

114TH CONGRESS
1ST SESSION

H. R. 625

To eliminate the incentive for corporations to continue to hold accumulated earnings offshore, to invest in domestic infrastructure, to provide for international tax reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2015

Mr. DELANEY (for himself and Mr. HANNA) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Transportation and Infrastructure and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To eliminate the incentive for corporations to continue to hold accumulated earnings offshore, to invest in domestic infrastructure, to provide for international tax reform, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; ETC.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Infrastructure 2.0 Act”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-
 3 ment or repeal is expressed in terms of an amendment
 4 to, or repeal of, a section or other provision, the reference
 5 shall be considered to be made to a section or other provi-
 6 sion of the Internal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—DEEMED REPATRIATION AND INVESTMENT IN DOMESTIC INFRASTRUCTURE

Sec. 101. Elimination of incentive for corporations to continue to hold accumu-
 lated earnings offshore.

Sec. 102. American Infrastructure Fund.

Sec. 103. Dedication of remaining revenues to highway trust fund.

Sec. 104. Highway Trust Fund Solvency Commission.

Sec. 105. Regional infrastructure accelerator pilot program.

TITLE II—DEADLINE FOR INTERNATIONAL TAX REFORM

Sec. 201. 18-month deadline for international tax reform.

TITLE III—FALLBACK INTERNATIONAL TAX REFORM

Sec. 300. General effective date of title.

Subtitle A—Reform of Taxation of Income Earned by Controlled Foreign Corporations

PART I—GENERAL PROVISIONS

Sec. 301. Modifications to subpart F income.

Sec. 302. Deemed repatriation upon transition to fallback international tax re-
 form.

PART II—FOREIGN TAX CREDIT LIMITATIONS

Sec. 311. Reform of foreign tax credit limitation.

Sec. 312. Denial of credit and deduction for foreign taxes with respect to ex-
 cluded subpart F income.

PART III—EXPENSE DISALLOWANCE

Sec. 321. Disallowance of deduction for expenses allocable to exempt income of
 a controlled foreign corporation.

PART IV—OTHER PROVISIONS RELATING TO SUBPART F

SUBPART A—PREVIOUSLY DEFERRED FOREIGN INCOME

Sec. 331. Treatment of previously deferred foreign income.

SUBPART B—OTHER PROVISIONS

Sec. 336. Elimination of 30-day requirement.

Sec. 337. Modification of definition of United States shareholder.

Subtitle B—Reform of Foreign Tax Credit Provisions

Sec. 341. Repeal of section 902 indirect foreign tax credits; foreign tax credit related to subpart F income.

Sec. 342. Repeal of rule suspending foreign taxes and credits until related income is taken into account.

1 **TITLE I—DEEMED REPATRI-**
 2 **ATION AND INVESTMENT IN**
 3 **DOMESTIC INFRASTRUCTURE**

4 **SEC. 101. ELIMINATION OF INCENTIVE FOR CORPORATIONS**
 5 **TO CONTINUE TO HOLD ACCUMULATED**
 6 **EARNINGS OFFSHORE.**

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

9 **“SEC. 965. ELIMINATION OF INCENTIVE TO HOLD ACCUMU-**
 10 **LATED EARNINGS AND PROFITS OFFSHORE.**

11 “(a) TREATMENT OF DEFERRED FOREIGN INCOME
 12 AS SUBPART F INCOME.—In the case of the last taxable
 13 year of a deferred foreign income corporation which ends
 14 before the date of the enactment of the Infrastructure 2.0
 15 Act, the subpart F income of such foreign corporation (as
 16 otherwise determined for such taxable year under section
 17 952) shall be increased by the accumulated post-1986 de-
 18 ferred foreign income of such corporation determined as
 19 of the close of such taxable year.

