B) and inserting a period, and by strik-
2 ing subparagraph (C).

3 (c) EXCEPTIONS TO DEFINITION OF BASE EROSION
4 PAYMENT.—Section 59A(d) of the Internal Revenue Code
5 of 1986 is amended by adding at the end the following
6 new paragraph:

7 “(6) EXCEPTION FOR CERTAIN PAYMENTS IN-
8 CLUDIBLE IN GROSS INCOME OF PAYEE.—

9 “(A) IN GENERAL.—Paragraph (1) shall
10 not apply to any portion of an amount—

11 “(i) which is paid or accrued by the
12 taxpayer to a foreign person who is a
13 member of the same controlled group of
14 corporations as the taxpayer, and

15 “(ii) which—

16 “(I) is treated by the foreign per-
17 son as an amount of income from
18 sources within the United States
19 which is effectively connected with the
20 conduct by such person of a trade or
21 business within the United States, or

22 “(II) if the foreign person is a
23 controlled foreign corporation, is in-
24 cluded in the income of a United
25 States shareholder of such controlled

1 foreign corporation under section
2 951(a).

3 “(B) CONTROLLED GROUP OF CORPORA-
4 TIONS.—For purposes of this paragraph, the
5 term ‘controlled group of corporations’ has the
6 same meaning given to such term by section
7 1563(a), except that—

8 “(i) ‘more than 50 percent’ shall be
9 substituted for ‘at least 80 percent’ each
10 place it appears in section 1563(a)(1), and

11 “(ii) the determination shall be made
12 without regard to subsections (a)(4),
13 (b)(2)(C), and (e)(3)(C) of section 1563.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning in cal-
16 endar years beginning after the date of the enactment of
17 this Act.

18 **SEC. 10. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**
19 **APPLICABLE TO OIL, GAS, MINING, GAM-**
20 **BLING AND OTHER INDUSTRY TAXPAYERS**
21 **RECEIVING SPECIFIC ECONOMIC BENEFITS.**

22 (a) IN GENERAL.—Section 901 of the Internal Rev-
23 enue Code of 1986 is amended by redesignating subsection
24 (n) as subsection (o) and by inserting after subsection (m)
25 the following new subsection:

1 “(n) SPECIAL RULES RELATING TO DUAL CAPACITY
2 TAXPAYERS.—

3 “(1) GENERAL RULE.—Notwithstanding any
4 other provision of this chapter, any amount paid or
5 accrued by a dual capacity taxpayer to a foreign
6 country or possession of the United States for any
7 period shall not be considered a tax—

8 “(A) if, for such period, the foreign coun-
9 try or possession does not impose a generally
10 applicable income tax, or

11 “(B) to the extent such amount exceeds
12 the amount (determined in accordance with reg-
13 ulations) which—

14 “(i) is paid by such dual capacity tax-
15 payer pursuant to the generally applicable
16 income tax imposed by the country or pos-
17 session, or

18 “(ii) would be paid if the generally ap-
19 plicable income tax imposed by the country
20 or possession were applicable to such dual
21 capacity taxpayer.

22 Nothing in this paragraph shall be construed to
23 imply the proper treatment of any such amount
24 not in excess of the amount determined under
25 subparagraph (B).

1 “(2) DUAL CAPACITY TAXPAYER.—For pur-
2 poses of this subsection, the term ‘dual capacity tax-
3 payer’ means, with respect to any foreign country or
4 possession of the United States, a person who—

5 “(A) is subject to a levy of such country or
6 possession, and

7 “(B) receives (or will receive) directly or
8 indirectly a specific economic benefit (as deter-
9 mined in accordance with regulations) from
10 such country or possession.

11 “(3) GENERALLY APPLICABLE INCOME TAX.—
12 For purposes of this subsection—

13 “(A) IN GENERAL.—The term ‘generally
14 applicable income tax’ means an income tax (or
15 a series of income taxes) which is generally im-
16 posed under the laws of a foreign country or
17 possession on income derived from the conduct
18 of a trade or business within such country or
19 possession.

20 “(B) EXCEPTIONS.—Such term shall not
21 include a tax unless it has substantial applica-
22 tion, by its terms and in practice, to—

23 “(i) persons who are not dual capacity
24 taxpayers, and

1 “(ii) persons who are citizens or resi-
2 dents of the foreign country or posses-
3 sion.”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxes paid or accrued in taxable
6 years beginning after the date of the enactment of this
7 Act.

8 (c) SPECIAL RULE FOR TREATIES.—Notwith-
9 standing sections 894 or 7852(d) of the Internal Revenue
10 Code of 1986, the amendments made by this section shall
11 apply without regard to any treaty obligation of the
12 United States.

13 **SEC. 11. LIMITATIONS ON TREATY BENEFITS.**

14 (a) LIMITATION FOR CERTAIN DEDUCTIBLE PAY-
15 MENTS.—Section 894 of the Internal Revenue Code of
16 1986 is amended by adding at the end the following new
17 subsection:

18 “(d) LIMITATION ON TREATY BENEFITS FOR CER-
19 TAIN DEDUCTIBLE PAYMENTS.—

20 “(1) IN GENERAL.—In the case of any deduct-
21 ible related-party payment, any withholding tax im-
22 posed under chapter 3 (and any tax imposed under
23 subpart A or B of this part) with respect to such
24 payment may not be reduced under any treaty of the
25 United States unless any such withholding tax would

1 be reduced under a treaty of the United States if
2 such payment were made directly to the foreign par-
3 ent corporation.

