TITLE III—BUSINESS TAX REFORM
Subtitle C—Business-related

Provisions

PART I—CORPORATE PROVISIONS

Subtitle Subpart A—20-percent Tax Rates

SEC. 3001. REDUCTION IN 13001. 20-PERCENT CORPORATE TAX RATE.

(a) IN GENERAL.—Section 11 is amended to read as follows:

“(b) AMOUNT OF TAX.—

“(1b) IN GENERAL.—Except as otherwise provided in this subsection, the amount of the tax imposed by subsection (a) shall be 20 percent of taxable income.”

“(2b) SPECIAL RULE FOR PERSONAL-SERVICE CORPORATIONS.

“(A) IN GENERAL.—In the case of a personal-service corporation (as defined in section 448(d)(2)), the amount of the tax imposed by subsection (a) shall be 25 percent of taxable income.

(1) The following sections are each amended by striking “section 11(b)(1)” and inserting “section 11(b)”:

(A) Section 280C(c)(3)(B)(ii)(II).
(B) REFERENCES TO CORPORATE RATE.—Any reference to the rate imposed under this section or to the highest rate in effect under this section (or any similar reference) shall be determined without regard to the rate imposed with respect to personal-service corporations (as so defined).”

Paragraphs (2)(B) and (6)(A)(ii) of section 860E(e).

(bC) CONFORMING AMENDMENTS.—Section 7874(e)(1)(B)

(A) Part I of subchapter P of chapter 1 is amended by striking section 1201 (and by striking the item relating to such section in the table of sections for such part).

(B) Section 12 is amended by striking paragraphs (4) and (6), and by redesignating paragraph (5) as paragraph (4).

(C) Section 453A(c)(3) is amended by striking “or 1201 (whichever is appropriate)”.

(D) Section 527(b) is amended—

(i) by striking paragraph (2), and

(ii) by striking all that precedes “is hereby imposed” and inserting:

“(b) TAX IMPOSED. — A tax”.

(DF) Sections 594(a) is amended by striking “taxes imposed by section 11 or 1201(a)” and inserting “tax imposed by section 11”.

2
Section 691(c)(4) is amended by striking “1201,”.

Section 801(a) is amended—

(i) by striking paragraph (2), and

(ii) by striking all that precedes “is hereby imposed” and inserting:

“(a) **TAX IMPOSED**.—A tax”.

Section 831(e) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

Sections 832(c)(5) and 834(b)(1)(D) are each amended by striking “sec. 1201 and following,”.

Section 852(b)(3)(A) is amended by striking “section 1201(a)” and inserting “section 11(b)(1)”. 

Section 857(b)(3) is amended—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) through (F) as subparagraphs (A) through (E), respectively,

(ii) in subparagraph (C), as so redesignated—

(I) by striking “subparagraph (A)(ii)” in clause (i) thereof and inserting “paragraph (1)”,

(II) by striking “the tax imposed by subparagraph (A)(ii)” in clauses (ii) and (iv) thereof and inserting “the tax imposed by paragraph (1) on undistributed capital gain”,
(iii) in subparagraph (E), as so redesignated, by striking “subparagraph (B) or (D)” and inserting “subparagraph (A) or (C)”, and

(iv) by adding at the end the following new subparagraph:

“(F) **UNDISTRIBUTED CAPITAL GAIN.**—

For purposes of this paragraph, the term ‘undistributed capital gain’ means the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gain dividends only.”.

(KL) Section 882(a)(1), as amended by section 12001, is amended by striking “or 1201(a)”.

(M) Section 904(b) is amended—

(i) by striking “or 1201(a)” in paragraph 22 (2)(C),

(ii) by striking paragraph (3)(D) and inserting the following:

“**(D) CAPITAL GAIN RATE DIFFERENTIAL.**—There is a capital gain rate differential for any year if subsection (h) of section 1 applies to such taxable year.”, and

(iii) by striking paragraph (3)(E) and inserting the following:

“**(E) RATE DIFFERENTIAL PORTION.**—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net
capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

“(i) the excess of—

“(I) the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), over

“(II) the alternative rate of tax determined under section 1(h), bears to

“(ii) that rate referred to in subclause 22 (I).”.

Section 1374(b) is amended by striking paragraph (4).

Section 1381(b) is amended by striking “taxes imposed by section 11 or 1201” and inserting “tax imposed by section 11”.

Section 6425(c)(1)(A), as amended by section 12001, and 6655(g)(1)(A)(i) are each amended by striking “or 1201(a),”.

Section 7518(g)(6)(A) is amended by striking “or 1201(a)”.

Section 1445(e)(1) is amended by striking “35 percent (or, to the extent provided in regulations, 20 percent)” and inserting “20 percent”.

(i) by striking “35 percent” and inserting “the highest rate of tax in effect for the taxable year under section 11(b)”, and

(ii) by striking “of the gain” and inserting “multiplied by the gain”.
(3B) Section 1445(e)(2) is amended by striking “35 percent of the amount” and inserting “20 percent the highest rate of tax in effect for the taxable year under section 11(b) multiplied by the amount”.

(C) Section 1445(e)(6) is amended—

(i) by striking “35 percent” and inserting “the highest rate of tax in effect for the taxable year under section 11(b)”, and

(ii) by striking “of the amount” and inserting “multiplied by the amount”.

(4D) Section 1445(e)(6b)(B) is amended by striking “35 percent (or, to the extent provided in regulations, 20 percent section 11(b)(1)” and inserting “20 percent section 11(b)”.

(4) Section 852(b)(1) is amended by striking the last sentence.

(5)(A) Part I of subchapter B of chapter 5 is amended by striking section 1551 (and by striking the item relating to such section in the table of sections for such part).

(B) Section 12 is amended by striking paragraph (6).

(CB) Section 535(c)(5) is amended to read as follows:

“(5) CROSS REFERENCE.—For limitation on credit provided in paragraph (2) or (3) in the case of certain controlled corporations, see section 15 1561.”.
(6)(A) Section 1561, as amended by the preceding provisions of this Act, is amended to read as follows:

“SEC. 1561. LIMITATION ON ACCUMULATED EARNINGS CREDIT IN THE CASE OF CERTAIN CONTROLLED CORPORATIONS.

“(a) IN GENERAL.—The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to one $250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3). Such amount shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amount.

“(b) CERTAIN SHORT TAXABLE YEARS.—If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle, the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3) of such corporation for such taxable year shall be the amount specified in subsection (a) with respect to such group, divided by the number of corporations which are component members of such group.
on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.”.

(B) The table of sections for part II of subchapter B of chapter 5 is amended by striking the item relating to section 1561 and inserting the following new item:

“Sec. 1561. Limitation on accumulated earnings credit in the case of certain controlled corporations.”.

(7) Section 7518(g)(6)(A) is amended—

(A) by striking “With respect to the portion” and inserting “In the case of a taxpayer other than a corporation, with respect to the portion”, and

(B) by striking “(34 percent in the case of a corporation)”.

(c) **Reduction in Dividend Received Deductions To Reflect Lower Corporate Income Tax Rates Effective Date.**—

(1) **In General.**—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years beginning after December 31, 2018.

(2) **Withholding.**—The amendments made by subsection (b)(3) shall apply to distributions made after December 31, 2018.
(3) CERTAIN TRANSFERS.—The amendments made by subsection (b)(6) shall apply to transfers made after December 31, 2018.

SEC. 13002. REDUCTION IN DIVIDEND RECEIVED DEDUCTIONS TO REFLECT LOWER CORPORATE INCOME TAX RATES.

(1a) DIVIDENDS RECEIVED BY CORPORATIONS.—

(A) IN GENERAL.—Section 243(a)(1) is amended by striking “70 percent” and inserting “50 percent”.

(B) DIVIDENDS FROM 20-PERCENT OWNED CORPORATIONS.—

Section 243(c)(1) is amended—

(i) by striking “80 percent” and inserting “65 percent”, and

(ii) by striking “70 percent” and inserting “50 percent”.

(C) CONFORMING AMENDMENT.—The heading for section 243(c) is amended by striking “RETENTION OF 80-PERCENT DIVIDEND RECEIVED DEDUCTION” and inserting “INCREASED PERCENTAGE”.

(2b) DIVIDENDS RECEIVED FROM FSC.—Section 245(c)(1)(B) is amended—

(A) by striking “70 percent” and inserting “50 percent”, and

(B) by striking “80 percent” and inserting “65 percent”.

9
(3e) LIMITATION ON AGGREGATE AMOUNT OF DEDUCTIONS.—

Section 246(b)(3) is amended—

(A) by striking “80 percent” in subparagraph

(B) by striking “70 percent” in subparagraph

(4d) REDUCTION IN DEDUCTION WHERE PORTFOLIO STOCK IS DEBT-FINANCED.—Section 246A(a)(1) is amended—

(A) by striking “70 percent” and inserting “50 percent”, and

(B) by striking “80 percent” and inserting “65 percent”.

(5e) INCOME FROM SOURCES WITHIN THE UNITED STATES.—

Section 861(a)(2) is amended—

(A) by striking “100/70th” and inserting “100/50th” in subparagraph

(B) in the flush sentence at the end—

(i) by striking “100/80th” and inserting “100/65th”, and

(ii) by striking “100/70th” and inserting “100/50th”.

(df) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section (other than subsection (c) thereof)
shall apply to taxable years beginning
 dividends received by a corporation
 after December 31, 20172018, in taxable years ending after such date.

(2) **CERTAIN CONFORMING AMENDMENTS**

**LIMITATION.**—The amendments made by paragraphs (2), (3), and (4) of subsection (bsection
102(c) shall apply to distributionstaxable years beginning after December 31, 20172018.

SEC. 13001 (continued)

(ed) **NORMALIZATION REQUIREMENTS**

**NORMALIZATION REQUIREMENTS.**—

(1) **IN GENERAL.**—A normalization method of accounting shall not be
treated as being used with respect to any public utility property for purposes
of section 167 or 168 of the Internal Revenue Code of 1986 if the taxpayer,
in computing its cost of service for ratemaking purposes and reflecting
operating results in its regulated books of account, reduces the excess tax
reserve more rapidly or to a greater extent than such reserve would be
reduced under the average rate assumption method.

(2) **ALTERNATIVE METHOD FOR CERTAIN TAXPAYERS.**—If, as of
the first day of the taxable year that includes the date of enactment of this
Act—
(A) the taxpayer was required by a regulatory agency to compute depreciation for public utility property on the basis of an average life or composite rate method, and

(B) the taxpayer’s books and underlying records did not contain the vintage account data necessary to apply the average rate assumption method,

the taxpayer will be treated as using a normalization method of accounting if, with respect to such jurisdiction, the taxpayer uses the alternative method for public utility property that is subject to the regulatory authority of that jurisdiction.

(3) DEFINITIONS.—For purposes of this subsection—

(A) EXCESS TAX RESERVE.—The term “excess tax reserve” means the excess of—

(i) the reserve for deferred taxes (as described in section 168(i)(9)(A)(ii) of the Internal Revenue Code of 1986) as determined under the Internal Revenue Code of 1986 as in effect on the day before the date of the enactment of this Act), over

(ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act were in effect for all prior periods.
(B) **Average Rate Assumption Method.**—The average rate assumption method is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, if timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying—

(i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by

(ii) the amount of the timing differences which reverse during such period.

(C) **Alternative Method.**—The “alternative method” is the method in which the taxpayer—

(i) computes the excess tax reserve on all public utility property included in the plant account on the basis of the weighted average life or composite rate used to compute depreciation for regulatory purposes, and

(ii) reduces the excess tax reserve ratably over the remaining regulatory life of the property.
(4) Tax increased for normalization violation.—If, for any taxable year ending after the date of the enactment of this Act, the taxpayer does not use a normalization method of accounting, the taxpayer’s tax for the taxable year shall be increased by the amount by which it reduces its excess tax reserve more rapidly than permitted under a normalization method of accounting.
PART III—COST RECOVERY AND ACCOUNTING METHODS

Subtitle B Subpart A—Cost Recovery

SEC. 3101. INCREASED TEMPORARY 100-PERCENT EXPENSING:

FOR CERTAIN BUSINESS ASSETS.

(a) IN GENERAL.—

(1) 100 PERCENT EXPENSING.—Section 168(k) is amended—

(aA) 100 PERCENT EXPENSING.—Section 168 in paragraph (k)(1)(A) is amended by striking “50 percent” and inserting “100 percent”, and

(B) in paragraph (5)(A)(i), by striking “50 percent” and inserting “100 percent”.

(b2) EXTENSION THROUGH JANUARY 1, 2023 EXTENSION THROUGH 2022.—Section 168(k)(2) is amended—


(B) in paragraph (2) in subparagraph (B)(i)(II), by striking “January 1, 2021” and inserting “January 1, 2024”. 
(3) in subparagraph (B)(iii), clauses (i)(III) and (ii) of subparagraph (B), and subparagraph (E)(i), by striking “January 1, 2020” each place it appears and inserting “January 1, 2023”, and (ii) in subparagraph (B)—

(I) in clause (i)(II), by striking “January 1, 2021” and inserting “January 1, 2024”, and

(II) in subparagraph (B) the heading of clause (ii), by striking “January 1, 2020” in each place it appears and inserting “January 1, 2023”, and

(C) in paragraph (5) in subparagraph (E)(iA), by striking “January 1, 2020” and replacing it with “January 1, 2023”.

(c) Application To Used Property.—

(1) IN GENERAL.—Section

(Exception for Public Utilities.—)

Paragraph (6) of section 168(k)(2)(A)(ii) is amended to read as follows:

“(ii) the original use of which begins with the taxpayer or the acquisition of which by the taxpayer meets the requirements of clause (ii) of subparagraph (E), and”.

(2) Acquisition Requirements.—Section 168(k)(2)(E)(ii) is amended to read as follows:

“(ii) Acquisition Requirements.—An acquisition of property meets the requirements of this clause if—

“(I) such property was not used by the taxpayer at any time prior to such acquisition, and
“(II) the acquisition of such property meets the requirements of paragraphs (2)(A), (2)(B), (2)(C), and (3) of section 179(d).”,

(3) ANTI-ABUSE RULES.—Section 168(k)(2)(E) is further amended by amending clause (iii)(I) to read as follows:

“(I) property is used by a lessor of such property and such use is the lessor’s first use of such property.”.

(d) EXCEPTION FOR CERTAIN TRADES AND BUSINESSES NOT SUBJECT TO LIMITATION ON INTEREST EXPENSE.—Section 168(k)(2), as amended by section 2001, is amended by inserting after subparagraph (F) the following new subparagraph:

“(G6) EXCEPTION FOR CERTAIN PUBLIC UTILITY PROPERTY OF CERTAIN BUSINESSES NOT SUBJECT TO LIMITATION ON INTEREST EXPENSE.—The term ‘qualified property’ shall not include any property used in—

which is primarily used in a trade or business described in clause (iv) of section 18 163(j)(7)“(i) a trade or business described in subparagraph (B) or (C) of section 163(j)(7), or

“(ii) a trade or business that has had floor plan financing indebtedness (as defined in paragraph (9) of section 163(j)), if the floor plan financing interest related to such indebtedness was taken into account under paragraph (1)(C) of such section.”.”

(e4) COORDINATION WITH SECTION 280F SPECIAL RULE. —Section 168(k)(2)(F) is amended—by adding at the end the following new paragraph:

(1) by striking “$8,000” in clauses (i) and (iii) and inserting “$16,000”, and
(2) in clause (iii)—

(A) by striking “placed in service by the taxpayer after December 31, 2017” and inserting “acquired by the taxpayer before September 28, 2017, and placed in service by the taxpayer after September 27, 2017”, and

(B) by redesignating subclauses (I) and (II) as subclauses (II) and (III) respectively, and inserting before clause (II), as so redesignated, the following new subclause:

“(I) in the case of a passenger automobile placed in service before January 1, 2018, ‘$8,000’,”.

“(f8) CONFORMING AMENDMENTS

SPECIAL RULE FOR

PROPERTY PLACED IN SERVICE DURING CERTAIN PERIODS.—

(1) Section 168(k)(2)(B)(i)(III), as amended, is amended by inserting “binding” before “contract”.

(2) Section 168(k)(5) is amended by—

(A) by striking “January 1, 2020” in subparagraph (A) and inserting “January 1, 2023”,

(B) by striking “50 percent” in subparagraph (A)(i) and inserting “100 percent”, and

(C) by striking subparagraph (F).

(3) Section 168(k)(6) is amended to read as follows:

“(6A) PHASE DOWN IN GENERAL.—In the case of qualified property acquired by the taxpayer before September 28, 2017, and placed in service by the taxpayer during the first taxable year ending after September 27, 2017, if the taxpayer elects to have this paragraph apply for such taxable year ending after September 27, 2017, if the taxpayer elects to have this paragraph apply for such taxable
year, paragraphs (1)(A) and (5)(A)(i) shall be applied by substituting ‘50 percent’ for ‘100 percent’—.

“(A) ‘50 percent’ in the case of—

“(i) property placed in service before January 1, 2018, and

“(B) FORM OF ELECTION.—Any election under this paragraph shall be made at such time and in such form and manner as the Secretary may prescribe.”.

(5) COORDINATION WITH SECTION 280F.—Section 168(k)(2)(F) is amended by striking clause (iii).

[[(6) QUALIFIED FILM AND TELEVISION AND LIVE THEATRICAL PRODUCTIONS.— OMITTED FOR BLACKLINE]]

(7) CONFORMING AMENDMENTS,—

“(iiA) property described in Paragraph (5) of section 168(k) is amended by striking subparagraph (BF) or (C) of paragraph (2) which is placed in service in 2018,

“(B) ‘40 percent’ in the case of—

“(i) property placed in service in 2018 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

“(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2019, and

“(C) ‘30 percent’ in the case of—
“(i) property placed in service in 2019 (other than property described in subparagraph (B) or (C) of paragraph (2)), and

“(ii) property described in subparagraph (B) or (C) of paragraph (2) which is placed in service in 2020.”

(4) The heading of section 168(k) is amended by striking “SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED AFTER DECEMBER 31, 2007, AND BEFORE JANUARY 1, 2020” and inserting “FULL EXPENSING OF CERTAIN PROPERTY”.

(5B) Section 460(c)(6)(B)(ii) is amended by striking “January 1, 2020 (January 1, 2021 in the case of property described in section 168(k)(2)(B))” and inserting “January 1, 2023 (January 1, 2024 in the case of property described in section 168(k)(2)(B))”.

(gb) EFFECTIVE DATE EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to property which—placed in service after September 27, 2017, in taxable years ending after such date.

(A) is acquired after September 27, 2017, and

(B) is placed in service after such date.

For purposes of the preceding sentence, property shall not be treated as acquired after the date on which a written binding contract is entered into for such acquisition.
(2) **Specified Certain plants.**—The amendments made by subsection paragraphs (f1)(B) and (2)(C) of subsection (a) shall apply to specified plants planted or grafted after September 27, 2017, in taxable years ending after such date.

(3) **Transition Rule.**—In the case of any taxpayer’s first taxable year ending after September 27, 2017, the taxpayer may elect (at such time and in such form and manner as the Secretary of the Treasury, or his designee, may provide) to apply section 168 of the Internal Revenue Code of 1986 without regard to the amendments made by this section.