1 “(b) REDUCTION IN AMOUNTS INCLUDED IN GROSS
2 INCOME OF UNITED STATES SHAREHOLDERS OF SPECI-
3 FIED FOREIGN CORPORATIONS WITH DEFICITS IN EARN-
4 INGS AND PROFITS.—

5 “(1) IN GENERAL.—In the case of a taxpayer
6 which is a United States shareholder with respect to
7 at least one deferred foreign income corporation and
8 at least one E&P deficit foreign corporation, the
9 amount which would (but for this subsection) be
10 taken into account under section 951(a)(1) by rea-
11 son of subsection (a) as such United States share-
12 holder’s pro rata share of the subpart F income of
13 each deferred foreign income corporation shall be re-
14 duced (but not below zero) by the amount of such
15 United States shareholder’s aggregate foreign E&P
16 deficit which is allocated under paragraph (2) to
17 such deferred foreign income corporation.

18 “(2) ALLOCATION OF AGGREGATE FOREIGN E&P
19 DEFICIT.—The aggregate foreign E&P deficit of any
20 United States shareholder shall be allocated among
21 the deferred foreign income corporations of such
22 United States shareholder in an amount which bears
23 the same proportion to such aggregate as—

24 “(A) such United States shareholder’s pro
25 rata share of the accumulated post-1986 de-

1 ferred foreign income of each such deferred for-
2 foreign income corporation, bears to

3 “(B) the aggregate of such United States
4 shareholder’s pro rata share of the accumulated
5 post-1986 deferred foreign income of all de-
6 ferred foreign income corporations of such
7 United States shareholder.

8 “(3) DEFINITIONS RELATED TO E&P DEFICI-
9 CITS.—For purposes of this subsection—

10 “(A) AGGREGATE FOREIGN E&P DEF-
11 ICIT.—The term ‘aggregate foreign E&P deficit’
12 means, with respect to any United States share-
13 holder, the aggregate of such shareholder’s pro
14 rata shares of the specified E&P deficits of the
15 E&P deficit foreign corporations of such share-
16 holder.

17 “(B) E&P DEFICIT FOREIGN CORPORA-
18 TION.—The term ‘E&P deficit foreign corpora-
19 tion’ means, with respect to any taxpayer, any
20 specified foreign corporation with respect to
21 which such taxpayer is a United States share-
22 holder, if—

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

1 “(ii) as of the date of the introduction
2 of Infrastructure 2.0 Act—

3 “(I) such corporation was a spec-
4 ified foreign corporation, and

5 “(II) such taxpayer was a United
6 States shareholder of such corpora-
7 tion.

8 “(C) SPECIFIED E&P DEFICIT.—The term
9 ‘specified E&P deficit’ means, with respect to
10 any E&P deficit foreign corporation, the
11 amount of the deficit referred to in subpara-
12 graph (B).

13 “(c) DEDUCTION FOR PORTION OF INCLUDED IN-
14 COME.—In the case of a United States shareholder of a
15 deferred foreign income corporation, there shall be allowed
16 as a deduction for the taxable year in which an amount
17 is included in the gross income of such United States
18 shareholder under section 951(a)(1) by reason of this sec-
19 tion an amount equal to 75 percent of the amount so in-
20 cluded in gross income.

21 “(d) DEFERRED FOREIGN INCOME CORPORATION;
22 ACCUMULATED POST-1986 DEFERRED FOREIGN IN-
23 COME.—For purposes of this section—

24 “(1) DEFERRED FOREIGN INCOME CORPORA-
25 TION.—The term ‘deferred foreign income corpora-

1 tion' means, with respect to any United States
2 shareholder, any specified foreign corporation of
3 such United States shareholder which has accumu-
4 lated post-1986 deferred foreign income (as of the
5 close of the taxable year referred to in subsection
6 (a)) greater than zero.