4 “(2) DEDUCTIBLE RELATED-PARTY PAY-
5 MENT.—For purposes of this subsection, the term
6 ‘deductible related-party payment’ means any pay-
7 ment made, directly or indirectly, by any person to
8 any other person if the payment is allowable as a de-
9 duction under this chapter and both persons are
10 members of the same foreign controlled group of en-
11 tities.

12 “(3) FOREIGN CONTROLLED GROUP OF ENTI-
13 TIES.—For purposes of this subsection—

14 “(A) IN GENERAL.—The term ‘foreign
15 controlled group of entities’ means a controlled
16 group of entities the common parent of which
17 is a foreign corporation.

18 “(B) CONTROLLED GROUP OF ENTITIES.—
19 The term ‘controlled group of entities’ means a
20 controlled group of corporations as defined in
21 section 1563(a)(1), except that—

22 “(i) ‘more than 50 percent’ shall be
23 substituted for ‘at least 80 percent’ each
24 place it appears therein, and

1 “(ii) the determination shall be made
2 without regard to subsections (a)(4) and
3 (b)(2) of section 1563.

4 A partnership or any other entity (other than a
5 corporation) shall be treated as a member of a
6 controlled group of entities if such entity is con-
7 trolled (within the meaning of section
8 954(d)(3)) by members of such group (includ-
9 ing any entity treated as a member of such
10 group by reason of this sentence).

11 “(4) FOREIGN PARENT CORPORATION.—For
12 purposes of this subsection, the term ‘foreign parent
13 corporation’ means, with respect to any deductible
14 related-party payment, the common parent of the
15 foreign controlled group of entities referred to in
16 paragraph (3)(A).

17 “(5) REGULATIONS.—The Secretary may pre-
18 scribe such regulations or other guidance as are nec-
19 essary or appropriate to carry out the purposes of
20 this subsection, including regulations or other guid-
21 ance which provide for—

22 “(A) the treatment of two or more persons
23 as members of a foreign controlled group of en-
24 tities if such persons would be the common par-

1 ent of such group if treated as one corporation,
2 and

3 “(B) the treatment of any member of a
4 foreign controlled group of entities as the com-
5 mon parent of such group if such treatment is
6 appropriate taking into account the economic
7 relationships among such entities.”.

8 (b) LIMITATION FOR CERTAIN INCOME ATTRIB-
9 UTABLE TO PERMANENT ESTABLISHMENTS IN A THIRD
10 COUNTRY.—Section 894 of such Code, as amended by
11 subsection (a), is amended by adding at the end the fol-
12 lowing new subsection:

13 “(e) DENIAL OF TREATY BENEFITS WITH RESPECT
14 TO CERTAIN INCOME ATTRIBUTABLE TO A PERMANENT
15 ESTABLISHMENT IN A THIRD COUNTRY.—A foreign per-
16 son shall not be entitled under any income tax treaty of
17 the United States with a foreign country to any exemption
18 from, or reduction of, any tax with respect to income if—

19 “(1) such income is income from sources within
20 the United States, and

21 “(2) such income is attributable to a permanent
22 establishment which is outside of such foreign coun-
23 try and—

24 “(A) the profits of which are subject to a
25 combined aggregate effective rate of tax in such

1 foreign country and the country of the perma-
2 nent establishment that is less than the lesser
3 of—

4 “(i) 15 percent, or

5 “(ii) 60 percent of the general statu-
6 tory rate of tax on income on corporations
7 in such foreign country, or

8 “(B) which is located in a foreign country
9 with which the United States does not have an
10 income tax treaty and is not taxed by the for-
11 eign country which is a party to the treaty.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to payments made after the date
14 of the enactment of this Act.

15 (d) SPECIAL RULE FOR TREATIES.—Notwith-
16 standing sections 894 or 7852(d) of the Internal Revenue
17 Code of 1986, the amendments made by this section shall
18 apply without regard to any treaty obligation of the
19 United States.

20 **SEC. 12. REPEAL OF DEDUCTION FOR FOREIGN-DERIVED**
21 **INTANGIBLE INCOME.**

22 (a) IN GENERAL.—Part VIII of subchapter B of
23 chapter 1 of the Internal Revenue Code of 1986 is amend-
24 ed by striking section 250 (and the item related to such
25 section in the table of sections for such part).

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 172(d) of the Internal Revenue
3 Code of 1986 is amended by striking paragraph (9).

4 (2) Section 246 of such Code is amended—

5 (A) by striking the comma after “section
6 243(a)(1)” the first place it appears and insert-
7 ing “and” and by striking “and section 250”,
8 and

9 (B) by insert after “section 243(a)(1)” the
10 second place it appears and by striking “, and
11 250”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2021.

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