(4) **Limitation on Net Operating Loss Carrybacks Attributable to Full Expensing.**—In the case of any taxable year which includes any portion of the period beginning on September 28, 2017, and ending on December 31, 2017, the amount of any net operating loss for such taxable year which may be treated as a net operating loss carryback (including any such carryback attributable to any specified liability loss under section 172(b)(1)(C), any corporate equity reduction interest loss under section 172(b)(1)(D), any eligible loss under section 172(b)(1)(E), and any farming loss under section 172(b)(1)(F)) shall be determined without regard to the amendments made by this section. For purposes of this paragraph, terms which are used in section 172 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by section 3302) shall have the same meaning as when used in such section.
PART IV—BUSINESS-RELATED EXCLUSIONS AND DEDUCTIONS

Subtitle D—Reform Of Business-Related Exclusions, Deductions, Etc.

SEC. 13301. LIMITATION ON DEDUCTION FOR INTEREST.

(a) IN GENERAL.—Section 163(j) is amended to read as follows:

“(j) LIMITATION ON BUSINESS INTEREST.—

“(1) IN GENERAL.—In the case of any taxpayer for any taxable year, the amount allowed as a deduction under this chapter for any taxable year for business interest shall not exceed the sum of—

“(A) the business interest income of such taxpayer for such taxable year, plus

“(B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus

“(C) the floor plan financing interest of such taxpayer for such taxable year.

The amount determined under subparagraph (B) shall not be less than zero.
“(2) Carryforward of disallowed business interest.—The amount of any business interest not allowed as a deduction for any taxable year by reason of paragraph (1) shall be treated as business interest paid or accrued in the succeeding taxable year.

“(2) Exemption for certain small businesses.—For exemption for certain small businesses, see the amendment made by section 3203 of the Tax Cuts and Jobs Act.

SEC. 3203. SMALL BUSINESS EXCEPTION FROM LIMITATION ON DEDUCTION OF BUSINESS INTEREST.

(a) In General.—Section 163(j)(2), as amended by section 3301, is amended to read as follows:

“(23) Exemption for certain small businesses.—In the case of any taxpayer (other than a tax shelter prohibited from using the cash receipts and disbursements method of accounting under section 448(a)(3)) which meets the gross receipts test of section 448(c) for any taxable year, paragraph (1) shall not apply to such taxpayer for such taxable year. In the case of any taxpayer which is not a corporation or a partnership, the gross receipts test of section 448(c) shall be applied in the same manner as if such taxpayer were a corporation or partnership.”.

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.
“(A) **IN GENERAL.**—In the case of any partnership—

“(i) this subsection shall be applied at the partnership level and any deduction for business interest shall be taken into account in determining the non-separately stated taxable income or loss of the partnership, and

“(ii) the adjusted taxable income of each partner of such partnership shall be determined without regard to such partner’s distributive share of the non-separately stated taxable income or loss of such partnership, and

“(iii) the amount determined under paragraph (1)(B) with respect to each partner of such partnership shall be increased by such partner’s distributive share of such partnership’s excess taxable income.

For purposes of clause (ii)(II), a partner’s distributive share of partnership excess taxable income shall be determined in the same manner as the partner’s distributive share of nonseparately stated taxable income or loss of the partnership.

“(B) **SPECIAL RULES FOR CARRYFORWARDS.**—
“(i) IN GENERAL.—The amount of any business interest not allowed as a deduction to a partnership for any taxable year by reason of paragraph (1) for any taxable year—

“(I) shall not be treated under paragraph (2) as business interest paid or accrued by the partnership in the succeeding taxable year, and

“(II) shall, subject to clause (ii), be treated as excess business interest which is allocated to each partner in the same manner as the non-separately stated taxable income or loss of the partnership.

“(ii) TREATMENT OF EXCESS BUSINESS INTEREST ALLOCATED TO PARTNERS.—If a partner is allocated any excess business interest from a partnership under clause (i) for any taxable year—

“(I) such excess business interest shall be treated as business interest paid or accrued by the partner in the next succeeding taxable year in which the partner is allocated excess taxable income from such partnership, but only to the extent of such excess taxable income, and

“(II) any portion of such excess business interest remaining after the application of subclause (I) shall, subject to the limitations of subclause (I), be treated as business interest paid or accrued in succeeding taxable years.

For purposes of applying this paragraph, excess taxable income allocated to a partner from a partnership for any taxable year shall not be
taken into account under paragraph (1)(A) with respect to any business
interest other than excess business interest from the partnership until all such
excess business interest for such taxable year and all preceding taxable years
has been treated as paid or accrued under clause (ii).

“(iii) BASIS ADJUSTMENTS.—

“(I) IN GENERAL.—The adjusted basis of a partner in a partnership
interest shall be reduced (but not below zero) by the amount of excess
business interest allocated to the partner under clause (i)(II).

“(II) SPECIAL RULE FOR DISPOSITIONS.—If a partner disposes of a
partnership interest, the adjusted basis of the partner in the partnership
interest shall be increased immediately before the disposition by the amount of
the excess (if any) of the amount of the basis reduction under subclause (I)
over the portion of any excess business interest allocated to the partner under
clause (i)(II) which has previously been treated under clause (ii) as business
interest paid or accrued by the partner. The preceding sentence shall also
apply to transfers of the partnership interest (including by reason of death) in
a transaction in which gain is not recognized in whole or in part. No
deduction shall be allowed to the transferor or transferee under this chapter
for any excess business interest resulting in a basis increase under this
subclause.
“(BC) EXCESS AMOUNT TAXABLE INCOME.—The term ‘excess amount taxable income’ means, with respect to any partnership, the excess (if any) of amount which bears the same ratio to the partnership’s adjusted taxable income as—

“(i) 30 percent of the adjusted taxable income of the partnership, over the excess (if any) of—

“(ii) the amount determined for the partnership under paragraph (1)(B), over “(II) the amount (if any) by which the business interest of the partnership, reduced by floor plan financing interest, exceeds the business interest income of the partnership, bears to

“(ii) the amount determined for the partnership under paragraph (1)(B).

“(CD) APPLICATION TO S CORPORATIONS.—

Rules similar to the rules of subparagraphs (A) and (B) shall apply with respect to any S corporation and its shareholders.

“(45) BUSINESS INTEREST.—For purposes of this subsection, the term ‘business interest’ means any interest paid or accrued on indebtedness properly allocable to a trade or business. Such term shall not include investment interest (within the meaning of subsection (d)).

“(56) BUSINESS INTEREST INCOME.—For purposes of this subsection, the term ‘business interest income’ means the amount of interest
includible in the gross income of the taxpayer for the taxable year which is properly allocable to a trade or business. Such term shall not include investment income (within the meaning of subsection (d)).

“(6) ADJUSTED TAXABLE INCOME.—For purposes of this subsection, the term ‘adjusted taxable income’ means the taxable income of the taxpayer—

“(A) computed without regard to—

“(i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business,

“(ii) any business interest or business interest income,

“(iii) the amount of any net operating loss deduction under section 172, and

“(iv) any deduction allowable for depreciation, amortization, or depletion, and

“(B) computed with such other adjustments as the Secretary may provide.

“(7) TRADE OR BUSINESS.—For purposes of this subsection, the term ‘trade or business’ shall not include—

“(A) IN GENERAL.—The term ‘trade or business’ shall not include—

“(A)i the trade or business of performing services as an employee,

“(B) ai) any electing real property trade or business (as such term is defined in section 469(e)(7)(C)), or

“(iii) any electing farming business, or
“(Civ) the trade or business of the furnishing or sale of—

“(iI) electrical energy, water, or sewage disposal services,

“(iiiI) gas or steam through a local distribution system, or

“(iiiIII) transportation of gas or steam by pipeline, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, or by the governing or ratemaking body of an electric cooperative.

“(B) ELECTING REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term ‘electing real property trade or business’ means any trade or business which is described in section 469(c)(7)(C) and which makes an election under this subparagraph.

Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.

“(C) ELECTING FARMING BUSINESS.—For purposes of this paragraph, the term ‘electing farming business’ means a farming business (as defined in section 263A(e)(4)) which makes an election under this subparagraph. Any such election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable.
“(8) ADJUSTED TAXABLE INCOME.—For purposes of this subsection, the term ‘adjusted taxable income’ means the taxable income of the taxpayer—

“(A) computed without regard to—

“(i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business,

“(ii) any business interest or business interest income,

“(iii) the amount of any net operating loss deduction under section 172, and

“(iv) the amount of any deduction allowed under section 199 or 199A, and

“(B) computed with such other adjustments as provided by the Secretary.

“(9) CROSS REFERENCES.—

“(A) For requirement that an electing real property trade or business use the alternative depreciation system, see section 168(g)(1)(F).

“(8) CARRYFORWARD OF DISALLOWED INTEREST.—For carryforward of interest disallowed under paragraph B) For requirement that an electing farming business use the alternative depreciation system, see section 168(g)(1), see subsection (e).”
“(9) Floor Plan Financing Interest Defined.—"

(b) Carryforward Of Disallowed Business Interest.—Section 163, after amendment by section 4302(a) and before amendment by section 4302(b), is amended by inserting after subsection (n) the following new subsection:

“(o) Carryforward Of Disallowed Business Interest.—The amount of any business interest not allowed as a deduction for any taxable year by reason of subsection (j) shall be treated as business interest paid or accrued in the succeeding taxable year. Business interest paid or accrued in any taxable year (determined without regard to the preceding sentence) shall not be carried past the 5th taxable year following such taxable year, determined by treating business interest as allowed as a deduction on a first-in, first-out basis.”.

(c) Treatment Of Carryforward Of Disallowed Business Interest In Certain Corporate Acquisitions—

Treatment Of Carryforward Of Disallowed Business Interest In Certain Corporate Acquisitions.—

(1) In General.—Section 381(c) is amended by inserting after paragraph (19) the following new paragraph:

“(20) Carryforward Of Disallowed Business Interest.—The carryover of disallowed business interest described in section 163(ej)(2) to taxable years ending after the date of distribution or transfer.”.

(2) Application Of Limitation.—Section 382(d) is amended by adding at the end the following new paragraph:
“(3) **APPLICATION TO CARRYFORWARD OF DISALLOWED INTEREST.** — The term ‘pre-change loss’ shall include any carryover of disallowed interest described in section 163(on) under rules similar to the rules of paragraph (1).”

(3) **CONFORMING AMENDMENT.** — Section 382(k)(1) is amended by inserting after the first sentence the following: “Such term shall include any corporation entitled to use a carryforward of disallowed interest described in section 381(c)(20).”

(3c) **EFFECTIVE DATE.** — The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

**SEC. 3302. MODIFICATION OF NET OPERATING LOSS DEDUCTION.**

(a) **INDEFINITE CARRYFORWARD OF NET OPERATING LOSSES.** — Section 172(b)(1)(A)(ii) is amended by striking “to each of the 20 taxable years” and inserting “to each taxable year”.

(b) **REPEAL OF NET OPERATING LOSS CARRYBACKS OTHER THAN 1-YEAR CARRYBACK OF ELIGIBLE DISASTER LOSSES.** — Section 172(b)(1)(A)(i) is amended to read as follows:—
(A) by striking “shall be a net operating loss carryback to each of the 2 taxable years” in clause (i) and inserting “except as otherwise provided in this paragraph, shall not be a net operating loss carryback to any taxable year”, and

(B) by striking “to each of the 20 taxable years” in clause (ii) and inserting “to each taxable year”.

“(i) in the case of any portion of a net operating loss for the taxable year which is an eligible disaster loss with respect to the taxpayer, shall be a net operating loss carryback to the taxable year preceding the taxable year of such loss, and”.

(2) CONFORMING AMENDMENTS.—

(A)2) CONFORMING AMENDMENT.—Section 172(b)(1) is amended by striking subparagraphs (B) through (F) and inserting the following:

“(B) ELIGIBLE DISASTER LOSS.—

“(i) IN GENERAL.—For purposes of subparagraph (A)(i), the term ‘eligible disaster loss’ means—

“(I) in the case of a taxpayer which is a small business, net operating losses attributable to federally declared disasters (as defined by section 165(i)(5)), and

“(II) in the case of a taxpayer engaged in the trade or business of farming, net operating losses attributable to such federally declared disasters.

“(ii) SMALL BUSINESS.—For purposes of this subparagraph, the term ‘small business’ means a corporation or
partnership which meets the gross receipts test of section 448(c) (determined by substituting ‘$5,000,000’ for ‘$25,000,000’ each place it appears therein) for the taxable year in which the loss arose (or, in the case of a sole proprietorship, which would meet such test if such proprietorship were a corporation).

“(iii) TRADE OR BUSINESS OF FARMING.—For purposes of this subparagraph, the trade or business of farming shall include the trade or business of—

“(I) operating a nursery or sod farm, or

“(II) the raising or harvesting of trees bearing fruit, nuts, or other crops, or ornamental trees.

For purposes of subclause (II), an evergreen tree which is more than 6 years old at the time severed from the roots shall not be treated as an ornamental tree.”.

(B) Section 172 is amended by striking subsections (f), (g), and (h).

13302 (ca) LIMITATION OF NET OPERATING LOSS TO 90 PERCENT OF TAXABLE INCOME

LIMITATION ON DEDUCTION.——

(1) IN GENERAL.—Section 172(a) is amended to read as follows:

“(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the lesser of—

“(1) the aggregate of the net operating loss carryovers to such year, plus the net operating loss carrybacks to such year, or
“(2) 90 percent (80 percent in the case of taxable years beginning after December 31, 2022) of taxable income computed without regard to the deduction allowable under this section.

For purposes of this subtitle, the term ‘net operating loss deduction’ means the deduction allowed by this subsection.”.

(2) Coordination of limitation with carrybacks and carryovers.—Section 172(b)(2) is amended by striking “shall be computed—” and all that follows and inserting “shall—

“(A) be computed with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

“(B) not be considered to be less than zero, and

“(C) not exceed the amount determined under subsection (a)(2) for such prior taxable year.”.

(3) Conforming amendment.—Section 172(d)(6) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “; and”, and by adding at the end the following new subparagraph:
“(C) subsection (a)(2) shall be applied by substituting ‘real estate investment trust taxable income (as defined in section 857(b)(2) but without regard to the deduction for dividends paid (as defined in section 561))’ for ‘taxable income’.”.

(d) ANNUAL INCREASE OF INDEFINITE CARRYOVER AMOUNTS.—Section 172(b) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

“(3) ANNUAL INCREASE OF INDEFINITE CARRYOVER AMOUNTS.—For purposes of paragraph (2)—

“(A) the amount of any indefinite net operating loss which is carried to the next succeeding taxable year after the loss year (within the meaning of paragraph (2)) shall be increased by an amount equal to—

“(i) the amount of the loss which may be so carried over to such succeeding taxable year (determined without regard to this paragraph), multiplied by

“(iic) the sum of—TREATMENT OF FARMING LOSSES.—OMITTED FOR BLACKLINE]

[(d) TREATMENT OF CERTAIN INSURANCE LOSSES.—OMITTED FOR BLACKLINE]

“(I) the annual Federal short-term rate (determined under section 1274(d)) for the last month ending before the beginning of such taxable year, plus

“(II) 4 percentage points, and
“(B) the amount of any indefinite net operating loss which is carried to any succeeding taxable year (after such next succeeding taxable year) shall be an amount equal to—

“(i) the excess of—

“(I) the amount of the loss carried to the prior taxable year (after any increase under this paragraph with respect to such amount), over

“(II) the amount by which such loss was reduced under paragraph (2) by reason of the taxable income for such prior taxable year, multiplied by

“(ii) a percentage equal to 100 percent plus the percentage determined under subparagraph (A)(ii) with respect to such succeeding taxable year.

For purposes of the preceding sentence, the term ‘indefinite net operating loss’ means any net operating loss arising in a taxable year beginning after December 31, 2017.”

(e) Effective Date.—

(1) Carryforwards and carrybacks. The amendments made by subsections (a) and (bd)(2) shall apply to net operating losses arising in taxable years beginning after December 31, 2017.

(2) Net operating loss limited to 90 percent of taxable income. The amendments made by subsections (b), (c), and (d)(1) shall apply to net operating losses arising in taxable years beginning ending after December 31, 2017.
(3) **Annual Increase in Carryover Amounts.**—The amendments made by subsection (d) shall apply to amounts carried to taxable years beginning after December 31, 2017.

(4) **Special Rule for Net Disaster Losses.**—Notwithstanding paragraph (1), the amendments made by subsection (b) shall not apply to the portion of the net operating loss for any taxable year which is a net disaster loss to which section 504(b) of the Disaster Tax Relief and Airport and Airway Extension Act of 2017 applies.

SEC. 3303. **Like-Kind Exchanges of Real Property.**

(a) **In General.**—Section 1031(a)(1) is amended by striking “property” each place it appears and inserting “real property”.

(b) **Conforming Amendments.**

(1) Paragraph (2) of section 1031(a) is amended to read as follows:

“(2) Exception for Real Property Held for Sale.—This subsection shall not apply to any exchange of real property held primarily for sale.”.

(2) Section 1031 is amended by striking subsections (e) and (i).

(3) Section 1031, as amended by paragraph (2), is amended by inserting after subsection (d) the following new subsection:

“(e) **Application to Certain Partnerships.**—

“(e) **Application To Certain Partnerships.**—For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of
subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.”.

(4) Section 1031(h) is amended to read as follows:

“(h) **Special Rules For Foreign Real Property** Special Rules For Foreign Real Property.—Real property located in the United States and real property located outside the United States are not property of a like kind.”.

(5) Section 1031(i) is amended to read as follows:

“(i) **Special Rules For Mutual Ditch, Reservoir, or Irrigation Company Stock**.—For purposes of subsection (a), shares in a mutual ditch, reservoir, or irrigation company shall be treated as real property if at the time of the exchange—

“(1) the mutual ditch, reservoir, or irrigation company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses), and

“(2) the shares in such company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.”.
(56) The heading of section 1031 is amended by striking “PROPERTY” and inserting “REAL PROPERTY”.

(67) The table of sections for part III of subchapter O of chapter 1 is amended by striking the item relating to section 1031 and inserting the following new item:

“Sec. 1031. Exchange of real property held for productive use or investment.”.

(c) **Effective Date**

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to exchanges completed after December 31, 2017.

(2) TRANSITION RULE.—The amendments made by this section shall not apply to any exchange if—

(A) the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or

(B) the property received by the taxpayer in the exchange is received on or before December 31, 2017.

SEC. 3306. **REPEAL OF DEDUCTION FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.**

40
(a) **In General.**—Part VI of subchapter B of chapter 1 is amended by striking section 199 (and by striking the item relating to such section in the table of sections for such part).

(b) **Conforming Amendments.**—

(1) Sections 74(d)(2)(B), 86(b)(2)(A), 135(c)(4)(A), 137(b)(3)(A), 219(g)(3)(A)(ii), and 221(b)(2)(C), 222(b)(2)(C), 246(b)(1), and 7469(i)(3)(F)(iii) are each amended by striking “199,”.

(2) Section 170(b)(2)(D), as amended by the preceding provisions of this Act, is amended by striking clause (iv), and by redesignating clauses (v) and (vi) as redesignating clauses (iv) as clause (v) as clause (iv), and by inserting “and” at the end of clause (iii), respectively.