7 “(2) ACCUMULATED POST-1986 DEFERRED FOR-
8 EIGN INCOME.—The term ‘accumulated post-1986
9 deferred foreign income’ means the post-1986 earn-
10 ings and profits except to the extent such earnings—

11 “(A) are attributable to income of the
12 specified foreign corporation which is effectively
13 connected with the conduct of a trade or busi-
14 ness within the United States and subject to
15 tax under this chapter,

16 “(B) if distributed, would—

17 “(i) in the case of a controlled foreign
18 corporation, be excluded from the gross in-
19 come of a United States shareholder under
20 section 959, or

21 “(ii) in the case of any passive foreign
22 investment company (as defined in section
23 1297) other than a controlled foreign cor-
24 poration, be treated as a distribution which
25 is not a dividend, or

1 “(C) in the case of any passive foreign in-
2 vestment company (as so defined), is properly
3 attributable to an unreversed inclusion of a
4 United States person under section 1296.

5 To the extent provided in regulations or other guid-
6 ance prescribed by the Secretary, in the case of any
7 controlled foreign corporation which has share-
8 holders which are not United States shareholders,
9 accumulated post-1986 deferred foreign income shall
10 be appropriately reduced by amounts which would be
11 described in subparagraph (B)(i) if such share-
12 holders were United States shareholders. Such regu-
13 lations or other guidance may provide a similar rule
14 for purposes of subparagraph (B)(ii) and (C).

15 “(3) POST-1986 EARNINGS AND PROFITS.—The
16 term ‘post-1986 earnings and profits’ means the
17 earnings and profits of the foreign corporation (com-
18 puted in accordance with sections 964(a) and 986)
19 accumulated in taxable years beginning after Decem-
20 ber 31, 1986, and determined—

21 “(A) as of the close the taxable year re-
22 ferred to in subsection (a), and

23 “(B) without diminution by reason of divi-
24 dends distributed during such taxable year.

25 “(e) SPECIFIED FOREIGN CORPORATION.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the term ‘specified foreign corporation’
3 means—

4 “(A) any controlled foreign corporation,
5 and

6 “(B) any section 902 corporation (as de-
7 fined in section 909(d)(5)).

8 “(2) APPLICATION TO SECTION 902 CORPORA-
9 TIONS.—For purposes of section 951, a section 902
10 corporation (as so defined) shall be treated as a con-
11 trolled foreign corporation solely for purposes of tak-
12 ing into account the subpart F income of such cor-
13 poration under subsection (a) (and for purposes of
14 applying subsection (f)).

15 “(f) DETERMINATIONS OF PRO RATA SHARE.—For
16 purposes of this section, the determination of any United
17 States shareholder’s pro rata share of any amount with
18 respect to any specified foreign corporation shall be deter-
19 mined under rules similar to the rules of section 951(a)(2)
20 by treating such amount in the same manner as subpart
21 F income (and by treating such specified foreign corpora-
22 tion as a controlled foreign corporation).

23 “(g) DISALLOWANCE OF FOREIGN TAX CREDIT,
24 ETC.—

1 “(1) IN GENERAL.—No credit shall be allowed
2 under section 901 for the applicable percentage of
3 any taxes paid or accrued (or treated as paid or ac-
4 crued) with respect to any amount for which a de-
5 duction is allowed under this section.

6 “(2) APPLICABLE PERCENTAGE.—For purposes
7 of this subsection, the term ‘applicable percentage’
8 means the percentage specified in subsection (c).

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

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

19 “(h) ELECTION TO PAY LIABILITY IN INSTALL-
20 MENTS.—

21 “(1) IN GENERAL.—In the case of a United
22 States shareholder of a deferred foreign income cor-
23 poration, such United States shareholder may elect
24 to pay the net tax liability under this section in 8
25 installments of the following amounts:

1 “(A) 8 percent of the net tax liability in
2 the case of each of the first 5 of such install-
3 ments,

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

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

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

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

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

20 “(3) ACCELERATION OF PAYMENT.—If there is
21 an addition to tax for failure to pay timely assessed
22 with respect to any installment required under this
23 subsection, a liquidation or sale of substantially all
24 the assets of the taxpayer (including in a title 11 or
25 similar case), a cessation of business by the tax-

1 payer, or any similar circumstance, then the unpaid
2 portion of all remaining installments shall be due on
3 the date of such event (or in the case of a title 11
4 or similar case, the day before the petition is filed).
5 The preceding sentence shall not apply to the sale
6 of substantially all the assets of a taxpayer to a
7 buyer if such buyer enters into an agreement with
8 the Secretary under which such buyer is liable for
9 the remaining installments due under this subsection
10 in the same manner as if such buyer were the tax-
11 payer.

12 “(4) PRORATION OF DEFICIENCY TO INSTALL-
13 MENTS.—If an election is made under paragraph (1)
14 to pay the net tax liability under this section in in-
15 stallments and a deficiency has been assessed with
16 respect to such net tax liability, the deficiency shall
17 be prorated to the installments payable under para-
18 graph (1). The part of the deficiency so prorated to
19 any installment the date for payment of which has
20 not arrived shall be collected at the same time as,
21 and as a part of, such installment. The part of the
22 deficiency so prorated to any installment the date
23 for payment of which has arrived shall be paid upon
24 notice and demand from the Secretary. This sub-
25 section shall not apply if the deficiency is due to

1 negligence, to intentional disregard of rules and reg-
2 ulations, or to fraud with intent to evade tax.

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

8 “(6) NET TAX LIABILITY UNDER THIS SEC-
9 TION.—For purposes of this subsection—

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

13 “(i) such taxpayer’s net income tax
14 for the taxable year described in subsection
15 (a), over

16 “(ii) such taxpayer’s net income tax
17 for such taxable year determined without
18 regard to this section.

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

23 “(i) INCLUSION OF DEFERRED FOREIGN INCOME
24 UNDER THIS SECTION NOT TO TRIGGER RECAPTURE OF
25 OVERALL FOREIGN LOSS.—For purposes of section

1 904(f)(1), in the case of a United States shareholder of
2 a deferred foreign income corporation, such United States
3 shareholder's taxable income from sources without the
4 United States shall be determined without regard to this
5 section.

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

9 (b) CLERICAL AMENDMENT.—The table of sections
10 for subpart F of part III of subchapter N of chapter 1
11 of such Code is amended by striking the item relating to
12 section 965 and inserting the following:

“Sec. 965. Elimination of incentive to hold accumulated earnings and profits
offshore.”.

13 **SEC. 102. AMERICAN INFRASTRUCTURE FUND.**

14 (a) AMERICAN INFRASTRUCTURE FUND.—

15 (1) IN GENERAL.—There is established a wholly
16 owned Government corporation—

17 (A) which shall be called the American In-
18 frastructure Fund (referred to in this Act as
19 the “AIF”);

20 (B) which shall be headed by the Board of
21 Trustees established under subsection (b);

22 (C) which may have separate subaccounts
23 or subsidiaries for funds used to make loans,

1 bond guarantees, and equity investments under
2 this section;

3 (D) which shall be available to the AIF to
4 pay for the costs of carrying out this section,
5 including the compensation of the Board and
6 other employees of the AIF; and

7 (E) the funds of which may be invested by
8 the Board in such manner as the Board deter-
9 mines appropriate.

10 (2) DEPOSITS TO AIF.—All funds received from
11 bond issuances, loan payments, bond guarantee fees,
12 and any other funds received in carrying out this
13 section shall be held by AIF.

14 (3) LIMITATIONS.—The charter of the AIF
15 shall limit its activities to those activities described
16 as the mission of the Board under subsection (b)(2).

17 (4) OVERSIGHT.—The AIF shall register with
18 the Securities and Exchange Commission and the
19 Chairman shall report to Congress annually as to
20 whether the AIF is fulfilling the mission of the
21 Board under subsection (b)(2).