(3) Section 172(d) is amended by striking paragraph (7).

(4) Section 613(a) is amended by striking “and without the deduction under section 199”.

(5) Section 613A(d)(1) is amended by striking subparagraph (B) and by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (D), respectively.

(6) Section 1402(a) is amended by adding “and” at the end of paragraph (15) and by striking paragraph (16).
(c) Effective Date.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2017.  

SEC. 3309. LIMITATION ON DEDUCTION FOR FDIC PREMIUMS.  

(a) In General.—Section 162 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:  

“(q) Disallowance of FDIC Premiums Paid By Certain Large Financial Institutions.—

“(1) In General.—No deduction shall be allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer.  

“(2) Exception for Small Institutions.—Paragraph (1) shall not apply to any taxpayer for any taxable year if the total consolidated assets of such taxpayer (determined as of the close of such taxable year) do not exceed $10,000,000,000.  

“(3) Applicable Percentage.—For purposes of this subsection, the term ‘applicable percentage’ means, with respect to any taxpayer for any taxable year, the ratio (expressed as a percentage but not greater than 100 percent) which—
“(A) the excess of—

“(i) the total consolidated assets of such taxpayer (determined as of the close of such taxable year), over

“(ii) $10,000,000,000, bears to

“(B) $40,000,000,000.

“(4) FDIC PREMIUMS.—For purposes of this subsection, the term ‘FDIC premium’ means any assessment imposed under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)).

“(5) TOTAL CONSOLIDATED ASSETS.—For purposes of this subsection, the term ‘total consolidated assets’ has the meaning given such term under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365).

“(6) AGGREGATION RULE.—

“(A) IN GENERAL.—Members of an expanded affiliated group shall be treated as a single taxpayer for purposes of applying this subsection.

“(B) EXPANDED AFFILIATED GROUP.—

“(i) IN GENERAL.—For purposes of this paragraph, the term ‘expanded affiliated group’ means an affiliated group as defined in section 1504(a), determined—

“(ii) by substituting ‘more than 50 percent’ for ‘at least 80 percent’
“(ii) CONTROL OF NON-CORPORATE ENTITIES.—A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this sentence clause).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

SEC. 3314. RECHARACTERIZATION OF CERTAIN GAINS IN THE CASE OF PARTNERSHIP PROFITS INTERESTS HELD IN CONNECTION WITH PERFORMANCE OF INVESTMENT SERVICES.

(a) IN GENERAL.—Part IV of subchapter O of chapter 1 is amended—

(1) by redesignating section 1061 as section 1062, and

(2) by inserting after section 1060 the following new section:

“SEC. 1061. PARTNERSHIP INTERESTS HELD IN CONNECTION WITH PERFORMANCE OF SERVICES.

“(a) IN GENERAL.—If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of—
“(1) the taxpayer’s net long-term capital gain with respect to such interests for such taxable year, over

“(2) the taxpayer’s net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of sections 1222 by substituting ‘3 years’ for ‘1 year’,

shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 1983(b).

“(b) Special Rule.—To the extent provided by the Secretary, subsection (a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors.

“(c) Applicable Partnership Interest.—For purposes of this section—

“(1) In general.—Except as provided in this paragraph or paragraph (4), the term ‘applicable partnership interest’ means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. The previous sentence shall not apply to an interest held by a person who is employed by another entity that is conducting a trade or business (other than an applicable trade or business) and only provides services to such other entity.
“(2) APPLICABLE TRADE OR BUSINESS.—The term ‘applicable trade or business’ means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

“(A) raising or returning capital, and

“(B) either—

“(i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or

“(ii) developing specified assets.

“(3) SPECIFIED ASSET.—The term ‘specified asset’ means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), commodities (as defined in section 475(e)(2)), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership’s proportionate interest in any of the foregoing.

“(4) EXCEPTIONS.—The term ‘applicable partnership interest’ shall not include—

“(A) any interest in a partnership directly or indirectly held by a corporation, or
“(B) any capital interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—

“(i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or

“(ii) the value of such interest subject to tax under section 83 upon the receipt or vesting of such interest.

“(5) THIRD PARTY INVESTOR.—The term ‘third party investor’ means a person who—

“(A) holds an interest in the partnership which does not constitute property held in connection with an applicable trade or business; and

“(B) is not (and has not been) actively engaged, and is (and was) not related to a person so engaged, in (directly or indirectly) providing substantial services described in paragraph (1) for such partnership or any applicable trade or business.

“(d) Transfer of Applicable Partnership Interest To Related Person.

“(1) IN GENERAL.—If a taxpayer transfers any applicable partnership interest, directly or indirectly, to a person related to the taxpayer, the taxpayer
shall include in gross income (as short term capital gain) the excess (if any) of—

“(A) so much of the taxpayer’s long-term capital gains with respect to such interest for such taxable year attributable to the sale or exchange of any asset held for not more than 3 years as is allocable to such interest, over

“(B) any amount treated as short term capital gain under subsection (a) with respect to the transfer of such interest.

“(2) RELATED PERSON.—For purposes of this paragraph, a person is related to the taxpayer if—

“(A) the person is a member of the taxpayer’s family within the meaning of section 318(a)(1), or

“(B) the person performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which or for which the taxpayer performed a service.

“(e) REPORTING.—The Secretary shall require such reporting (at the time and in the manner prescribed by the Secretary) as is necessary to carry out the purposes of this section.

“(f) REGULATIONS.—The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section”.

48
(b) COORDINATION WITH SECTION 83.—Subsection (e) of section 83 is amended by striking “or” at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting “, or”, and by adding at the end the following new paragraph:

“(6) a transfer of an applicable partnership interest to which section 1061 applies.”.

(cb) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to 1061 and inserting the following new items:

“Sec. 1061. Partnership interests held in connection with performance of services.

“Sec. 1062. Cross references.”.

(dc) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.
PART VII—EMPLOYMENT

Subtitle I

Subpart A—Compensation

SEC. 3801. MODIFICATION OF LIMITATION ON EXCESSIVE EMPLOYEE REMUNERATION.

(a) REPEAL OF PERFORMANCE-BASED COMPENSATION AND COMMISSION EXCEPTIONS FOR LIMITATION ON EXCESSIVE EMPLOYEE REMUNERATION.—

(1) IN GENERAL.—Section Paragraph (4) of section 162(m)(4) is amended by striking subparagraphs (B) and (C) and by redesignating subparagraphs (D), (E), (F), and (G) as subparagraphs (B), (C), (D), and (E), respectively.

(2) CONFORMING AMENDMENTS.—

(A) Paragraphs (5)(E) and (6)(D) of section 162(m) are each amended by striking “subparagraphs (B), (C), and (D)” and inserting “subparagraph (B)”.

(B) Paragraphs (5)(G) and (6)(G) of section 162(m) are each amended by striking “(F) and (G)” and inserting “(D) and (E)”. 
(b) **Expansion Of Applicable Employer.**

Section **Modification Of Definition Of Covered Employees.**

Paragraph (3) of section 162(m)(2) is amended to read as follows:

“(2) **Publicly Held Corporation.**—For purposes of this subsection, the term ‘publicly held corporation’ means any corporation which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c))—

“(A) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. 78l), or

“(B) that is required to file reports under section 15(d) of such Act (15 U.S.C. 78o(d)).”.

(c) **Modification Of Definition Of Covered Employees.**—

Section 162(m)(3) is amended—

(1) in subparagraph (A), by striking “as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is” and inserting “such employee is the principal executive officer or principal financial officer of the taxpayer at any time during the taxable year, or was”,

(2) in subparagraph (B)—

(A) by striking “4” and inserting “3”, and

(B) by striking “(other than the chief executive officer)” and inserting “(other than the principal executive officer or principal financial officer any individual described in subparagraph (A))”, and
(3) by striking “or” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “, or”, and by adding at the end the following:

“(C) was a covered employee of the taxpayer (or any predecessor) for any preceding taxable year beginning after December 31, 2016.”.

(c) EXPANSION OF APPLICABLE EMPLOYER.—

(1) IN GENERAL.—Section 162(m)(2) is amended to read as follows:

“(2) PUBLICLY HELD CORPORATION.—For purposes of this subsection, the term ‘publicly held corporation’ means any corporation which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c))—

“(A) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. 781), or

“(B) that is required to file reports under section 15(d) of such Act (15 U.S.C. 780(d)).”.

(2) CONFORMING AMENDMENT.—Section 162(m)(3), as amended by subsection (b), is amended by adding at the end the following flush sentence:

“Such term shall include any employee who would be described in subparagraph (B) if the reporting described in such subparagraph were required as so described.”.
(d) **Special Rule for Remuneration Paid To Beneficiaries, Etc.**—Section **Special Rule for Remuneration Paid to Beneficiaries, Etc.—**Paragraph (4) of section 162(m)(4), as amended by subsection (a), is amended by adding at the end the following new subparagraph:

“(F) **Special Rule for Remuneration Paid to Beneficiaries, Etc.—**Remuneration shall not fail to be applicable employee remuneration merely because it is includible in the income of, or paid to, a person other than the covered employee, including after the death of the covered employee.”.

(e) **Effective Date.**

(e1) **Effective Date.**—The **In General.**—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2017.

(2) **Exception for Binding Contracts.**

The amendments made by this section shall not apply to remuneration which is pursuant to a written binding contract which was in effect on November 2, 2017, and which was not modified in any material respect on or after such date.
SEC. 3802. EXCISE TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION.

(a) In General.—Subchapter D of chapter 42 is amended by adding at the end the following new section:

“SEC. 4960. TAX ON EXCESS TAX-EXEMPT ORGANIZATION EXECUTIVE COMPENSATION.

“(a) Tax Imposed.—There is hereby imposed a tax equal to 20 percent of the sum of—

“(1) so much of the remuneration paid (other than any excess parachute payment) by an applicable tax-exempt organization for the taxable year with respect to employment of any covered employee in excess of $1,000,000, plus

“(2) any excess parachute payment paid by such an organization to any covered employee.

For purposes of the preceding sentence, remuneration shall be treated as paid when there is no substantial risk of forfeiture of the rights to such remuneration.

“(b) Liability for Tax.—The employer shall be liable for the tax imposed under subsection (a).

“(c) Definitions and Special Rules.—For purposes of this section—
“(1) APPLICABLE TAX-EXEMPT ORGANIZATION.—The term ‘applicable tax-exempt organization’ means any organization that for the taxable year—

“(A) is exempt from taxation under section 501(a),

“(B) is a farmers’ cooperative organization described in section 521(b)(1),

“(C) has income excluded from taxation under section 115(1), or

“(D) is a political organization described in section 527(e)(1).

“(2) COVERED EMPLOYEE.—For purposes of this section, the term ‘covered employee’ means any employee (including any former employee) of an applicable tax-exempt organization if the employee—

“(A) is one of the 5 highest compensated employees of the organization for the taxable year, or

“(B) was a covered employee of the organization (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

“(3) REMUNERATION.—For purposes of this section, the term ‘remuneration’ means wages (as defined in section 3401(a)), except that such term shall not include any designated Roth contribution (as defined in section 402A(c)) and shall include amounts required to be included in gross income under section 457(f).

“(4) REMUNERATION FROM RELATED ORGANIZATIONS.—
“(A) IN GENERAL.—Remuneration of a covered employee paid by an applicable tax-exempt organization shall include any remuneration paid with respect to employment of such employee by any related person or governmental entity.

“(B) RELATED ORGANIZATIONS.—A person or governmental entity shall be treated as related to an applicable tax-exempt organization if such person or governmental entity—

“(i) controls, or is controlled by, the organization,

“(ii) is controlled by one or more persons that control the organization,

“(iii) is a supported organization (as defined in section 509(f)(23)) during the taxable year with respect to the organization,

“(iv) is a supporting organization described in section 509(a)(3) during the taxable year with respect to the organization, or

“(v) in the case of an organization that is a voluntary employees’ beneficiary association described in section 501(ac)(9), establishes, maintains, or makes contributions to such voluntary employees’ beneficiary association.

“(C) LIABILITY FOR TAX.—In any case in which remuneration from more than one employer is taken into account under this paragraph in
determining the tax imposed by subsection (a), each such employer shall be liable for such tax in an amount which bears the same ratio to the total tax determined under subsection (a) with respect to such remuneration as—

“(i) the amount of remuneration paid by such employer with respect to such employee, bears to

“(ii) the amount of remuneration paid by all such employers to such employee.

“(5) EXCESS PARACHUTE PAYMENT.—For purposes of determining the tax imposed by subsection (a)(2)—

“(A) IN GENERAL.—The term ‘excess parachute payment’ means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

“(B) PARACHUTE PAYMENT.—The term ‘parachute payment’ means any payment in the nature of compensation to (or for the benefit of) a covered employee if—

“(i) such payment is contingent on such employee’s separation from employment with the employer, and

“(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent
on such separation equals or exceeds an amount equal to 3 times the base amount.

Such term does not include any payment described in section 280G(b)(6) (relating to exemption for payments under qualified plans) or any payment made under or to an annuity contract described in section 403(b) or a plan described in section 457(b).

“(C) BASE AMOUNT.—Rules similar to the rules of 280G(b)(3) shall apply for purposes of determining the base amount.

“(D) PROPERTY TRANSFERS; PRESENT VALUE.—Rules similar to the rules of paragraphs (3) and (4) of section 280G(d) shall apply.

“(6) COORDINATION WITH DEDUCTION LIMITATION.—Remuneration the deduction for which is not allowed by reason of section 162(m) shall not be taken into account for purposes of this section.

“(d) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to prevent avoidance of the purposes of tax under this section through the performance of services other than as an employee, including regulations preventing employees from being misclassified as contractors or from being compensated through a pass-through or other entity to avoid such tax.”.
(b) **Clerical Amendment.**—The table of sections for subchapter D of chapter 42 is amended by adding at the end the following new item:

“Sec. 4960. Tax on excess exempt organization executive compensation.”.

(c) **Effective Date.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.

**Sec. 3803.** Treatment of Qualified Equity Grants.

(a) **In General.**—

(1) **Election to defer income.**—Section 83 is amended by adding at the end the following new subsection:

“(i) **Qualified Equity Grants.**—

“(1) **In General.**—For purposes of this subtitle, if qualified stock is transferred to a qualified employee who makes an election with respect to such stock under this subsection—

“(A) **except as provided in Timing of Inclusion.**—If qualified stock is transferred to a qualified employee who makes an election with respect to such stock under this subsection, subsection (a) shall be applied
by including the amount determined under such subsection with respect to such stock in income of the employee in the taxable year determined under subparagraph (B), no amount shall be included in income under subsection (a) for the first taxable year in which the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable, and in lieu of the taxable year described in subsection (a).

“(B) an amount equal to the amount which would be included in income of the employee under subsection (a) (determined without regard to this subsection) shall be included in income for the taxable year determined under this subparagraph is the taxable year of the employee which includes the earliest of—

“(i) the first date such qualified stock becomes transferable (including, solely for purposes of this clause, becoming transferable to the employer),

“(ii) the date the employee first becomes an excluded employee,

“(iii) the first date on which any stock of the corporation which issued the qualified stock becomes readily tradable on an established securities market (as determined by the Secretary, but not including any market unless
such market is recognized as an established securities market by the Secretary for purposes of a provision of this title other than this subsection),

“(iv) the date that is 5 years after the first date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, or

“(v) the date on which the employee revokes (at such time and in such manner as the Secretary may provide) the election under this subsection with respect to such stock.

“(2) QUALIFIED STOCK.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified stock’ means, with respect to any qualified employee, any stock in a corporation which is the employer of such employee, if—

“(i) such stock is received—

“(I) in connection with the exercise of an option, or

“(II) in settlement of a restricted stock unit, and

“(ii) such option or restricted stock unit was granted by the corporation—

“(I) in connection with the performance of services as an employee, and

“(II) during a calendar year in which such corporation was an eligible
corporation.

“(B) LIMITATION.—The term ‘qualified stock’ shall not include any stock if the employee may sell such stock to, or otherwise receive cash in lieu of stock from, the corporation at the time that the rights of the employee in such stock first become transferable or not subject to a substantial risk of forfeiture.

“(C) ELIGIBLE CORPORATION.—For purposes of subparagraph (A)(ii)(II)—

“(i) IN GENERAL.—The term ‘eligible corporation’ means, with respect to any calendar year, any corporation if—

“(I) no stock of such corporation

(or any predecessor of such corporation) is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii)) during any preceding calendar year, and

“(II) such corporation has a written plan under which, in such calendar year, not less than 80 percent of all employees who provide services to such corporation in the United States (or any possession of the United States) are granted stock options, or restricted stock units, with the same rights and privileges to receive qualified stock.
“(ii) SAME RIGHTS AND PRIVILEGES.—For purposes of clause (i)(II)—

“(I) except as provided in subclauses (II) and (III), the determination of rights and privileges with respect to stock shall be determined in a similar manner as provided under section 423(b)(5),

“(II) employees shall not fail to be treated as having the same rights and privileges to receive qualified stock solely because the number of shares available to all employees is not equal in amount, so long as the number of shares available to each employee is more than a de minimis amount, and

“(III) rights and privileges with respect to the exercise of an option shall not be treated as the same as rights and privileges with respect to the settlement of a restricted stock unit.

“(iii) EMPLOYEE.—For purposes of clause (i)(II), the term ‘employee’ shall not include any employee described in section 4980E(d)(4) or any excluded employee.

“(iv) SPECIAL RULE FOR CALENDAR YEARS BEFORE 2018.—In the case of any calendar year beginning before January 1, 2018, clause (i)(II) shall be applied without regard to whether the rights and privileges with respect to the qualified stock are the same.
“(3) QUALIFIED EMPLOYEE; EXCLUDED EMPLOYEE.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘qualified employee’ means any individual who—

“(i) is not an excluded employee, and

“(ii) agrees in the election made under this subsection to meet such requirements as are determined by the Secretary to be necessary to ensure that the withholding requirements of the corporation under chapter 24 with respect to the qualified stock are met.

“(B) EXCLUDED EMPLOYEE.—The term ‘excluded employee’ means, with respect to any corporation, any individual—

“(i) who was a 1-percent owner (within the meaning of section 416(i)(1)(B)(ii)) at any time during the 10 preceding calendar years,

“(ii) who is or has been at any prior time—

“(I) the chief executive officer of such corporation or an individual acting in such a capacity, or

“(II) the chief financial officer of such corporation or an individual acting in such a capacity,

“(iii) who bears a relationship described in section 318(a)(1) to any individual described in subclause (I) or (II) of clause (ii), or
“(iv) who has been was for any of the 10 preceding taxable years one of the 4 highest compensated officers of such corporation, determined with respect to each such taxable year on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (as if such rules applied to such corporation).

“(4) Election.—

“(A) Time for making election.—An election with respect to qualified stock shall be made under this subsection no later than 30 days after the first time date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, and shall be made in a manner similar to the manner in which an election is made under subsection (b).

“(B) Limitations.—No election may be made under this section with respect to any qualified stock if—

“(i) the qualified employee has made an election under subsection (b) with respect to such qualified stock,

“(ii) any stock of the corporation which issued the qualified stock is readily tradable on an established securities market (as determined under paragraph (1)(B)(iii)) at any time before the election is made, or
“(iii) such corporation purchased any of its outstanding stock in the calendar year preceding the calendar year which includes the first time date the rights of the employee in such stock are transferable or are not subject to a substantial risk of forfeiture, unless—

“(I) not less than 25 percent of the total dollar amount of the stock so purchased is deferral stock, and

“(II) the determination of which individuals from whom deferral stock is purchased is made on a reasonable basis.

“(C) DEFINITIONS AND SPECIAL RULES RELATED TO LIMITATION ON STOCK REDEMPTIONS.—

“(i) DEFERRAL STOCK.—For purposes of this paragraph, the term ‘deferral stock’ means stock with respect to which an election is in effect under this subsection.

“(ii) DEFERRAL STOCK WITH RESPECT TO ANY INDIVIDUAL NOT TAKEN INTO ACCOUNT IF INDIVIDUAL HOLDS DEFERRAL STOCK WITH LONGER DEFERRAL PERIOD.—Stock purchased by a corporation from any individual shall not be treated as deferral stock for purposes of subclause subparagraph (B)(iii) if such individual (immediately after such purchase) holds any deferral stock with respect to which an election has
been in effect under this subsection for a longer period than the election with respect to the stock so purchased.

“(iii) Purchase of all outstanding deferral stock.—The requirements of subclauses (I) and (II) of subparagraph (B)(iii) shall be treated as met if the stock so purchased includes all of the corporation’s outstanding deferral stock.

“(iv) Reporting.—Any corporation which has outstanding deferral stock as of the beginning of any calendar year and which purchases any of its outstanding stock during such calendar year shall include on its return of tax for the taxable year in which, or with which, such calendar year ends the total dollar amount of its outstanding stock so purchased during such calendar year and such other information as the Secretary may require for purposes of administering this paragraph.

“(5) Controlled groups.—For purposes of this subsection, all corporations which are members of the same controlled group of corporations (as defined in persons treated as a single employer under section 15634(a)b) shall be treated as one corporation.

“(6) Notice requirement.—Any corporation that transfers qualified stock to a qualified employee shall, at the time that (or a reasonable period before) an amount attributable to such stock would (but
for this subsection) first be includible in the gross income of such employee—

“(A) certify to such employee that such stock is qualified stock, and

“(B) notify such employee—

“(i) that the employee may be eligible to elect to defer income on such stock under this subsection, and

under this subsection, and

“(ii) that, if the employee makes such an election—

“(I) the amount of income recognized at the end of the deferral period will be based on the value of the stock at the time at which the rights of the employee in such stock first become transferable or not subject to substantial risk of forfeiture, notwithstanding whether the value of the stock has declined during the deferral period,

“(II) the amount of such income recognized at the end of the deferral period will be subject to withholding under section 3401(i) at the rate determined under section 3402(t), and

“(III) the responsibilities of the employee (as determined by the Secretary under paragraph (3)(A)(ii)) with respect to such withholding.
“(7) RESTRICTED STOCK UNITS.—This section (other than this subsection), including any election under subsection (b), shall not apply to restricted stock units.”.

(2) DEDUCTION BY EMPLOYER.—Subsection (h) of section 83 is amended by striking “or (d)(2)” and inserting “(d)(2), or (i)”.

(b) WITHHOLDING.—

(1) TIME OF WITHHOLDING.—Section 3401 is amended by adding at the end the following new subsection:

“(i) QUALIFIED STOCK FOR WHICH AN ELECTION IS IN EFFECT UNDER SECTION 83(i).—For purposes of subsection (a), qualified stock (as defined in section 83(i)) with respect to which an election is made under section 83(i) shall be treated as wages—

“(1) received on the earliest date described in section 83(i)(1)(B), and

“(2) in an amount equal to the amount included in income under section 83 for the taxable year which includes such date.”.

(2) AMOUNT OF WITHHOLDING.—Section 3402 is amended by adding at the end the following new subsection:
“(t) **Rate of Withholding for Certain Stock**

—In the case of any qualified stock (as defined in section 83(i)(2)) with respect to which an election is made under section 83(i)—

“(1) the rate of tax under subsection (a) shall not be less than the maximum rate of tax in effect under section 1, and

“(2) such stock shall be treated for purposes of section 3501(b) in the same manner as a non-cash fringe benefit.”.

(c) **Coordination with Other Deferred Compensation Rules.**

—

(1) **Election to apply deferral to statutory options.**—

(A) **Incentive stock options.**—Section 422(b) is amended by adding at the end the following: “Such term shall not include any option if an election is made under section 83(i) with respect to the stock received in connection with the exercise of such option.”.

(B) **Employee stock purchase plans.**—Section 423(a) is amended by adding at the end—

(i) by adding at the end of subsection
(a) the following flush sentence: “The preceding sentence shall not apply to any share of stock with respect to which an election is made under section 83(i).”.

(ii) in subsection (b)(5), by striking “and” before “the plan” and by inserting “, and the rules of section 83(i) shall apply in determining which employees have a right to make an election under such section” before the semicolon at the end.

(2) EXCLUSION FROM DEFINITION OF NONQUALIFIED DEFERRED COMPENSATION PLAN.—Subsection (d) of section 409A is amended by adding at the end the following new paragraph:

“(7) TREATMENT OF QUALIFIED STOCK.—An arrangement under which an employee may receive qualified stock (as defined in section 83(i)(2)) shall not be treated as a nonqualified deferred compensation plan solely because of an employee’s election, or ability to make an election, to defer recognition of income under section 83(i).”.

(d) INFORMATION REPORTING.—Section 6051(a) is amended by striking “and” at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a comma, and by inserting after paragraph (14) the following new paragraphs:
“(15) the amount excludable from gross income under subparagraph (A) of section 83(i)(1),

“(16) the amount includible in gross income under subparagraph (B) of section 83(i)(1) with respect to an event described in such subparagraph (B) of such section which occurs in such calendar year, and

“(17) the aggregate amount of income which is being deferred pursuant to elections under section 83(i), determined as of the close of the calendar year.”.

(e) Penalty for Failure of Employer To Provide Notice Of Tax Consequences

Penalty for Failure of Employer To Provide Notice Of Tax Consequences.——Section 6652 is amended by adding at the end the following new subsection:

“(p) Failure To Provide Notice Under Section 83(i).—In the case of each failure to provide a notice as required by section 83(i)(6), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.”.

72
(f) **Effective Dates**

(1) **In General.**—Except as provided in paragraph (2), the amendments made by this section shall apply to stock attributable to options exercised, or restricted stock units settled, after December 31, 2017.

(2) **Requirement to Provide Notice.**—The amendments made by subsection (e) shall apply to failures after December 31, 2017.

(g) **Transition Rule**

--Until such time as the Secretary (or the Secretary’s delegate) issue regulations or other guidance for purposes of implementing the requirements of paragraph (2)(C)(i)(II) of section 83(i) of the Internal Revenue Code of 1986 (as added by this section), or the requirements of paragraph (6) of such section, a corporation shall be treated as being in compliance with such requirements (respectively) if such corporation complies with a reasonable good faith interpretation of such requirements.

**Title IV—Taxation of Foreign Income and Foreign Persons**

Subtitle D—International Tax

Provisions

Part I—Outbound Transactions
Subtitle A—Establishment Of Participation Exemption System For Taxation Of Foreign Income

SEC. 14101. DEDUCTION FOR FOREIGN-SOURCE PORTION OF DIVIDENDS RECEIVED BY DOMESTIC CORPORATIONS FROM SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

(a) In General. Part VIII of subchapter B of chapter 1 is amended by inserting after section 245 the following new section:

“SEC. 245A. DEDUCTION FOR FOREIGN-SOURCE PORTION OF DIVIDENDS RECEIVED BY DOMESTIC CORPORATIONS FROM SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

“(a) In General. In the case of any dividend received from a specified 10-percent owned foreign corporation by a domestic corporation which is a United States shareholder with respect to such foreign corporation, there shall be allowed as a deduction an amount equal to the foreign-source portion of such dividend.

“(b) Specified 10-percent Owned Foreign Corporation. For purposes of this section—

“(b1) Specified 10-percent Owned Foreign Corporation. For purposes of this section, the term ‘specified 10-percent owned foreign corporation’ means any foreign...
corporation with respect to which any domestic corporation is a United States shareholder, with respect to such corporation.

“(2) Exclusion of Passive Foreign Investment Companies.—Such term shall not include any corporation which is a passive foreign investment company (within the meaning of subpart D of part VI of subchapter P) that is defined in section 1297) with respect to the shareholder and which is not a controlled foreign corporation.

“(c) Foreign-Source Portion.—For purposes of this section—

“(1) In General.—The foreign-source portion of any dividend from a specified 10-percent owned foreign corporation is an amount which bears the same ratio to such dividend as—

“(A) the post-1986 undistributed foreign earnings of the specified 10-percent owned foreign corporation, bears to

“(B) the total post-1986 undistributed earnings of such foreign corporation.

“(2) Post-1986 Undistributed Earnings.—The term ‘post-1986 undistributed earnings’ means the amount of the earnings and profits of the specified 10-percent owned foreign corporation (computed in accordance with
sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986—

“(A) as of the close of the taxable year of the specified 10-percent owned foreign corporation in which the dividend is distributed, and

“(B) without diminution by reason of dividends distributed during such taxable year.

“(3) **Post-1986 Undistributed Foreign Earnings.**—

The term ‘post-1986-undistributed foreign earnings’ means the portion of the post-1986-undistributed earnings which is attributable to neither—

“(A) income described in subparagraph (A) of section 245(a)(5), nor

“(B) dividends described in subparagraph (B) of such section (determined without regard 16 to section 245(a)(12)).

“(4) **Treatment of Distributions from Earnings Before 1987.**—

“(A) **In General.**—In the case of any dividend paid out of earnings and profits of the specified 10-percent owned foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning before January 1, 1987—

“(i) paragraphs (1), (2), and (3) shall be applied without regard to the phrase ‘post-1986’ each place it appears, and

“(ii) paragraph (2) shall be applied by substituting ‘after the date specified in section 316(a)(1)’ for ‘in taxable years beginning after December 31, 1986’.
“(B) Dividends paid first out of post-1986 earnings.—Dividends shall be treated as paid out of post-1986 undistributed earnings to the extent thereof.

“(5) Treatment of certain dividends in excess of undistributed earnings.—In the case of any dividend from the specified 10-percent owned foreign corporation which is in excess of undistributed earnings (as determined under paragraph (2) after taking into account the modifications described in clauses (i) and (ii) of paragraph (4)(A)), the foreign-source portion of such dividend is an amount which bears the same ratio to such dividend as—

“(A) the portion of the earnings and profits described in subparagraph (B) which is attributable to neither income described in paragraph (3)(A) nor dividends described in paragraph (3)(B), bears to

“(B) the earnings and profits of such corporation for the taxable year in which such distribution is made (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year).

“(d) Disallowance of foreign tax credit, etc.

“(1) In general.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to any distribution any portion of which constitutes a dividend for which a deduction is allowed under this section.

“(2) Denial of deduction.—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901
by reason of paragraph (1) (determined by treating the taxpayer as having
elected the benefits of subpart A of part III of subchapter N).

“(e) SPECIAL RULES FOR HYBRID DIVIDENDS.—

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

“(2) HYBRID DIVIDENDS OF TIERED CORPORATIONS.—If a
controlled foreign corporation with respect to which a domestic
corporation is a United States shareholder receives a hybrid dividend from
any other controlled foreign corporation with respect to which such domestic
corporation is also a United States shareholder, then, notwithstanding any
other provision of this title—

“(A) the hybrid dividend shall be treated for purposes of section
951(a)(1)(A) as subpart F income of the receiving controlled foreign
corporation for the taxable year of the controlled foreign corporation in
which the dividend was received, and

“(B) the United States shareholder shall include in gross income an
amount equal to the shareholder’s pro rata share (determined in the same
manner as under section 951(a)(2)) of the subpart F income described in
subparagraph 4 (A).
“(3) Denial of foreign tax credit, etc.—

The rules of subsection (d) shall apply to any hybrid dividend received by, or any amount included under paragraph (2) in the gross income of, a United States shareholder.

“(4) Hybrid dividend.—The term ‘hybrid dividend’ means an amount received from a controlled foreign corporation—

“(A) for which a deduction would be allowed under subsection (a) but for this subsection, and

“(B) for which the controlled foreign corporation received a deduction (or other tax benefit) from taxes imposed by any foreign country.

“(f) Special rule for purging distributions of passive foreign investment companies.—Any amount which is treated as a dividend under section 1291(d)(2)(B) shall not be treated as a dividend for purposes of this section.

“(eg) Regulations.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section, including regulations for the treatment of United States shareholders owning stock of a specified 10 percent owned foreign corporation through a partnership.”.
(b) Application Of Holding Period Requirement.—

Section 246 APPLICATION OF HOLDING PERIOD REQUIREMENT.—

Subsection (c) of section 246 is amended—

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

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

“(5) Special rules for foreign source portion of dividends received from specified 10-percent owned foreign corporations.—

“(A) 61-monthyear holding period requirement.—For purposes of section 245A—

“(i) paragraph (1)(A) shall be applied—

“(I) by substituting ‘180365 days’ for ‘45 days’ each place it appears, and

“(II) by substituting ‘361731-day period’ for ‘91-day period’, and

“(ii) paragraph (2) shall not apply.

“(B) Status must be maintained during holding period.—For purposes of applying paragraph (1) with respect to section 245A, the taxpayer shall be treated as holding the stock referred to in paragraph (1) for any period only if—
“(i) the specified 10-percent owned foreign corporation referred to in section 245A(a) is a specified 10-percent owned foreign corporation for all times during such period, and

“(ii) the taxpayer is a United States shareholder with respect to such specified 10-percent owned foreign corporation for all times during such period.”.

(c) Application of Rules Generally Applicable to Deductions for Dividends Received

Application of Rules Generally Applicable to Deductions for Dividends Received.—

(1) Treatment of dividends from certain corporations.—Section Paragraph (1) of section 246(a)(4) is amended by striking “and 245” and inserting “245, 21 and 245A”.

(2) Assets generating tax-exempt portion of dividend not taken into account in allocating and apportioning deductible expenses.—Paragraph (3) of section 864(e) is amended by striking “or 245(a)” and inserting “, 245(a), 2 or 245A”.

(23) Coordination with section 1059.—Section Subparagraph (B) of section 1059(b)(2)(B) is amended by striking “or 245” and inserting “245, or 245A”.

81
(d) **Coordination With Foreign Tax Credit**

**Limitation.**—Section 904 is amended by adding at the end the following new paragraph:

“(5) **Treatment of dividends for which deduction is allowed under section 245A.**—

For purposes of subsection (a), in the case of a domestic corporation which is a United States shareholder with respect to a specified 10-percent owned foreign corporation, such shareholder’s taxable income from sources without the United States (and entire taxable income) shall be determined without regard to—

“(A) the foreign-source portion of any dividend received from such foreign corporation, and

“(B) any deductions properly allocable or apportioned to—

such portion. “(i) income (other than subpart F income (as defined in section 952) and foreign high return amounts (as defined in section 951A(b)) with respect to stock of such specified 10-percent owned foreign corporation, or

“(ii) such stock (to the extent income with respect to such stock is other than subpart F income (as so defined) or foreign high return amounts (as so defined)).
Any term which is used in section 245A and in this paragraph shall have the same meaning for purposes of this paragraph as when used in such section.”.

(e) **Conforming Amendments**

(1) Section 245(a)(4) is amended by striking “section 902(c)(1)” and inserting “section 245A(c)(2) applied by substituting ‘qualified 10-percent owned foreign corporation’ for ‘specified 10-percent owned foreign corporation’ each place it appears.”.

(21) **Section 951** Subsection (b) of section 951 is amended by striking “subpart” and inserting “title”.

(32) **Section 957** Subsection (a) of section 957 is amended by striking “subpart” in the matter preceding paragraph (1) and inserting “title”.

(43) The table of sections for part VIII of subchapter B of chapter 1 is amended by inserting after the item relating to section 245 the following new item:

“Sec. 245A. **Deduction for foreign-source portion of dividends** received by domestic corporations from **specified 10-percent owned** certain foreign corporations.”.

(f) **Effective Date.**—The amendments made by this section shall apply to distributions made after (and, in the case of the amendments made by subsection (d), deductions with respect to taxable years ending after) December 31, 2017.

SEC. 4002. APPLICATION OF PARTICIPATION EXEMPTION TO INVESTMENTS IN UNITED STATES PROPERTY.
(a) IN GENERAL.—Section 956(a) is amended in the matter preceding paragraph (1) by inserting “(other than a corporation)” after “United States shareholder”.

(b) REGULATORY AUTHORITY TO PREVENT ABUSE.—Section 956(e) is amended by striking “including regulations to prevent” and inserting “including regulations—

“(1) to address United States shareholders that are partnerships with corporate partners, and

“(2) to prevent”.

(cf) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 4003. LIMITATION ON LOSSES WITH RESPECT TO 14102.

SPECIAL RULES RELATING TO SALES OR TRANSFERS INVOLVING SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

(a) BASIS IN SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATION REDUCED BY NONTAXED PORTION OF DIVIDEND FOR PURPOSES OF DETERMINING LOSS.—

(a) SALES BY UNITED STATES PERSONS OF STOCK.—Section 1248 is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—In the case of the sale or exchange by a domestic corporation of stock in a foreign
corporation held for 1 year or more, any amount received by the domestic corporation which is treated as a dividend by reason of this section shall be treated as a dividend for purposes of applying section 245A.”.

(b) **Basis in Specified 10-Percent Owned Foreign Corporation Reduced by Nontaxed Portion of Dividend for Purposes of Determining Loss.**—

(1) In General.—Section 961 is amended by adding at the end the following new subsection:

“(d) **Basis in Specified 10-Percent Owned Foreign Corporation Reduced by Nontaxed Portion of Dividend for Purposes of Determining Loss.**—If a domestic corporation received a dividend from a specified 10-percent owned foreign corporation (as defined in section 245A) in any taxable year, solely for purposes of determining loss on any disposition of stock of such foreign corporation in such taxable year or any subsequent taxable year, the basis of such domestic corporation in such stock shall be reduced (but not below zero) by the amount of any deduction allowable to such domestic corporation
under section 245A with respect to such stock except to the extent such basis was reduced under section 1059 by reason of a dividend for which such a deduction was allowable.”.

(2) Effective date.—The amendments made by this subsection shall apply to distributions made dividends received in taxable years beginning after December 31, 2017.

(b) Treatment of Foreign Branch Losses Transferred to Specified 10 Percent Owned Foreign Corporations.—

(c) Sale by a CFC of a Lower Tier CFC.—Section 964(e) is amended by adding at the end the following new paragraph:

“(4) Coordination with dividends received deduction.—

“(A) In general.—If, for any taxable year of a controlled foreign corporation beginning after December 31, 2017, any amount is treated as a dividend under paragraph (1) by reason of a sale or exchange by the controlled foreign corporation of stock in another foreign corporation held for 1 year or more, then, notwithstanding any other provision of this title—

“(i) the foreign-source portion of such dividend shall be treated for purposes of section 951(a)(1)(A) as subpart F income of the selling controlled foreign corporation for such taxable year.
“(ii) a United States shareholder with respect to the selling controlled foreign corporation shall include in gross income for the taxable year of the shareholder with or within which such taxable year of the controlled foreign corporation ends an amount equal to the shareholder’s pro rata share (determined in the same manner as under section 951(a)(2)) of the amount treated as subpart F income under clause (i), and “(iii) the deduction under section 245A(a) shall be allowable to the United States shareholder with respect to the subpart F income included in gross income under clause (ii) in the same manner as if such subpart F income were a dividend received by the shareholder from the selling controlled foreign corporation.