22 (5) TREATMENT OF AIF.—

23 (A) ACCOUNTS.—Title 31, United States
24 Code, is amended in each of sections 9107(c)(3)
25 and 9108(d)(2)—

1 (i) by inserting “the American Infra-
2 structure Fund,” after “the Regional
3 Banks for Cooperatives,”; and

4 (ii) by striking “those banks” and in-
5 sserting “those entities”.

6 (B) BONDS.—Section 149(b)(3)(A)(i) is
7 amended by inserting “American Infrastructure
8 Fund,” after “Federal Home Loan Mortgage
9 Corporation,”.

10 (b) BOARD OF TRUSTEES.—

11 (1) IN GENERAL.—There is established a Board
12 of Trustees of the AIF (referred to in this sub-
13 section as the “Board”), which shall be composed of
14 9 members who—

15 (A) have substantial experience in bond
16 guarantees or municipal credit; and

17 (B) to the greatest extent practicable, have
18 extensive experience working with municipal
19 credit, risk management, and infrastructure fi-
20 nance.

21 (2) MISSION.—The mission of the Board is—

22 (A) to operate the AIF and its subsidiaries
23 to be a low cost provider of bond guarantees,
24 loans, and equity investments to State and local

1 governments and infrastructure providers for
2 urban and rural infrastructure projects that—

3 (i) provide a positive economic impact;

4 and

5 (ii) meet such other standards as the

6 Board may develop;

7 (B) to operate the AIF in a self-sustaining
8 manner;

9 (C) to not have a profit motive, but to seek
10 at all times to pursue its mission of providing
11 low cost bond guarantees and loans while—

12 (i) covering its costs;

13 (ii) maintaining such reserves as may
14 be needed; and

15 (iii) applying prudent underwriting
16 standards;

17 (D) to only consider projects put forth by
18 State and local governments and not to seek
19 projects directly; and

20 (E) to engage in no other activities other
21 than those permitted under this section.

22 (3) MEMBERSHIP.—

23 (A) INITIAL MEMBERS.—

24 (i) APPOINTMENT.—Not later than
25 150 days after the date of the enactment

1 of this Act, the President shall appoint,
2 with the advice and consent of the Senate,
3 as members of the Board—

4 (I) 2 individuals from a list of at
5 least 5 individuals selected by the
6 Speaker of the House of Representa-
7 tives;

8 (II) 2 individuals from a list of
9 at least 5 individuals selected by the
10 Minority Leader of the House of Rep-
11 resentatives;

12 (III) 2 individuals from a list of
13 at least 5 individuals selected by the
14 Majority Leader of the Senate;

15 (IV) 2 individuals from a list of
16 at least 5 individuals selected by the
17 Minority Leader of the Senate; and

18 (V) 1 individual selected at will
19 by the President.

20 (ii) SUBMISSION OF LISTS.—Each of
21 the lists described in clause (i) shall be
22 submitted to the President not later than
23 90 days after the date of the enactment of
24 this Act. If any of such lists are submitted
25 after the date required under this clause,

1 the President may appoint the 2 members
2 of the Board who were to be selected from
3 such list at will.

4 (B) STAGGERED TERMS.—The members of
5 the Board appointed pursuant to subparagraph
6 (A)(i) shall serve staggered terms, with 2 each
7 of the initial members of the Board serving for
8 terms of 5, 6, 7, and 8 years, respectively, and
9 the initial Chair selected under subparagraph
10 (D) serving for 9 years. The decision of which
11 Board members, other than the Chair, serve for
12 which initial terms shall be made by the mem-
13 bers of the Board drawing lots.

14 (C) ADDITIONAL MEMBERS.—

15 (i) IN GENERAL.—Except as provided
16 in subparagraph (A), if the term of a
17 member of the Board expires or otherwise
18 becomes vacant, the President shall ap-
19 point a replacement for such member, with
20 the advice and consent of the Senate, from
21 among a list of at least 5 individuals sub-
22 mitted by the Board.

23 (ii) TERM OF SERVICE.—

24 (I) IN GENERAL.—Each member
25 of the Board appointed to replace a

1 member whose term is expiring shall
2 serve for a 7-year term.

3 (II) VACANCIES.—Any member
4 of the Board appointed to fill a va-
5 cancy occurring before the expiration
6 of the term to which that member’s
7 predecessor was appointed shall be ap-
8 pointed only for the remainder of the
9 term.

10 (D) CHAIR.—The members of the Board
11 shall choose 1 member to serve as the Chair of
12 the Board for a term of 7 years, except that the
13 initial Chair shall serve for a term of 9 years,
14 pursuant to subsection (B).

15 (E) CONTINUATION OF SERVICE.—Each
16 member of the Board may continue to serve
17 after the expiration of the term of office to
18 which that member was appointed until a suc-
19 cessor has been appointed.

20 (F) CONFLICTS OF INTEREST.—No mem-
21 ber of the Board may have a financial interest
22 in, or be employed by, a Qualified Infrastruc-
23 ture Project (“QIP”) related to assistance pro-
24 vided under this section. Owning municipal
25 credit of any State or local government or own-

1 ing the securities of a diversified company that
2 engages in infrastructure activities, provided
3 those activities constitute less than 20 percent
4 of the company's revenues, or investing in
5 broadly held investment funds shall not be
6 deemed to create a conflict of interest. The
7 Board may issue regulations to define terms
8 used under this subparagraph.

9 (4) COMPENSATION.—The members of the
10 Board shall be compensated at an amount to be set
11 by the Board, but under no circumstances may such
12 compensation be higher than the rate prescribed for
13 level IV of the Executive Schedule under section
14 5315 of title 5, United States Code.

15 (5) STAFF.—The Board shall employ and set
16 compensation for such staff as the Board determines
17 as is necessary to carry out the activities and mis-
18 sion of the AIF, and such staff may be paid without
19 regard to the provisions of chapter 51 and sub-
20 chapter III of chapter 53, United States Code, relat-
21 ing to classification and General Schedule pay rates.

22 (6) PROCEDURES.—The Board shall establish
23 such procedures as are necessary to carry out this
24 section.

25 (7) CORPORATE GOVERNANCE STANDARDS.—

1 (A) BOARD COMMITTEES GENERALLY.—

2 The Board shall maintain all of the committees
3 required to be maintained by the board of direc-
4 tors of an issuer listed on the New York Stock
5 Exchange as of the date of the enactment of
6 this section.

7 (B) RISK MANAGEMENT COMMITTEE.—The
8 Board shall maintain a risk management com-
9 mittee, which shall—

10 (i) employ additional staff who are
11 certified by the Board as having significant
12 and relevant experience in insurance un-
13 derwriting and credit risk management;
14 and

15 (ii) establish the risk management
16 policies used by the Board.

17 (C) STANDARDS.—The Board shall, to the
18 extent practicable, follow all standards with re-
19 spect to corporate governance that are required
20 to be followed by the board of directors of an
21 issuer listed on the New York Stock Exchange
22 as of the date of the enactment of this section.

23 (8) BIENNIAL REPORTS.—Not less frequently
24 than once every 2 years, the Board shall produce a
25 report that describes, of the materials, goods, and

1 products that were used to construct, or to support
2 the construction of, qualified infrastructure projects
3 (as described in subsection (c)) and received financ-
4 ing from the American Infrastructure Fund within
5 the most recent 2 calendar years, the percentage of
6 such materials, goods, and products that were cre-
7 ated, sourced, or manufactured in the United States.

8 (c) INFRASTRUCTURE INVESTMENT.—

9 (1) ENTITIES ELIGIBLE FOR ASSISTANCE.—The
10 AIF may provide assistance to State and local gov-
11 ernment entities, nonprofit infrastructure providers,
12 private parties, and public-private partnerships (re-
13 ferred to in this section as “eligible entities”) to help
14 finance qualified infrastructure projects (referred to
15 in this subsection as “QIPs”).