“(B) Effect of loss on earnings and profits.—For purposes of this title, in the case of a sale or exchange by a controlled foreign corporation of stock in another foreign corporation in a taxable year of the selling controlled foreign corporation beginning after December 31, 2017, to which this paragraph would apply if gain were recognized, the earnings and profits of the selling controlled foreign corporation shall not be reduced by reason of any loss from such sale or exchange.

“(C) Foreign-source portion.—For purposes of this paragraph, the foreign-source portion of any amount treated as a dividend under
paragraph (1) shall be determined in the same manner as under section 245A(c).”.

(d) TREATMENT OF FOREIGN BRANCH LOSSES TRANSFERRED TO SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.—

(1) IN GENERAL.—Part II of subchapter B of chapter 1 is amended by adding at the end the following new section:

“SEC. 91. CERTAIN FOREIGN BRANCH LOSSES TRANSFERRED TO SPECIFIED 10-PERCENT OWNED FOREIGN CORPORATIONS.

“(a) IN GENERAL.—If a domestic corporation transfers substantially all of the assets of a foreign branch (within the meaning of section 367(a)(3)(C), as in effect before the date of the enactment of the Tax Cuts and Jobs Act) to a specified 10-percent owned foreign corporation (as defined in section 245A) with respect to which it is a United States shareholder after such transfer, such domestic corporation shall include in gross income for the taxable year which includes such transfer an amount equal to the transferred loss amount with respect to such transfer.

“(b) LIMITATION AND CARRYFORWARD BASED ON FOREIGN-SOURCE DIVIDENDS RECEIVED.—

“(1) IN GENERAL.—The amount included in the gross income of the taxpayer under subsection (a) for any taxable year shall not exceed the
amount allowed as a deduction under section 245A for such taxable year (taking into account dividends received from all specified 10-percent owned foreign corporations with respect to which the taxpayer is a United States shareholder).

“(2) Amounts not included carried forward.—Any amount not included in gross income for any taxable year by reason of paragraph (1) shall, subject to the application of paragraph (1) to the succeeding taxable year, be included in gross income for the succeeding taxable year.

“(bc) Transferred Loss Amount.—For purposes of this section, the term ‘transferred loss amount’ means, with respect to any transfer of substantially all of the assets of a foreign branch, the excess (if any) of—

“(1) the sum of losses—

“(A) which were incurred by the foreign branch after December 31, 2017, and before the transfer, and

“(B) with respect to which a deduction was allowed to the taxpayer, over

“(2) the sum of—
“(A) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

“(B) any amount which is recognized under section 904(f)(3) on account of the transfer.

“(e) REDUCTION FOR RECOGNIZED GAINS.—

“(1) IN GENERAL.—In the case of a transfer not described in section 367(a)(3)(C), the transferred loss amount shall be reduced (but not below zero) by the amount of gain recognized by the taxpayer on account of the transfer (other than amounts taken into account under subsection (c)(2)(B)).

“(2) COORDINATION WITH RECOGNITION UNDER SECTION 367.—

In the case of a transfer described in section 367(a)(3)(C), the transferred loss amount shall not exceed the excess (if any) of—

“(A) the excess of the amount described in section 367(a)(3)(C)(i) over the amount described in section 367(a)(3)(C)(ii) with respect to such transfer, over

“(B) the amount of gain recognized under section 367(a)(3)(C) with respect to such transfer.

“(d) SOURCE OF INCOME.—Amounts included in gross income under this section shall be treated as derived from sources within the United States.
“(ef) BASIS ADJUSTMENTS. — Consistent with such regulations or other guidance as the Secretary may prescribe, proper adjustments shall be made in the adjusted basis of the taxpayer’s stock in the specified 10-percent owned foreign corporation to which the transfer is made, and in the transferee’s adjusted basis in the property transferred, to reflect amounts included in gross income under this section.”.

(2) AMOUNTS RECOGNIZED UNDER SECTION 367 ON TRANSFER OF FOREIGN BRANCH WITH PREVIOUSLY DEDUCTED LOSSES TREATED AS UNITED STATES SOURCE. — Section 367(a)(3)(C) is amended by striking “outside” in the last sentence and inserting “within”.

(32) CLERICAL AMENDMENT. — The table of sections for part II of subchapter B of chapter 1 is amended by adding at the end the following new item:

“Sec. 91. Certain foreign branch losses transferred to specified 10-percent owned foreign corporations.”.

(43) EFFECTIVE DATE. — The amendments made by this subsection shall apply to transfers after December 31, 2017.

(e) REPEAL OF ACTIVE TRADE OR BUSINESS EXCEPTION UNDER SECTION 367. —

(1) IN GENERAL. — Section 367(a) is amended by striking paragraph (3) and redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively
(2) CONFORMING AMENDMENTS.—Section 367(a)(4), as redesignated by paragraph (1), is amended—

(A) by striking “Paragraphs (2) and (3)” and inserting “Paragraph (2)”, and

(B) by striking “PARAGRAPHS (2) AND (3)” in the heading and inserting “PARAGRAPH (2)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transfers after December 31, 2017.

SEC. 4004. TREATMENT OF DEFERRED FOREIGN INCOME UPON TRANSITION TO PARTICIPATION EXEMPTION SYSTEM OF TAXATION.

(a) IN GENERAL.—Section 965 is amended to read as follows:

“SEC. 965. TREATMENT OF DEFERRED FOREIGN INCOME UPON TRANSITION TO PARTICIPATION EXEMPTION SYSTEM OF TAXATION.

“(a) TREATMENT OF DEFERRED FOREIGN INCOME AS Subpart F Income.—In the case of the last taxable year of a deferred foreign income corporation which begins before January 1, 2018, the subpart F income of such foreign corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of—

92
“(1) the accumulated post-1986 deferred foreign income of such corporation determined as of November 29, 2017, or
“(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017.
“(b) REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS.—
REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS.—
“(1) IN GENERAL.—In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 951(a)(1) by reason of subsection (a) as such United States shareholder’s pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced (but not below zero) by the amount of such United States shareholder’s aggregate foreign E&P deficit which is allocated under paragraph (2) to such deferred foreign income corporation.
“(2) Allocation of aggregate foreign E&P deficit.—The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as—

“(A) such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

“(B) the aggregate of such United States shareholder’s pro rata share of the accumulated post-1986 deferred foreign income of all deferred foreign income corporations of such United States shareholder.

“(3) Definitions related to E&P deficits.—For purposes of this subsection—

“(A) Aggregate foreign E&P deficit.—

“(i) In general.—The term ‘aggregate foreign E&P deficit’ means, with respect to any United States shareholder, the lesser of—

“(I) the aggregate of such shareholder’s pro rata shares of the specified E&P deficits of the E&P deficit foreign corporations of such shareholder, or

“(II) the amount determined under paragraph (2)(B).
“(ii) Allocation of Deficit.—If the amount described in clause (i)(II) is less than the amount described in clause (i)(I), then the shareholder shall designate, in such form and manner as the Secretary determines—

“(I) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to the taxpayer, and

“(II) in the case of an E&P deficit corporation which has a qualified deficit (as defined in section 952), the portion (if any) of the deficit taken into account under subclause (I) which is attributable to a qualified deficit, including the qualified activities to which such portion is attributable.

“(B) E&P Deficit Foreign Corporation.—The term ‘E&P deficit foreign corporation’ means, with respect to any taxpayer, any specified foreign corporation with respect to which such taxpayer is a United States shareholder, if—

“(i) such specified foreign corporation has a deficit in post-1986 earnings and profits, and

“(ii) as of November 29, 2017—

“(I) such corporation was a specified foreign corporation, and

“(II) such taxpayer was a United States shareholder of such corporation.
“(C) SPECIFIED E&P DEFICIT.—The term ‘specified E&P deficit’ means, with respect to any E&P deficit foreign corporation, the amount of the deficit referred to in subparagraph (B).

“(4) NETTING AMONG UNITED STATES SHAREHOLDERS IN SAME AFFILIATED GROUP TREATMENT OF EARNINGS AND PROFITS IN FUTURE YEARS.—

“(A) IN GENERAL.—In the case of any affiliated group which includes at least one E&P net surplus shareholder and one E&P net deficit shareholder, the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by each such E&P net surplus shareholder shall be reduced (but not below zero) by such shareholder’s applicable share of the affiliated group’s aggregate unused E&P deficit. REDUCED EARNINGS AND PROFITS TREATED AS PREVIOUSLY TAXED INCOME WHEN DISTRIBUTED.—For purposes of applying section 959 in any taxable year beginning after December 31, 2017, with respect to any United States shareholder of a deferred foreign income corporation, an amount equal to such shareholder’s reduction under paragraph (1) which is allocated to such deferred foreign income corporation under this subsection shall be
treated as an amount which was included in the gross income of such United
States shareholder under section 951(a).

“(B) E&P net surplus shareholder deficits.—For purposes of this paragraph, the term ‘E&P net surplus shareholder’ means any United States shareholder which would (determined without regard to this paragraph) take into account an amount greater than zero under section 951(a)(1) by reason of subsection (a). A United States shareholder’s pro rata share of the earnings and profits of any specified E&P deficit foreign corporation under this subsection shall be increased by the amount of the specified E&P deficit of such corporation taken into account by such shareholder under paragraph (1), and, for purposes of section 952, such increase shall be attributable to the same activity to which the deficit so taken into account was attributable.

“(C) E&P net deficit shareholder.—For purposes of this paragraph, the term ‘E&P net deficit shareholder’ means any United States shareholder if—

“(i) the aggregate foreign E&P deficit with respect to such shareholder (as defined in paragraph (3)(A)), exceeds

“(ii) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a).

“(D) Aggregate unused E&P deficit.—For purposes of this paragraph—
“(i) IN GENERAL.—The term ‘aggregate unused E&P deficit’ means, with respect to any affiliated group, the lesser of—

“(I) the sum of the excesses described in subparagraph (C), determined with respect to each E&P net deficit shareholder in such group, or

“(II) the amount determined under subparagraph (E)(ii).

“(ii) REDUCTION WITH RESPECT TO E&P NET DEFICIT SHAREHOLDERS WHICH ARE NOT WHOLLY OWNED BY THE AFFILIATED GROUP.—If the group ownership percentage of any E&P net deficit shareholder is less than 100 percent, the amount of the excess described in subparagraph (C) which is taken into account under clause (i)(I) with respect to such E&P net deficit shareholder shall be such group ownership percentage of such amount.

“(E) APPLICABLE SHARE.—For purposes of this paragraph, the term ‘applicable share’ means, with respect to any E&P net surplus shareholder in any affiliated group, the amount which bears the same proportion to such group’s aggregate unused E&P deficit as—

“(i) the product of—

“(I) such shareholder’s group ownership percentage, multiplied by

“(II) the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by such shareholder, bears to

“(ii) the aggregate amount determined under clause (i) with respect to all E&P net surplus shareholders in such group.

“(F) GROUP OWNERSHIP PERCENTAGE.—For purposes of this paragraph, the term ‘group ownership percentage’ means, with respect to any United States shareholder in any affiliated group, the percentage of the value of the stock of such United States shareholder which is held by other includible corporations in such
affiliated group. Notwithstanding the preceding sentence, the group ownership percentage of the common parent of the affiliated group is 100 percent. Any term used in this subparagraph which is also used in section 1504 shall have the same meaning as when used in such section.

“(c) **Application Of Participation Exemption To Included Income**

“(1) **In General.**—In the case of a United States shareholder of a deferred foreign income corporation, there shall be allowed as a deduction for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section an amount equal to the sum of—

“(A) the United States shareholder’s 785.7 percent rate equivalent percentage of the excess (if any) of—

“(i) the amount so included as gross income, over

“(ii) the amount of such United States shareholder’s aggregate foreign cash position, plus

“(B) the United States shareholder’s 1471.4 percent rate equivalent percentage of so much of the amount described in subparagraph (A)(ii) as does not exceed the amount described in subparagraph (A)(i).
“(2) 7 AND 14 PERCENT RATE EQUIVALENT PERCENTAGES.—For purposes of this subsection—

“(A) 7 PERCENT RATE EQUIVALENT PERCENTAGE.—The term ‘7 percent rate equivalent percentage’ means, with respect to any United States shareholder for any taxable year, the percentage which would result in the amount to which such percentage applies being subject to a 7 percent rate of tax determined by only taking into account a deduction equal to such percentage of such amount and the highest rate of tax specified in section 11 for such taxable year. In the case of any taxable year of a United States shareholder to which section 15 applies, the highest rate of tax under section 11 before the effective date of the change in rates and the highest rate of tax under section 11 after the effective date of such change shall each be taken into account under the preceding sentence in the same proportions as the portion of such taxable year which is before and after such effective date, respectively.

“(B) 14 PERCENT RATE EQUIVALENT PERCENTAGE.—The term ‘14 percent rate equivalent percentage’ means, with respect to any United States shareholder for any taxable year, the percentage determined under subparagraph (A) applied by substituting ‘14 percent rate of tax’ for ‘7 percent rate of tax’.

“(32) AGGREGATE FOREIGN CASH POSITION.—

For purposes of this subsection—

“(A) IN GENERAL.—The term ‘aggregate foreign cash position’ means, with respect to any United States shareholder, one-third of the sum greater of—

“(i) the aggregate of such United States shareholder’s pro rata share of the cash position of each specified foreign corporation of such United States shareholder determined as of November 2, 2017, the close of the last taxable
year of such specified foreign corporation which begins before January 1, 2018, or

“(ii) one half of the sum of—

“(iii) the aggregate described in clause (i) determined as of the close of the last taxable year of each such specified foreign corporation which ends before November 29, 2017, and

plus “(iiiII) the aggregate described in clause (i) determined as of the close of the taxable year of each such specified foreign corporation which precedes the taxable year referred to in clause subclause 4 (iiI).

In the case of any foreign corporation which did not exist as of the determination date described in clause (ii) or (iii), this subparagraph shall be applied separately to such foreign corporation by not taking into account such clause and by substituting ‘one-half (100 percent in the case that both clauses (ii) and (iii) are disregarded)’ for ‘one-third’.

“(B) CASH POSITION.—For purposes of this paragraph, the cash position of any specified foreign corporation is the sum of—

“(i) cash and foreign currency held by such foreign corporation,

“(ii) the net accounts receivable of such foreign corporation, plus

“(iii) the fair market value of the following assets held by such corporation:
“(I) Actively traded personal property which is of a type that is actively traded and for which there is an established financial market (other than stock in the specified foreign corporation).

“(II) Commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government.

“(III) Any foreign currency.

“(IV) Any obligation with a term of less than one year.

“(V) Any asset which the Secretary identifies as being economically equivalent to any asset described in this subparagraph.

“(C) NET ACCOUNTS RECEIVABLE.—For purposes of this paragraph, the term ‘net accounts receivable’ means, with respect to any specified foreign corporation, the excess (if any) of—

“(i) such corporation’s accounts receivable, over

“(ii) such corporation’s accounts payable (determined consistent with the rules of section 461).

“(D) PREVENTION OF DOUBLE COUNTING.—

“(i) IN GENERAL.—The applicable percentage of each specified cash position of a specified foreign corporation shall not be taken into account by—

“(I) the United States shareholder referred to in clause (ii) with respect to such position, or
“(II) any United States shareholder which is an includible corporation in the same affiliated group as such United States shareholder referred to in clause (ii).

“(ii) SPECIFIED CASH POSITION.—For purposes of this subparagraph, the term ‘specified cash position’ means—

“(I) amounts described in subparagraph (B)(ii) to the extent such amounts are receivable from another specified foreign corporation with respect to any United States shareholder,

“(II) amounts described in subparagraph (B)(iii)(I) to the extent such amounts consist of an equity interest in another specified foreign corporation with respect to any United States shareholder, and

“(III) amounts described in subparagraph (B)(iii)(IV) to the extent that another specified foreign corporation with respect to any United States shareholder is obligated to repay such amount.

“(iii) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the term ‘applicable percentage’ means—

“(I) with respect to each specified cash position described in subclause (I) or (III) of clause (ii), the pro rata share of the United States shareholder referred to in clause (ii) with respect to the specified foreign corporation referred to in such clause, and

“(II) with respect to each specified cash position described in clause (ii)(II), the ratio (expressed as a percentage and not in excess of 100 percent) of the United States shareholder’s pro rata share of the cash position of the specified foreign corporation referred to in such clause divided by the amount of such specified cash position.

For purposes of this subparagraph, a separate applicable percentage shall be determined under each of subclauses (I) and (II) with respect to each specified foreign corporation referred
to in clause (ii) with respect to which a specified cash position is determined for the specified foreign corporation referred to in clause (i).

“(iv) REDUCTION WITH RESPECT TO AFFILIATED GROUP MEMBERS NOT WHOLLY OWNED BY THE AFFILIATED GROUP.—For purposes of clause (i)(II), in the case of an includible corporation the group ownership percentage of which is less than 100 percent (as determined under subsection (b)(4)(F)), the amount not take into account by reason of such clause shall be the group ownership percentage of such amount (determined without regard to this clause).

“(ED) CERTAIN BLOCKED ASSETS NOT TAKEN INTO ACCOUNT.—A cash position PREVENTION OF DOUBLE COUNTING.—Cash positions of a specified foreign corporation described in clause (ii) or (iii)(III) of subparagraph (B) shall not be taken into account by a United States shareholder under subparagraph (A) if such position could not (as of the date that it would otherwise have been to the extent that such United States shareholder demonstrates to the satisfaction of the Secretary that such amount is so taken into account under clause (i), (ii), or (iii) of subparagraph (A)) have been distributed by such United States shareholder with respect to another specified foreign corporation to United States shareholders of such specified foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country (within the meaning of section 964(b)).
“(FE) Cash positions of certain non-corporate entities taken into account.—

An entity (other than a domestic corporation) shall be treated as a specified foreign corporation of a United States shareholder for purposes of determining such United States shareholder’s aggregate foreign cash position if—

“(i) such entity is a foreign entity which would be a specified foreign corporation of such United States shareholder if such entity were a corporation, or

“(ii) any interest in such entity is held by a specified foreign corporation of such United States shareholder (determined after application of this subparagraph clause (i)) and such entity would be a specified foreign corporation of such United States shareholder if such entity were a foreign corporation.

“(G) Time of certain determinations.—For purposes of this paragraph, the determination of whether a person is a United States shareholder, whether a person is a specified foreign corporation, and the pro rata share of a United States shareholder with respect to a specified foreign corporation, shall be determined as of the end of the taxable year described in subsection (a).

“(HF) Anti-abuse.—If the Secretary determines that the principal purpose of any transaction was to reduce the aggregate foreign cash position
taken into account under this subsection, such transaction shall be disregarded for purposes of this subsection.

“(d) **Deferred Foreign Income Corporation; Accumulated Post-1986 Deferred Foreign Income**

**Deferred Foreign Income Corporation; Accumulated Post-1986 Deferred Foreign Income.**—For purposes of this section—

“(1) **Deferred foreign income corporation.**—The term ‘deferred foreign income corporation’ means, with respect to any United States shareholder, any specified foreign corporation of such United States shareholder which has accumulated post-1986 deferred foreign income (as of the date close of the taxable year referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation) greater than zero.

“(2) **Accumulated Post-1986 Deferred Foreign Income.**—The term ‘accumulated post-1986 deferred foreign income’ means the post-1986 earnings and profits except to the extent such earnings—

“(A) are attributable to income of the specified foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or
“(B) in the case of a controlled foreign corporation, if distributed, would be excluded from the gross income of a United States shareholder under section 959.

To the extent provided in regulations or other guidance prescribed by the Secretary, in the case of any controlled foreign corporation which has shareholders which are not United States shareholders, accumulated post-1986 deferred foreign income shall be appropriately reduced by amounts which would be described in subparagraph (B) if such shareholders were United States shareholders.

“(3) POST-1986 EARNINGS AND PROFITS.—The term ‘post-1986 earnings and profits’ means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986, and by only taking into account periods when the foreign corporation was a specified foreign corporation) accumulated in taxable years beginning after December 31, 1986, and determined—

“(A) as of the date of the taxable year referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation, and

“(B) without diminution by reason of dividends distributed during the taxable year ending with or including such date, and
“(C) increased by the amount of any qualified deficit (within the meaning of section 952(c)(1)(B)(ii)) arising before January 1, 2018, which is treated as a qualified deficit (within the meaning of such section as amended by the Tax Cuts and Jobs Act) for purposes of such foreign corporation’s first taxable year beginning after December 31, 2017.

“(e) 

**Specified Foreign Corporation.**—

“(1) In general.—For purposes of this section, the term ‘specified foreign corporation’ means—

“(A) any controlled foreign corporation, and

“(B) any foreign section 902 corporation with respect to which one or more domestic corporations is a United States shareholder (determined without regard to section 958(b)(4)(as defined in section 909(d)(5) as in effect before the date of the enactment of the Tax Cuts and Jobs Act).

“(2) Application to certain foreign section 902 corporations.—For purposes of sections 951 and 961, a foreign section 902 corporation described in paragraph (1)(B(as so defined) shall be treated as a controlled foreign corporation solely for purposes of taking into account the subpart F income of such corporation under subsection (a)(and for purposes of applying subsection (f)

“(3) Exception for exclusion of passive foreign investment companies.—The term ‘specified foreign corporation’
shall not include any corporation which is a passive foreign investment company (within the meaning of subpart D of part VI of subchapter P) that as defined in section 1297) with respect to the shareholder and which is not a controlled foreign corporation.

“(f) Determinations of Pro Rata Share. For purposes of this section, the determination of any United States shareholder’s pro rata share of any amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating such amount in the same manner as subpart F income (and by treating such specified foreign corporation as a controlled foreign corporation).

“(g) Disallowance of Foreign Tax Credit, etc. —

“(1) In general. — No credit shall be allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section.

“(2) Applicable percentage. — For purposes of this subsection, the term ‘applicable percentage’ means the amount (expressed as a percentage) equal to the sum of—
“(A) **80 percent of** 0.857 **multiplied by** the ratio of—

“(i) the excess to which subsection (c)(1)(A) applies, divided by

“(ii) the sum of such excess plus the amount to which subsection (c)(1)(B) applies, plus

“(B) **60 percent of** 0.714 **multiplied by** the ratio of—

“(i) the amount to which subsection (c)(1)(B) applies, divided by

“(ii) the sum described in subparagraph (A)(ii).

“(3) **DENIAL OF DEDUCTION.**—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

“(4) **COORDINATION WITH SECTION 78.**—Section 78 shall not apply to any tax for which credit is not allowable under section 901 by reason of paragraph (1).

“(4) **COORDINATION WITH SECTION 78.**—With respect to the taxes treated as paid or accrued by a domestic corporation with respect to amounts which are includible in gross income of such domestic corporation by reason of this section, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

“(A) the excess of—

“(i) the amounts which are includible in gross income of such domestic corporation by reason of this section, over
“(ii) the deduction allowable under subsection (c) with respect to such amounts, bears to
“(B) such amounts.

“(5) EXTENSION OF FOREIGN TAX CREDIT CARRYOVER PERIOD.—With respect to any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section, section 904(c) shall be applied by substituting ‘first 20 succeeding taxable years’ for ‘first 10 succeeding taxable years’.

“(h) ELECTION TO PAY LIABILITY IN INSTALLMENTS.—

“(1) IN GENERAL.—In the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder may elect to pay the net tax liability under this section in 8 equal installments of the following amounts:

“(A) 8 percent of the net tax liability in the case of each of the first 5 of such installments,

“(B) 15 percent of the net tax liability in the case of the 6th such installment,

“(C) 20 percent of the net tax liability in the case of the 7th such installment, and

“(D) 25 percent of the net tax liability in the case of the 8th such installment.

“(2) DATE FOR PAYMENT OF INSTALLMENTS.—
If an election is made under paragraph (1), the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year described in subsection (a) and each succeeding installment shall be paid on the due date (as so determined) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made.

“(3) Acceleration of Payment.—If there is an addition to tax for failure to timely pay any installment required under this subsection, a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, then the unpaid portion of all remaining installments shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed). The preceding sentence shall not apply to the sale of substantially all the assets of a taxpayer to a buyer if such buyer enters into an agreement with the Secretary under which such buyer is liable for the remaining installments due under this subsection in the same manner as if such buyer were the taxpayer.

“(4) Proration of Deficiency to Installments.—If an election is made under paragraph (1) to pay the net tax liability under this section in installments and a deficiency has been assessed with respect to such net tax
liability, the deficiency shall be prorated to the installments payable under paragraph (1). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

“(5) ELECTION.—Any election under paragraph (1) shall be made not later than the due date for the return of tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary may provide.

“(6) NET TAX LIABILITY UNDER THIS SECTION.—For purposes of this subsection—

“(A) IN GENERAL.—The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

“(i) such taxpayer’s net income tax for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section, over

“(ii) such taxpayer’s net income tax for such taxable year determined—
“(I) without regard to this section, and

“(II) without regard to any income, or deduction, or credit, properly attributable to a dividend received by such United States shareholder from any deferred foreign income corporation.

“(B) NET INCOME TAX.—The term ‘net income tax’ means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

“(i) SPECIAL RULES FOR S CORPORATION SHAREHOLDERS

SPECIAL RULES FOR S CORPORATION SHAREHOLDERS.—

“(1) IN GENERAL.—In the case of any S corporation which is a United States shareholder of a deferred foreign income corporation, each shareholder of such S corporation may elect to defer payment of such shareholder’s net tax liability under this section with respect to such S corporation until the shareholder’s taxable year which includes the triggering event with respect to such liability. Any net tax liability payment of which is deferred under the preceding sentence shall be assessed on the return of tax as an addition to tax in the shareholder’s taxable year which includes such triggering event.

“(2) TRIGGERING EVENT.—
“(A) IN GENERAL.—In the case of any shareholder’s net tax liability under this section with respect to any S corporation, the triggering event with respect to such liability is whichever of the following occurs first:

“(i) Such corporation ceases to be an S corporation (determined as of the first day of the first taxable year that such corporation is not an S corporation).

“(ii) A liquidation or sale of substantially all the assets of such S corporation (including in a title 11 or similar case), a cessation of business by such S corporation, such S corporation ceases to exist, or any similar circumstance.

“(iii) A transfer of any share of stock in such S corporation by the taxpayer (including by reason of death, or otherwise).

“(B) PARTIAL TRANSFERS OF STOCK.—In the case of a transfer of less than all of the taxpayer’s shares of stock in the S corporation, such transfer shall only be a triggering event with respect to so much of the taxpayer’s net tax liability under this section with respect to such S corporation as is properly allocable to such stock.

“(C) TRANSFER OF LIABILITY.—A transfer described in clause (iii) of subparagraph (A) shall not be treated as a triggering event if the transferee enters into an agreement with the Secretary under which such transferee is
liable for net tax liability with respect to such stock in the same manner as if such transferee were the taxpayer.

“(3) **Net Tax Liability.**—A shareholder’s net tax liability under this section with respect to any S corporation is the net tax liability under this section which would be determined under subsection (h)(6) if the only subpart F income taken into account by such shareholder by reason of this section were allocations from such S corporation.

“(4) **Election to Pay Deferred Liability in Installments.**—In the case of a taxpayer which elects to defer payment under paragraph (1)—

“(A) subsection (h) shall be applied separately with respect to the liability to which such election applies,

“(B) an election under subsection (h) with respect to such liability shall be treated as timely made if made not later than the due date for the return of tax for the taxable year in which the triggering event with respect to such liability occurs,

“(C) the first installment under subsection (h) with respect to such liability shall be paid not later than such due date (but determined without regard to any extension of time for filing the return), and
“(D) if the triggering event with respect to any net tax liability is described in paragraph (2)(A)(ii), an election under subsection (h) with respect to such liability may be made only with the consent of the Secretary.

“(5) JOINT AND SEVERAL LIABILITY OF S CORPORATION.—If any shareholder of an S corporation elects to defer payment under paragraph (1), such S corporation shall be jointly and severally liable for such payment and any penalty, addition to tax, or additional amount attributable thereto.

“(6) EXTENSION OF LIMITATION ON COLLECTION.—Notwithstanding any other provision of law, any limitation on the time period for the collection of a liability deferred under this subsection shall not be treated as beginning before the date of the triggering event with respect to such liability.

“(7) ANNUAL REPORTING OF NET TAX LIABILITY.—

“(A) IN GENERAL.—Any shareholder of an S corporation which makes an election under paragraph (1) shall report the amount of such shareholder’s deferred net tax liability on such shareholder’s return of tax for the taxable year for which such election is made and on the return of tax for each taxable year thereafter until such amount has been fully assessed on such returns.

“(B) DEFERRED NET TAX LIABILITY.—
For purposes of this paragraph, the term ‘deferred net tax liability’ means, with respect to any taxable year, the amount of net tax liability payment of which has been deferred under paragraph (1) and which has not been assessed on a return of tax for any prior taxable year.

“(C) FAILURE TO REPORT.—In the case of any failure to report any amount required to be reported under subparagraph (A) with respect to any taxable year before the due date for the return of tax for such taxable year, there shall be assessed on such return as an addition to tax 5 percent of such amount.

“(8) ELECTION.—Any election under paragraph 18 (1)—

“(A) shall be made by the shareholder of the S corporation not later than the due date for such shareholder’s return of tax for the taxable year which includes the close of the taxable year of such S corporation in which the amount described in subsection (a) is taken into account, and

“(B) shall be made in such manner as the Secretary may provide.

“(j) REPORTING BY S CORPORATION.—Each S corporation which is a United States shareholder of a deferred specified foreign income corporation shall report in its return of tax under section 6037(a) the amount includible in its gross income for such taxable year by reason of this section and the amount of
the deduction allowable by subsection (eb). Any copy provided to a shareholder under section 6037(b) shall include a statement of such shareholder’s pro rata share of such amounts.

“(k) Inclusion of Deferred Foreign Income Under This Section Not To Trigger Recapture Of Overall Foreign Loss, Etc.—For purposes of sections 904(f)(1) and 907(c)(4), in the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder’s taxable income from sources without the United States and combined foreign oil and gas income shall be determined without regard to this section.

“(k) Extension of Limitation on Assessment.—

Notwithstanding section 6501, the limitation on the time period for the assessment of the net tax liability under this section (as defined in subsection (h)(6)) shall not expire before the date that is 6 years after the return for the taxable year described in such subsection was filed.

“(l) Recapture for Expatriated Entities.—

“(1) In general.—If a deduction is allowed under subsection (c) to a United States shareholder and such shareholder first becomes an expatriated entity at any time during the 10-year period beginning on the date of the enactment of the Tax Cuts and Jobs Act, then—

“(A) the tax imposed by this chapter shall be increased for the first taxable year in which such taxpayer becomes an expatriated entity by an
amount equal to 35 percent of the amount of the deduction allowed to the specified foreign corporation under subsection (c), and

“(B) no credits shall be allowed against the increase in tax under subparagraph (A).

“(2) EXPATRIATED ENTITY.—For purposes of this subsection, the term ‘expatriated entity’ has the same meaning given such term under section 7874(a)(2), except that such term shall not include an entity if the surrogate foreign corporation with respect to the entity is treated as a domestic corporation under section 7874(b).

“(m) SPECIAL RULES FOR UNITED STATES SHAREHOLDERS WHICH ARE REAL ESTATE INVESTMENT TRUSTS.—

“(1) IN GENERAL.—If a real estate investment trust is a United States shareholder in 1 or more deferred foreign income corporations—

“(A) any amount required to be taken into account under section 951(a)(1) by reason of this section shall not be taken into account as gross income of the real estate investment trust for purposes of applying paragraphs (2) and (3) of section 856(c) to any taxable year for which such amount is taken into account under section 951(a)(1), and

“(B) if the real estate investment trust elects the application of this subparagraph, notwithstanding subsection (a), any amount required to be
taken into account under section 951(a)(1) by reason of this section shall, in lieu of the taxable year in which it would otherwise be included in gross income (for purposes of the computation of real estate investment trust taxable income under section 857(b)), be included in gross income as follows:

“(i) 8 percent of such amount in the case of each of the taxable years in the 5 taxable year period beginning with the taxable year in which such amount would otherwise be included.

“(ii) 15 percent of such amount in the case of the 1st taxable year following such period.

“(iii) 20 percent of such amount in the case of the 2nd taxable year following such period.

“(iv) 25 percent of such amount in the case of the 3rd taxable year following such period.

“(2) RULES FOR TRUSTS ELECTING DEFERRED INCLUSION.—

“(A) ELECTION.—Any election under paragraph (1)(B) shall be made not later than the due date for the first taxable year in the taxable year period described in clause (i) of paragraph (1)(B) and shall be made in such manner as the Secretary shall provide.
“(B) SPECIAL RULES.—If an election under paragraph (1)(B) is in effect with respect to any real estate investment trust, the following rules shall apply:

“(i) APPLICATION OF PARTICIPATION EXEMPTION.—For purposes of subsection 18(c)(1)—

“(I) the aggregate amount to which subparagraph (A) or (B) of subsection (c)(1) applies shall be determined without regard to the election,

“(II) each such aggregate amount shall be allocated to each taxable year described in paragraph (1)(B) in the same proportion as the amount included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section is allocated to each such taxable year.

“(III) NO INSTALLMENT PAYMENTS.—The real estate investment trust may not make an election under subsection (g) for any taxable year described in paragraph (1)(B).

“(ii) ACCELERATION OF INCLUSION.—

If there is a liquidation or sale of substantially all the assets of the real estate investment trust (including in a title 11 or similar case), a cessation of business by such trust, or any similar circumstance, then any amount not yet included in gross income under paragraph (1)(B) shall be included in gross income as of the day before the date of the event and the
unpaid portion of any tax liability with respect to such inclusion shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed).

“(n) Election Not to Apply Net Operating Loss Deduction.—

“(1) In General.—If a United States shareholder of a deferred foreign income corporation elects the application of this subsection for the taxable year described in subsection (a), then the amount described in paragraph (2) shall not be taken into account—

“(A) in determining the amount of the net operating loss deduction under section 172 of such shareholder for such taxable year, or

“(B) in determining the amount of taxable income for such taxable year which may be reduced by net operating loss carryovers or carrybacks to such taxable year under section 18172.

“(2) Amount Described.—The amount described in this paragraph is the sum of—

“(A) the amount required to be taken into account under section 951(a)(1) by reason of this section (determined after the application of subsection (c)), plus
“(B) in the case of a domestic corporation which chooses to have the benefits of subpart A of part III of subchapter N for the taxable year, the taxes deemed to be paid by such corporation under subsections (a) and (b) of section 960 for such taxable year with respect to the amount described in subparagraph (A) which are treated as a dividends under section 978.

“(3) ELECTION.—Any election under this subsection shall be made not later than the due date (including extensions) for filing the return of tax for the taxable year and shall be made in such manner as the Secretary shall prescribe.

“(l) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section or to prevent the avoidance of the purposes of this section, including through a reduction in earnings and profits through changes in entity classification, changes in accounting methods, or otherwise.”.

(b) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 965 and inserting the following:
Sec. 965. Treatment of deferred foreign income upon transition to participation exemption system of taxation.

Subtitle B—Modifications Related to Foreign Tax Credit System

SEC. 4101. REPEAL OF SECTION 902 INDIRECT FOREIGN TAX CREDITS; DETERMINATION OF SECTION 960 CREDIT ON CURRENT YEAR BASIS.

(a) REPEAL OF SECTION 902 INDIRECT FOREIGN TAX CREDITS

REPEAL OF SECTION 902 INDIRECT FOREIGN TAX CREDITS.—Subpart A of part III of subchapter N of chapter 1 is amended by striking section 902.

(b) DETERMINATION OF SECTION 960 CREDIT ON CURRENT YEAR BASIS

DETERMINATION OF SECTION 960 CREDIT ON CURRENT YEAR BASIS.—Section 960, as amended by section 14201, is amended—

(1) by striking subsection (c), by redesignating subsection (b) as subsection (c), by striking all that precedes subsection (c) (as so redesignated) and inserting the following:

“SEC. 960. DEEMED PAID CREDIT FOR SUBPART F INCLUSIONS.

“(a) IN GENERAL.—For purposes of this subpart, if there is included in the gross income of a domestic corporation any item of income under section 951(a)(1) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, such domestic corporation shall be deemed to have paid so much of such foreign corporation’s foreign income taxes as are properly attributable to such item of income.”
“(b) **SPECIAL RULES FOR DISTRIBUTIONS FROM PREVIOUSLY TAXED EARNINGS AND PROFITS.**—For purposes of this subpart—

“(1) IN GENERAL.—If any portion of a distribution from a controlled foreign corporation to a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation is excluded from gross income under section 959(a), such domestic corporation shall be deemed to have paid so much of such foreign corporation’s foreign income taxes as—

“(A) are properly attributable to such portion, and

“(B) have not been deemed to have to been paid by such domestic corporation under this section for the taxable year or any prior taxable year.

“(2) TIERED CONTROLLED FOREIGN CORPORATIONS.—If section 959(b) applies to any portion of a distribution from a controlled foreign corporation to another controlled foreign corporation, such controlled foreign corporation shall be deemed to have paid so much of such other controlled foreign corporation’s foreign income taxes as—

“(A) are properly attributable to such portion, and

“(B) have not been deemed to have been paid by a domestic corporation under this section for the taxable year or any prior taxable year.”,

(2) and by adding after subsection (ed) (as so redesignated added by section 14201) the following new subsections:
“(de) FOREIGN INCOME TAXES. The term ‘foreign income taxes’ means any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States.

“(ef) REGULATIONS. The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.”.