16 (2) FORMS OF ASSISTANCE.—The AIF may—

17 (A) provide bond guarantees to debt issued
18 by eligible entities;

19 (B) make loans, including subordinated
20 loans, to eligible entities; and

21 (C) make equity investments in QIPs.

22 (3) QUALIFIED INFRASTRUCTURE PROJECTS.—

23 A project qualifies as a QIP under this section if—

24 (A) the project is sponsored by a State or
25 local government;

1 (B) the infrastructure is, or will be, owned
2 by a State or local government;

3 (C) the project involves the construction,
4 maintenance, improvement, or repair of a trans-
5 portation, energy, water, communications, or
6 educational facility;

7 (D) the recipient of bond guarantees,
8 loans, equity investments, or any other innova-
9 tive financing technique authorized under this
10 Act provides written assurances prescribed by
11 the AIF that the project will be performed in
12 compliance with the requirements of all Federal
13 laws that would otherwise apply to similar
14 projects to which the United States is a party;
15 and

16 (E) in the case of a public transportation
17 capital project as defined in section 5302 of
18 title 49, United States Code, the recipient of
19 bond guarantees, loans, equity investments, or
20 any other innovative financing technique au-
21 thorized under this Act complies with the grant
22 requirements applicable to grants made under
23 section 5309 of such title.

24 (4) APPLICATION FOR ASSISTANCE.—

1 (A) IN GENERAL.—A State or local gov-
2 ernment that wishes to receive a loan or bond
3 guarantee under this section shall submit an
4 application to the Board in such form and man-
5 ner and containing such information as the
6 Board may require.

7 (B) REQUIREMENT FOR PUBLIC SPONSOR-
8 SHIP OF PRIVATE ENTITIES.—A private entity
9 may only receive a bond guarantee, loan, or eq-
10 uity investment under this section if the State
11 or local government for the jurisdiction in which
12 the nonprofit infrastructure provider or private
13 partner is located submits an application pursu-
14 ant to subparagraph (A) on behalf of such non-
15 profit infrastructure provider or private part-
16 ner.

17 (5) LIMITATIONS ON SINGLE STATE AWARDS.—

18 (A) ANNUAL LIMITATION.—The Board
19 shall set an annual limit, as a percentage of
20 total assistance provided under this section dur-
21 ing a year, on the amount of assistance a single
22 State (including local governments and other
23 infrastructure providers within such State) may
24 receive in assistance provided under this sec-
25 tion.

1 (B) CUMULATIVE LIMITATION.—The
2 Board shall set a limit, as a percentage of total
3 assistance provided under this section out-
4 standing at any one time, on the amount of as-
5 sistance a single State (including local govern-
6 ments and other infrastructure providers within
7 such State) may receive in assistance provided
8 under this section.

9 (6) LOAN SPECIFICATIONS.—Loans made under
10 this section shall have such maturity and carry such
11 interest rate as the Board determines appropriate.

12 (7) BOND GUARANTEE.—The Board shall
13 charge such fees for Bond guarantees made under
14 this section as the Board determines appropriate.

15 (8) EQUITY INVESTMENTS.—With respect to a
16 QIP, the amount of an equity investment made by
17 the AIF in such QIP may not exceed 20 percent of
18 the total cost of the QIP.

19 (9) PUBLIC-PRIVATE PARTNERSHIP REQUIRE-
20 MENTS.—At least 35 percent of the assistance pro-
21 vided under this section shall be provided to QIPs
22 for which at least 10 percent of the financing for
23 such QIPs comes from private debt or equity.

24 (10) PROHIBITION ON PRINCIPAL FORGIVE-
25 NESS.—With respect to a loan made under this sec-

1 tion, the Board may not forgive any amount of prin-
2 cipal on such loan.