(c) CONFORMING AMENDMENTS. —

(1) Section 78, as amended by section 14201, is amended to read as follows:

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''SEC. 78. GROSS UP FOR DEEMED PAID FOREIGN TAX CREDIT.
If a domestic corporation chooses to have the benefits of subpart A of part III of subchapter N (relating to foreign tax credit) for any taxable year, —

“(1) an amount equal to the taxes deemed to be paid by such corporation under subsections (a) and (b) of section 960 for such taxable year shall be treated for purposes of this title (other than sections 959, section 960, and 961) as an item of income required to be included in the gross income of such domestic corporation under section 951(a), and

“(2) an amount equal to the aggregate tested foreign income taxes deemed paid by such corporation under section 960(d) (determined without regard to the phrase ‘80 percent of’ in paragraph (1) thereof) shall be treated for purposes of this title (other than section 960) as an addition to the global intangible low-taxed income of such domestic corporation under section 951A(a) for such taxable year.”.

(2) Paragraph (4) of section 245(a) is amended to read as follows:

“(4) POST-1986 UNDISTRIBUTED EARNINGS. —

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The term ‘post-1986 undistributed earnings’ means the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986—

“(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

“(B) without diminution by reason of dividends distributed during such taxable year.”

(23) Section 245(a)(10)(C) is amended by striking “sections 902, 907, and 960” and inserting “sections 907 and 960”.

(34) Sections 535(b)(1) and 545(b)(1) are each amended by striking “section 902(a) or 960(a)(1)” and inserting “section 960”.

(45) Section 814(f)(1) is amended—

(A) by striking subparagraph (B), and

(B) by striking all that precedes “No income” and inserting the following:

“(1) TREATMENT OF FOREIGN TAXES. —”.

(56) Section 865(h)(1)(B) is amended by striking “sections 902, 907, and 960” and inserting “sections 907 and 960”.

(67) Section 901(a) is amended by striking “''sections 902 and 960''” and inserting “section 960”.

(78) Section 901(e)(2) is amended by striking “‘‘that portion’” and all that follows through “that portion” and inserting “but is not limited to; that portion”.

128
Section 901(f) is amended by striking “sections 902 and 960” and inserting “section 960”.

Section 901(j)(1)(A) is amended by striking “902 or”.

Section 901(j)(1)(B) is amended by striking “sections 902 and 960” and inserting “section 960”.

Section 901(k)(2) is amended by striking “section 853, 902, or 960” and inserting “section 853 or 960”.

Section 901(k)(6) is amended by striking “902 or”.

Section 901(m)(1) is amended by striking “relevant foreign assets—” and all that follows and inserting “relevant foreign assets shall not be taken into account in determining the credit allowed under subsection (a).”.

Section 904(d)(1) is amended by striking “sections 902, 907, and 960” and inserting “sections 907 and 960”.

Section 904(d)(6)(A) is amended by striking “sections 902, 907, and 960” and inserting “sections 907 and 960”.

Section 904(h)(10)(A) is amended by striking “sections 902, 907, and 960” and inserting “sections 907 and 960”.

Section 904 is amended by striking subsection (k), is amended to read as follows:

“(k) CROSS REFERENCES.—For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of
the taxpayer for a prior taxable year as a United States shareholder with respect to a
controlled foreign corporation, see section 960(c).

(18) Section 905(c)(1) is amended by striking the last sentence.

(19) Section 905(c)(2)(B)(i) is amended to read as follows:

“(i) shall be taken into account for the taxable year to which such taxes relate, and”.

(20) Section 906(a) is amended by striking “or deemed, under section 902, paid or accrued during the taxable year”.

(21) Section 906(b) is amended by striking paragraphs (4) and (5).

(22) Section 907(b)(2)(B) is amended by striking “902 or”.

(23) Section 907(c)(3) is amended—

(A) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(B) by striking “section 960(a)” in subparagraph (A) (as so redesignated) and inserting “section 960”.

(24) Section 907(c)(5) is amended by striking “902 or”.

(25) Section 907(f)(2)(B)(i) is amended by striking “902 or”.

(26) Section 908(a) is amended by striking “902 or”.

(27) Section 909(b) is amended—

(A) by striking “section 902 corporation” in the matter preceding paragraph (1) and inserting “specified 10/50-percent owned foreign corporation (as defined in section 245A(b))”,

(B) by striking “902 or” in paragraph (1),
(C) by striking “by such section 902 corporation” and all that follows in the matter following paragraph (2) and inserting “by such specified 10/50-percent owned foreign corporation or a domestic corporation which is a United States shareholder with respect to such specified 10/50-percent owned foreign corporation.”, and

(D) by striking “SECTION 902 CORPORATIONS” in the heading thereof and inserting “SPECIFIED 10/50-CORPORATIONS-PERCENT OWNED FOREIGN CORPORATIONS”.

(28) Section 909(d) is amended by striking paragraph (5) is amended to read as follows:

“(5) 10/50 CORPORATION.—The term ‘10/50 corporation’ means any foreign corporation with respect to which one or more domestic corporations is a United States shareholder.”.

(29) Section 958(a)(1) is amended by striking “960(a)(1)” and inserting “960”.

(30) Section 959(d) is amended by striking “Except as provided in section 960(a)(3), any” and inserting “Any”.

(31) Section 959(e) is amended by striking “section 960(b)” and inserting “section 960(c)”.

(32) Section 1291(g)(2)(A) is amended by striking “any distribution—” and all that follows through “but only if” and inserting “any distribution, any withholding tax imposed with respect to such distribution, but only if”.

131
(33) Section 6038(c)(1)(B) is amended by striking “sections 902 (relating to foreign tax credit for corporate stockholder in foreign corporation) and 960 (relating to special rules for foreign tax credit)” and inserting “section 960”.

(34) Section 6038(c)(4) is amended by striking subparagraph (C).

(35) The table of sections for subpart A of part IIII of subchapter N of chapter 1 is amended by striking the item relating to section 902.

(36) The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 960 and inserting the following:

“Sec. 960. Deemed paid credit for subpart F inclusions.”

(d) **EFFECTIVE DATE**—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 4102. SOURCES OF INCOME FROM SALES OF INVENTORY DETERMINED SOLELY ON BASIS OF PRODUCTION ACTIVITIES.

(a) **IN GENERAL**—Section 863(b) is amended by adding at the end the following: “Gains, profits, and income from the sale or exchange of inventory property described in paragraph (2) shall be allocated and apportioned between sources within and without the United States solely on the basis of the production activities with respect to the property.”.
(b) **Effective Date.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2017.

**Subtitle C—Modification Of Subpart F Provisions**

SEC. 4201. **Repeal Of Inclusion Based On Withdrawal Of Previously Excluded Subpart F Income From Qualified Investment.**

(a) **In General.**—Subpart F of part III of subchapter N of chapter 1 is amended by striking section 955.

(b) **Conforming Amendments.**—

(1)(A) Section 951(a)(1)(A) is amended to read as follows:

“(A) his pro rata share (determined under paragraph (2)) of the corporation’s subpart F income for such year, and”.

(B) Section 851(b)(3) is amended by striking “section 951(a)(1)(A)(i)” in the flush language at the end and inserting “section 951(a)(1)(A)”.

(C) Section 952(c)(1)(B)(i) is amended by striking “section 951(a)(1)(A)(i)” and inserting “section 951(a)(1)(A)”.

(D) Section 953(c)(1)(C) is amended by striking “section 951(a)(1)(A)(i)” and inserting “section 951(a)(1)(A)”.

(2) Section 951(a) is amended by striking paragraph (3).
(3) Section 953(d)(4)(B)(iv)(II) is amended by striking “or amounts referred to in clause (ii) or (iii) 26 of section 951(a)(1)(A)”. 

(4) Section 964(b) is amended by striking “, 2 955,.”. 

(5) Section 970 is amended by striking subsection (b). 

(6) The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by striking the item relating to section 955. 

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 4202. REPEAL.

14211. ELIMINATION OF TREATMENT INCLUSION OF FOREIGN BASE COMPANY OIL RELATED INCOME AS SUBPART F INCOME.

(a) IN GENERAL.—Section 954(a) is amended by striking paragraph (5), by striking the comma at the end of paragraph (3) and inserting a period, and by inserting “and” at the end of paragraph (2). 

(a) REPEAL.—Subsection (a) of section 954 is amended—

(1) by inserting “and” at the end of paragraph

(2) by striking the comma at the end of paragraph (3) and inserting a period, and

(3) by striking paragraph (5).
(b) **Conforming Amendments.** —

(1) Section 952(c)(1)(B)(iii) is amended by striking subclause (I) and by redesignating subclauses (II) through (V) as subclauses (I) through (IV), respectively.

(2) Section 954(b)(4) is amended by striking the last sentence.

(A) by striking the second sentence of paragraph (4).

(3) Section 954(b)(5) is amended by striking “the foreign base company services income, and the foreign base company oil related income” in paragraph (5) and inserting “and the foreign base company services income”.

and

(4) Section 954(b) is amended by striking paragraph (6).

(c) **Effective Date.** —The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or within which such taxable years of foreign corporations end.

**Sec. 4203. Inflation adjustment of de minimis exception for foreign base company income.**

(a) **In General.** —Section 954(b)(3) is amended by adding at the end the following new subparagraph:
“(D) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 2017, the dollar amount in subparagraph (A)(ii) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(cf)(2)(A3) for the calendar year in which the taxable year begins.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $50,000.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 4204. LOOK-THRU RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS MADE PERMANENT.

(a) IN GENERAL.—Paragraph (6) of section 954(c) is amended by striking subparagraph (C).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2019, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.
shareholders in which or with which such taxable years of foreign corporations end.

SEC. 4205. MODIFICATION OF STOCK ATTRIBUTION RULES FOR DETERMINING STATUS AS A CONTROLLED FOREIGN CORPORATION.

(a) **IN GENERAL.**—Section 958(b) is amended—

(1) by striking paragraph (4), and

(2) by striking “Paragraphs (1) and (4)” in the last sentence and inserting “Paragraph (1)”.

(b) **APPLICATION OF CERTAIN REPORTING REQUIREMENTS.**—Section 6038(e)(2) is amended by striking “except that—” and all that follows through “in applying subparagraph (C)” and inserting “except that in applying subparagraph (C)”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to—

(1) the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent taxable year of such foreign corporations, and

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.
SEC. 4206. ELIMINATION OF REQUIREMENT THAT CORPORATION MUST BE CONTROLLED FOR 30 DAYS BEFORE SUBPART F INCLUSIONS APPLY.

(a) **In General.**—Section 951(a)(1) is amended by striking “for an uninterrupted period of 30 days or more” and inserting “at any time”.

(b) **Effective Date.**—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

Subtitle D—Prevention Of Base Erosion
Subpart B—Rules Related to Passive and Mobile Income

CHAPTER 1—TAXATION OF FOREIGN-DERIVED INTANGIBLE INCOME AND GLOBAL INTANGIBLE LOW-TAXED INCOME

SEC. 4301. CURRENT YEAR INCLUSION OF GLOBAL INTANGIBLE LOW-TAXED INCOME BY UNITED STATES SHAREHOLDERS WITH FOREIGN HIGH RETURNS.

(a) **In General.**—Subpart F of part III of subchapter N of chapter 1 is amended by inserting after section 951 the following new section:
“SEC. 951A. FOREIGN HIGH RETURN AMOUNT GLOBAL INTANGIBLE LOW-TAXED INCOME INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS.

“(a) IN GENERAL.—Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income for such taxable year 50 percent of such shareholder’s foreign high return amount global intangible low-taxed income for such taxable year.

“(b) GLOBAL INTANGIBLE LOW-TAXED INCOME.—

“(b) FOREIGN HIGH RETURN AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘foreign high return amount global intangible low-taxed income’ means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

“(A) such shareholder’s net CFC tested income for such taxable year, over

“(B) the excess (if any) of—such shareholder’s net deemed tangible income return for such taxable year.

“(i) the applicable percentage—

“(2) NET DEEMED TANGIBLE INCOME RETURN.—The term ‘net deemed tangible income return’ means, with
respect to any United States shareholder for any taxable year, an amount equal to 10 percent of the aggregate of such shareholder’s pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year (determined for each taxable year of each such controlled foreign corporation which ends in or with such taxable year of such United States shareholder) over.

“(ii) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the shareholder’s net CFC tested income for the taxable year.

“(2) APPLICABLE PERCENTAGE.—The term ‘applicable percentage’ means, with respect to any taxable year, the Federal short-term rate (determined under section 1274(d) for the month in which or with which such taxable year ends) plus 7 percentage points.

“(c) NET CFC TESTED INCOME.—For purposes of this section—

“(1) IN GENERAL.—The term ‘net CFC tested income’ means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

“(A) the aggregate of such shareholder’s pro rata share of the tested income of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such
United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

“(B) the aggregate of such shareholder’s pro rata share of the tested loss of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder).

“(2) TESTED INCOME; TESTED LOSS.—For purposes of this section—

“(A) TESTED INCOME.—The term ‘tested income’ means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of—

“(i) the gross income of such corporation determined without regard to—

“(I) any item of income which is effectively connected with the conduct by such corporation of a trade or business within the United States if subject to tax under this chapter described in section 952(b),

“(II) any gross income taken into account in determining the subpart F income of such corporation,
“(III) except as otherwise provided by the Secretary, any amount excluded from the foreign personal holding company income (as defined in section 954) of such corporation by reason of section 954(c)(6) but only to the extent that any deduction allowable for the payment or accrual of such amount does not result in a reduction in the foreign high return amount of any United States shareholder (determined without regard to this subclause),

“(IV) any gross income excluded from the foreign personal holding company income (as defined in section 954) of such corporation by reason of subsection (c)(2)(C), (h), or (i) of section 954,

“(V) any gross income excluded from the insurance income (as defined in section 953) of such corporation by reason of section 953(a)(2),

“(VIII) any gross income excluded from the foreign base company income (as defined in section 954) or the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4),

“(VIII) any dividend received from a related person (as defined in section 954(d)(3)), and

“(VIII) any commodities-gross-income—foreign oil and gas extraction income (as defined in section 907(c)(1)) of such corporation, over

“(ii) the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or which would be so properly allocable if such corporation had such gross income).

24 “(B) Tested loss.—
“(i) IN GENERAL.—The term ‘tested loss’ means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

“(ii) COORDINATION WITH SUBPART F

TO DENY DOUBLE BENEFIT OF LOSSES.—

Section 952(c)(1)(A) shall be applied by increasing the earnings and profits of the controlled foreign corporation by the tested loss of such corporation.

“(d) QUALIFIED BUSINESS ASSET INVESTMENT.—

“(d) QUALIFIED BUSINESS ASSET INVESTMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified business asset investment’ means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the aggregate of the corporation’s adjusted bases (determined as of the close of each quarter of such taxable year and after any adjustments with respect to such taxable year) in specified tangible property —

“(A) used in a trade or business of the corporation, and
“(B) of a type with respect to which a deduction is allowable under section 468167.

“(2) SPECIFIED TANGIBLE PROPERTY.—

“(A) IN GENERAL.—The term ‘specified tangible property’ means, except as provided in subparagraph (B), any tangible property to the extent such property is used in the production of tested income or tested loss.

“(3B) PARTNERSHIP DUAL USE PROPERTY.—For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the close of such taxable year of the controlled foreign corporation, such controlled foreign corporation shall take into account under paragraph (1) the controlled foreign corporation’s distributive share of the aggregate of the partnership’s adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by such partnership to the extent such property—In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

“(A) is used in the trade or business of the partnership,
“(B) is of a type with respect to which a deduction is allowable under section 168, and

“(C) is used in the production of tested income or tested loss (determined with respect to such controlled foreign corporation’s distributive share of income or loss with respect to such property).

For purposes of this paragraph, the controlled foreign corporation’s distributive share of the adjusted basis of any property shall be the controlled foreign corporation’s distributive share of income and loss with respect to such property.

“(43) Determination of adjusted basis.—

For purposes of this subsection, the adjusted basis in any property shall be determined without regard to notwithstanding any provision of this title (or any other provision of law) which is enacted after the date of the enactment of this section, the adjusted basis in any property shall be determined using the alternative depreciation system under section 168(g).

“(54) Regulations.—The Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—

“(A) such property is transferred, or held, temporarily, or

“(B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.

“(e) Determination of pro rata share, etc.—
“(e) COMMODITIES GROSS INCOME.—For purposes of this section—

“(1) COMMODITIES GROSS INCOME.—The term ‘commodities gross income’ means, with respect to any corporation—

“(A) gross income of such corporation from the disposition of commodities which are produced or extracted by such corporation (or a partnership in which such corporation is a partner), and

“(B) gross income of such corporation from the disposition of property which gives rise to income described in subparagraph (A).

“(2) COMMODITY.—The term ‘commodity’ means any commodity described in section 475(e)(2)(A) or section 475(e)(2)(D) (determined without regard to clause (i) thereof and by substituting ‘a commodity described in subparagraph (A)’ for ‘such a commodity’ in clause (ii) thereof).

“(f) TAXABLE YEARS FOR WHICH PERSONS ARE TREATED AS UNITED STATES SHAREHOLDERS OF CONTROLLED FOREIGN CORPORATIONS.—For purposes of this section—

“(1) IN GENERAL.—A The pro rata shares referred to in subsections (b), (c)(1)(A), and (c)(1)(B), respectively, shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income and shall be taken into account in the taxable year of the United States shareholder of a in which or with which the taxable year of the controlled foreign corporation ends.

“(2) TREATMENT AS UNITED STATES SHAREHOLDER.—For purposes of paragraph (1), a person shall be treated as a United States shareholder of such a controlled foreign corporation for any taxable year of such United States shareholder only if—
“(A) a taxable year of such controlled foreign corporation ends in or with such taxable year of such person, and

“(B) such person owns (within the meaning of section 958(a)) stock in such controlled foreign corporation on the last day, in such taxable year of such foreign corporation, on which the foreign corporation is a controlled foreign corporation.

“(23) TREATMENT AS A CONTROLLED FOREIGN CORPORATION.—

Except for purposes of paragraph (1)(B) and the application of section 951(a)(2) to this section pursuant to subsection (g), a foreign corporation shall be treated as a controlled foreign corporation for any taxable year of such foreign corporation if such foreign corporation is a controlled foreign corporation at any time during such taxable year.

“(g) DETERMINATION OF PRO RATA SHARE.—For purposes of this section, pro rata shares shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income.

“(h) COORDINATION WITH SUBPART F.—

“(1f) TREATMENT AS SUBPART F INCOME FOR CERTAIN PURPOSES.—

“(1) IN GENERAL.—

“(A) APPLICATION.—Except as otherwise provided by the Secretary any foreign-high-return amount provided in subparagraph (B), any global
intangible low taxed income included in gross income under subsection (a) shall be treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962(c), 962(d), 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

“(2) Entire foreign high return amount taken into account for purposes of certain sections.—For purposes of applying paragraph (1) with respect to sections 168(h)(2)(B), 851(b), 959, 961, 962(c), 962(d), 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4), the foreign high return amount included in gross income under subsection (a) shall be determined by substituting ‘100 percent’ for ‘50 percent’ in such subsection.

“(B) Exception.—The Secretary shall provide rules for the application of subparagraph (A) to other provisions of this title in any case in which the determination of subpart F income is required to be made at the level of the controlled foreign corporation.

“(3) Allocation of foreign high return amountglobal intangible low-taxed income to controlled foreign corporations.—For purposes of the sections referred to in paragraph (1), with respect to any controlled foreign corporation any pro rata amount from which is taken into account in determining the foreign high return amountglobal intangible low-taxed income included in gross income of a United States shareholder under subsection (a), the portion of such foreign
high return amount global intangible low-taxed income which is treated as being with respect to such controlled foreign corporation is—

“(A) in the case of a controlled foreign corporation with no tested loss income, zero, and

“(B) in the case of a controlled foreign corporation with tested income, the portion of such foreign high return amount global intangible low-taxed income which bears the same ratio to such foreign high return amount global intangible low-taxed income as—

“(i) such United States shareholder’s pro rata amount of the tested income of such controlled foreign corporation, bears to

“(ii) the aggregate amount determined under described in subsection (c)(1)(A) with respect to such United States shareholder.”.

“(4) COORDINATION WITH SUBPART F TO DENY DOUBLE BENEFIT OF LOSSES.—In the case of any United States shareholder of any controlled foreign corporation, the amount included in gross income under section 951(a)(1)(A) shall be determined by increasing the earnings and profits of such controlled foreign corporation (solely for purposes of determining such amount) by an amount that bears the same ratio (not greater than 1) to such shareholder’s pro rata share of the tested loss of such controlled foreign corporation as—

“(A) the aggregate amount determined under subsection (c)(1)(A) with respect to such shareholder, bears to

“(B) the aggregate amount determined under subsection (c)(1)(B) with respect to such shareholder.”.
(b) **FOREIGN TAX CREDIT**—

(1) **APPLICATION OF DEEMED PAID FOREIGN TAX CREDIT.**—Section 960, as amended by the preceding provisions of this Act, is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and by inserting after subsection (e) the following new subsection:

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“(d) **DEEMED PAID CREDIT FOR TAXES PROPERLY ATTRIBUTABLE TO TESTED INCOME**—

“(1) **IN GENERAL.**—For purposes of this subpart, if any amount is includible in the gross income of a domestic corporation under section 951A, such domestic corporation shall be deemed to have paid foreign income taxes equal to 80 percent of the product of—

“(A) such domestic corporation’s foreign high return inclusion percentage, multiplied by

“(B) the aggregate tested foreign income taxes paid or accrued by controlled foreign corporations with respect to which such domestic corporation is a United States shareholder.

“(2) **FOREIGN HIGH RETURN INCLUSION PERCENTAGE.**—For purposes of paragraph (1), the term ‘foreign high return inclusion’—
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percentage’ means, with respect to any domestic corporation, the ratio (expressed as a percentage) of—

“(A) such corporation’s foreign high return amount of global intangible low-taxed income (as defined in section 951A(b)), divided by

“(B) the aggregate amount determined under section 951A(c)(1)(A) with respect to such corporation.

“(3) TESTED FOREIGN INCOME TAXES.—For purposes of paragraph (1), the term ‘tested foreign income taxes’ means, with respect to any domestic corporation which is a United States shareholder of a controlled foreign corporation, the foreign income taxes paid or accrued by such foreign corporation which are properly attributable to gross income described in the tested income of such foreign corporation taken into account by such domestic corporation under section 951A(e)(2)(A)(i).”.

(2) APPLICATION OF FOREIGN TAX CREDIT LIMITATION.—

(A) SEPARATE BASKET FOR FOREIGN HIGH RETURN AMOUNT OF GLOBAL INTANGIBLE LOW-TAXED INCOME.—Section 904(d)(1) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:
“(A) any amount includible in gross income under section 951A (other than passive category income),”.

(B) EXCLUSION FROM GENERAL CATEGORY INCOME.—Section 904(d)(2)(A)(ii) is amended by inserting “income described in paragraph (1)(A) and” before “passive category income”.

(B) NO CARRYOVER OR CARRYBACK OF EXCESS TAXES.—Section 904(c) is amended by adding at the end the following: “This subsection shall not apply to taxes paid or accrued with respect to amounts described in subsection 14 (d)(1)(A).”.

(3) GROSS UP FOR DEEMED PAID FOREIGN TAX CREDIT.—Section 78, as amended by the preceding provisions of this Act, is amended—

(A) by striking “any taxable year, an amount” and inserting “any taxable year—

“(1) an amount”, and

(B) by striking the period at the end and inserting “, and

“(2) an amount equal to the taxes deemed to be paid by such corporation under section 960(d) for such taxable year (determined by substituting ‘100 percent’ for ‘80 percent’ in such section) shall be treated for purposes of this title (other than sections 959, 960, and 961) as an increase in the foreign high return amount of such domestic corporation under section 951A for such taxable year.”.

(e) CONFORMING AMENDMENTS.—

(1) Section 170(b)(2)(D) is amended by striking “computed without regard to” and all that follows and inserting “computed—
“(i) without regard to—

“(I) this section,

“(II) part VIII (except section 248),

“(III) any net operating loss carryback to the taxable year under section 172,

“(IV) any capital loss carryback to the taxable year under section 1212(a)(1), and

“(ii) by substituting ‘100 percent’ for ‘50 percent’ in section 951A(a).”

(2) Section 246(b)(1) is amended by—

(A) striking “and without regard to” and inserting “without regard to”, and

(B) by striking the period at the end and inserting “, and by substituting ‘100 percent’ for ‘50 percent’ in section 951A(a).”.

(3) Section 469(i)(3)(F) is amended by striking “determined without regard to” and all that follows and inserting “determined—

“(i) without regard to—

“(I) any amount includible in gross income under section 86,

“(II) the amounts allowable as a deduction under section 219, and

“(III) any passive activity loss or any loss allowable by reason of subsection (e)(7), and

“(ii) by substituting ‘100 percent’ for ‘50 percent’ in section 951A(a).”.
(4) Section 856(c)(2) is amended by striking “and” at the end of subparagraph (H), by adding “and” at the end of subparagraph (I), and by inserting after subparagraph (I) the following new subparagraph:

“(J) amounts includible in gross income under section 951A(a);”.

(5) Section 856(c)(3)(D) is amended by striking “dividends or other distributions on, and gain” and inserting “dividends, other distributions on, amounts includible in gross income under section 951A(a) with respect to, and gain”.

(6c) **CLERICAL AMENDMENT.**—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by inserting after the item relating to section 951 the following new item:

“Sec. 951A. Foreign high return amount Global intangible low-taxed income included in gross income of United States shareholders.”.

(d) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

**CHAPTER 3—PREVENTION OF BASE EROSION**

**SEC. 4302. LIMITATION ON DEDUCTION OF** 14221. **DENIAL OF DEDUCTION FOR INTEREST BY DOMESTIC CORPORATIONS** EXPENSE OF UNITED STATES SHAREHOLDERS WHICH ARE MEMBERS OF AN
INTERNATIONAL FINANCIAL REPORTING GROUP WORLDWIDE
AFFILIATED GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.

(a) IN GENERAL.—Section 163 is amended by redesignating subsection (n) as subsection (po) and by inserting after subsection (m) the following new subsection:

“(n) LIMITATION ON DEDUCTION OF INTEREST BY DOMESTIC CORPORATIONS IN INTERNATIONAL FINANCIAL REPORTING GROUPS.—DISALLOWANCE OF DEDUCTION FOR INTEREST EXPENSE OF UNITED STATES SHAREHOLDERS WHICH ARE MEMBERS OF WORLDWIDE AFFILIATED GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.—

“(1) IN GENERAL.—In the case of any domestic corporation which is a member of any international financial reporting a worldwide affiliated group, the deduction allowed under this chapter for interest paid or accrued by such domestic corporation during the taxable year shall not exceed the sum product of—

“(A) the allowable percentage of 110 percent of the excess (if any) of—

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

“(ii) the amount described in subparagraph (B), plus

“(B) the amount of net interest includible in gross-income expense of such domestic corporation for such taxable year, multiplied by

“(B) the debt-to-equity differential percentage of such worldwide affiliated group.
“(2) CARRYFORWARD.—Any amount disallowed under paragraph (1) for any taxable year shall be treated as interest paid or accrued in the succeeding taxable year.

“(23) INTERNATIONAL FINANCIAL REPORTING GROUP DEBT-TO-EQUITY DIFFERENTIAL PERCENTAGE.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘international financial reporting group debt-to-equity differential percentage’ means, with respect to any reporting year, any group of entities which—world-wide affiliated group, the percentage which the excess domestic indebtedness of such group bears to the total indebtedness of the domestic corporations which are members of such group.

“(i) includes—

“(I) at least one foreign corporation engaged in a trade or business within the United States, or

“(II) at least one domestic corporation and one foreign corporation,

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

“(iii) reports in such statements average annual gross receipts (determined in the aggregate with respect to all entities which are part of such group) for the 3-reporting-year period ending with such reporting year in excess of $100,000,000.

“(B) RULES RELATING TO DETERMINATION OF AVERAGE GROSS RECEIPTS EXCESS DOMESTIC INDEBTEDNESS.—For purposes of subparagraph (A)(iii), rules similar to the rules of section 448(c)(3) shall apply.

The term
‘excess domestic indebtedness’ means, with respect to any worldwide affiliated group, the excess (if any) of—

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

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

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

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

“(B) REPORTED NET INTEREST EXPENSE. — The term ‘reported net interest expense’ means—

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

“(I) the aggregate amount of interest expense reported in such group’s consolidated financial statements for such taxable year, total indebtedness of the domestic corporations which are members of such group, over

“(II) the aggregate amount of interest income reported in such group’s consolidated financial statements for such taxable year, and

“(ii) with respect to any domestic corporation for any reporting year, the excess of—110 percent of the amount which the total indebtedness of such
domestic corporations would be if the ratio of such indebtedness to the total equity of such domestic corporations equaled the ratio which—

“(I) the amount of interest expense of such corporation reported in the books and records of the international financial reporting group which are used in preparing such group’s consolidated financial statements for such taxable year, over the total indebtedness of such group, bears to

“(II) the amount of interest income of such corporation reported in such books and records, total equity of such group.

“(C) ALLOCABLE SHARE OF REPORTED NET INTEREST EXPENSE.— With respect to any domestic corporation which is a member of any international financial reporting group, such corporation’s allocable share of such group’s reported net interest expense for any reporting year is the portion of such expense which bears the same ratio to such expense as—

TOTAL EQUITY.—For purposes of subparagraph (B), the term ‘total equity’ means, with respect to one or more corporations, the excess (if any) of—

“(i) the EBITDA of such corporation for such reporting year, bears to money and all other assets of such corporations, over

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

“(D) EBITDASPECIAL RULES FOR DETERMINING DEBT AND EQUITY. —
“(i) IN GENERAL.—The term ‘EBITDA’ means, with respect to any reporting year, earnings before interest, taxes, depreciation, and amortization. For purposes of this paragraph—

“(I) as determined in the international financial reporting group’s consolidated financial statements for such year, or the amount taken into account with respect to any asset shall be the adjusted basis thereof for purposes of determining gain.

“(II) for purposes of subparagraph (A)(i), as determined in the books and records of the international financial reporting group which are used in preparing such statements if not determined in such statements.

“(II) the amount taken into account with respect to any indebtedness with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to subsection (a)(7) or (b)(4) thereof), and

“(III) there shall be such other adjustments as the Secretary shall by regulations prescribe.

“(ii) TREATMENT OF DISREGARDED ENTITIES.—The EBITDA of any domestic corporation shall not fail to include the EBITDA of any entity which is disregarded for purposes of this chapter. INTRAGROUP DEBT AND EQUITY INTERESTS DISREGARDED.—For purposes of this paragraph, the total indebtedness, and the assets, of any group of corporations shall be determined by treating all members of such group as one corporation.
“(iii) **TREATMENT OF INTRA-GROUP DISTRIBUTIONS.**—The EBITDA of any domestic corporation **DETERMINATION OF ASSETS OF DOMESTIC GROUP.**—For purposes of this paragraph, the assets of the domestic corporations which are members of any world-wide affiliated group shall be determined without regard to any distribution received by such disregarding any interest held by any such domestic corporation from any other in any foreign corporation which is a member of the international financial reporting such group.

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

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

“(ii) **NON-POSITIVE ENTITY EBITDA.**—In the case of any group member the EBITDA of which is zero or less, paragraph (1) shall be applied without regard to subparagraph (A) thereof.

“(4) **CONSOLIDATED FINANCIAL STATEMENT** **OTHER DEFINITIONS.**—

For purposes of this subsection, the term ‘consolidated financial statement’ means any consolidated financial statement described in paragraph (2)(A)(ii) if such statement is—

“(A) a financial statement which is certified as being prepared in accordance with generally accepted accounting principles, international financial reporting standards, or any other comparable method of accounting identified by the Secretary, and which is—
“(i) a 10-K (or successor form), or annual statement to shareholders, required to be filed with the United States Securities and Exchange Commission,

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

“(I) credit purposes,

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

“(III) any other substantial nontax purpose,

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

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

“(B) a financial statement which WORLDWIDE AFFILIATED GROUP. —

“(i) is used for a purpose described in subclause (I), (II), or (III) of subparagraph (A)(ii), or

The term ‘worldwide affiliated group’ means a group consisting of the includible members of an affiliated group, as defined in section 1504(a), determined—

“(i) by substituting ‘more than 50 percent’ for ‘at least 80 percent’ each place it appears in such section, and

“(ii) without regard to paragraphs (2), (3), and (4) of section 1504(b),

“(B) NET INTEREST EXPENSE.—The term ‘net interest expense’ means the excess (if any) of

“(i) the interest paid or accrued by the taxpayer during the taxable year, over
“(ii) filed with any regulatory or governmental body (whether
domestic or foreign) specified by the Secretary, the amount of interest includible
in the gross income of such taxpayer for such taxable year,

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

The Secretary shall by regulations provide for adjustments in determining the
amount of net interest expense if necessary.

“(5) **REPORTING YEAR TREATMENT OF AFFILIATED GROUP.**—For
purposes of this subsection, the term ‘reporting year’ means, with respect to any
international financial reporting group, the year with respect to which the
consolidated financial statements are prepared. All members of the same affiliated
group (within the meaning of section 1504(a) applied by substituting ‘more than 50
percent’ for ‘at least 80 percent’, each place it appears) shall be treated as one taxpayer.

“(6) **APPLICATION TO CERTAIN ENTITIES.**—

“(A) **PARTNERSHIPS.**—Except as otherwise provided by the
Secretary in paragraph (7), this subsection shall apply to any
partnership which is a member of any international financial
reporting group under rules similar to the rules of section 163(j)(3).

“(B) **FOREIGN CORPORATIONS ENGAGED IN TRADE OR
BUSINESS WITHIN THE UNITED STATES.**—Except as otherwise
provided by the Secretary in paragraph (8), any deduction for
interest paid or accrued by a foreign corporation engaged in a trade
or business within the United States shall be limited in a manner
consistent with the principles of this subsection.
“(C) CONSOLIDATED GROUPS.—For purposes of this subsection, the members of any group that file (or are required to file) a consolidated return with respect to the tax imposed by chapter 1 for a taxable year shall be treated as a single corporation.

“(76) REGULATIONS.—The Secretary may issue such regulations or other guidance as are necessary or may be appropriate to carry out the purposes of this subsection.”.

(b) CARRYFoward OF DISALLOWED INTEREST.—

(1) IN GENERAL.—Section 163(o) is amended to read as follows:

“(o) CARRYFORWARD OF CERTAIN DISALLOWED INTEREST.—The amount of any interest not allowed as a deduction for any taxable year by reason of subsection (j)(1) or (n)(1) (whichever imposes the lower limitation with respect to such taxable year) shall be treated as interest (and as business interest for purposes of subsection (j)(1)) paid or accrued in the succeeding taxable year. Interest paid or accrued in any taxable year (determined without regard to the preceding sentence) shall not be carried past the 5th taxable year following such taxable year, determined by treating interest as allowed as a deduction on a first-in, first-out basis.”.

(2) TREATMENT OF CARRYFORWARD OF DISALLOWED INTEREST IN CERTAIN CORPORATE ACQUISITIONS.—For rules related to the carryforward of disallowed interest in certain corporate acquisitions, see the amendments made by section 3301(c).

“(A) to prevent the avoidance of the purposes of this subsection,

“(B) providing such adjustments in the case of corporations which are members of an affiliated group as may be appropriate to carry out the purposes of this subsection,

“(C) providing for the coordination of this subsection with section 884,

“(D) providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership’s interest income or interest expense, and
“(E) providing for the coordination with the limitation under subsection (i).”

(Eb) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.
Subtitle F—Other International Reforms
SEC. 14501. RESTRICTION ON INSURANCE BUSINESS EXCEPTION TO PASSIVE FOREIGN INVESTMENT COMPANY RULES.

(a) In General. Section 1297(b)(2)(B) is amended to read as follows:

“(B) derived in the active conduct of an insurance business by a qualifying insurance corporation (as defined in subsection (f)),”.

(b) Qualifying Insurance Corporation Defined. Section 1297 is amended by adding at the end the following new subsection:

“(f) Qualifying Insurance Corporation Defined. —For purposes of subsection (b)(2)(B)—

“(1) In General. —The term ‘qualifying insurance corporation’ means, with respect to any taxable year, a foreign corporation—

“(A) which would be subject to tax under subchapter L if such corporation were a domestic corporation, and

“(B) the applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of such liabilities and assets as reported on the corporation’s applicable financial statement for the last year ending with or within the taxable year.
“(2) Alternative facts and circumstances test for
certain corporations.—

If a corporation fails to qualify as a qualified insurance corporation under paragraph (1) solely because the percentage determined under paragraph (1)(B) is 25 percent or less, a United States person that owns stock in such corporation may elect to treat such stock as stock of a qualifying insurance corporation if— “(A) the percentage so determined for the corporation is at least 10 percent, and “(B) under regulations provided by the Secretary, based on the applicable facts and circumstances— “(i) the corporation is predominantly engaged in an insurance business, and “(ii) such failure is due solely to runoff-related or rating-related circumstances involving such insurance business.

“(3) Applicable insurance liabilities.—

For purposes of this subsection—

“(A) In general.—The term ‘applicable insurance liabilities’ means, with respect to any life or property and casualty insurance business—

“(i) loss and loss adjustment expenses, and “(ii) reserves (other than deficiency, contingency, or unearned premium reserves) for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality or morbidity risks.
“(B) LIMITATIONS ON AMOUNT OF LIABILITIES.—Any amount determined under clause (i) or (ii) of subparagraph (A) shall not exceed the lesser of such amount—

“(i) as reported to the applicable insurance regulatory body in the applicable financial statement described in paragraph (4)(A) (or, if less, the amount required by applicable law or regulation), or

“(ii) as determined under regulations prescribed by the Secretary.

“(4) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

“(A) APPLICABLE FINANCIAL STATEMENT.—The term ‘applicable financial statement’ means a statement for financial reporting purposes which—

“(i) is made on the basis of generally accepted accounting principles,

“(ii) is made on the basis of international financial reporting standards, but only if there is no statement that meets the requirement of clause (i), or

“(iii) except as otherwise provided by the Secretary in regulations, is the annual statement which is required to be filed with the applicable insurance regulatory body, but only if there is no statement which meets the requirements of clause (i) or (ii).
“(B) APPLICABLE INSURANCE REGULATORY BODY.—The term ‘applicable insurance regulatory body’ means, with respect to any insurance business, the entity established by law to license, authorize, or regulate such business and to which the statement described in subparagraph (A) is provided.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2017.
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