3 (d) DEFINITIONS.—For purposes of this section:

4 (1) INFRASTRUCTURE PROVIDER.—The term
5 “infrastructure provider” means an entity that seeks
6 to finance a QIP.

7 (2) SECRETARY.—The term “Secretary” means
8 the Secretary of the Treasury.

9 (3) STATE.—The term “State” means each of
10 the several States, the District of Columbia, any ter-
11 ritory or possession of the United States, and each
12 federally recognized Indian tribe.

13 (e) APPROPRIATION.—Out of money in the Treasury
14 not otherwise appropriated, there is hereby appropriated
15 \$50,000,000,000 to the American Infrastructure Fund.
16 Amounts appropriated under this subsection shall remain
17 available without fiscal year limitation.

18 **SEC. 103. DEDICATION OF REMAINING REVENUES TO HIGH-**

19 **WAY TRUST FUND.**

20 (a) IN GENERAL.—Section 9503(f) is amended by re-
21 designating paragraph (5) as paragraph (6) and by insert-
22 ing after paragraph (4) the following new paragraph:

23 “(5) APPROPRIATION OF REVENUES ATTRIB-
24 UTABLE TO SECTION 965.—

1 “(A) INITIAL APPROPRIATION.—Out of
2 money in the Treasury not otherwise appro-
3 priated, there is hereby appropriated
4 \$100,000,000,000 to the Highway Trust Fund.

5 “(B) REMAINING REVENUES.—

6 “(i) IN GENERAL.—Out of money in
7 the Treasury not otherwise appropriated,
8 there are hereby appropriated to the High-
9 way Trust Fund the excess of—

10 “(I) amounts equivalent to the
11 aggregate net tax liabilities under sec-
12 tion 965 (as defined in such section)
13 received in the Treasury, over

14 “(II) \$150,025,000,000.

15 “(ii) ADDITIONAL TRANSFERS ONLY
16 AFTER REVENUES EQUALING INITIAL
17 TRANSFERS HAVE BEEN RECEIVED IN THE
18 TREASURY.—For purposes of applying sec-
19 tion 9601 to clause (i), no transfer shall be
20 made under clause (i) until the Secretary
21 estimates that the amount described in
22 clause (i)(I) has exceeded the amount de-
23 scribed in clause (i)(II).”.

24 (b) TRANSFERS TO MASS TRANSIT ACCOUNT.—Sec-
25 tion 9503(e)(2) of such Code is amended by striking “the

1 mass transit portion” and inserting “, 20 percent of the
2 amounts appropriated to the Highway Trust Fund under
3 subsection (f)(5), and the mass transit portion”.

4 **SEC. 104. HIGHWAY TRUST FUND SOLVENCY COMMISSION.**

5 (a) ESTABLISHMENT.—There is established in the
6 legislative branch a commission to be known as the “High-
7 way Trust Fund Solvency Commission” (in this section
8 referred to as the “Commission”).

9 (b) DUTY OF THE COMMISSION.—Not later than 1
10 year after the initial meeting of the Commission, the Com-
11 mission shall transmit to Congress a written report that
12 includes recommendations and proposed legislation for
13 achieving long-term solvency of the Highway Trust Fund.

14 (c) MEMBERS.—

15 (1) NUMBER AND APPOINTMENT.—The Com-
16 mission shall be composed of 9 members. Of the
17 members of the Commission—

18 (A) 1 member shall be appointed by the
19 President of the United States;

20 (B) 1 member shall be appointed by the
21 chairman of the Committee on Finance of the
22 Senate;

23 (C) 1 member shall be appointed by the
24 ranking minority member of the Committee on
25 Finance of the Senate;

1 (D) 1 member shall be appointed by the
2 chairman of the Committee on Ways and Means
3 of the House of Representatives;

4 (E) 1 member shall be appointed by the
5 ranking minority member of the Committee on
6 Ways and Means of the House of Representa-
7 tives;

8 (F) 1 member shall be appointed by the
9 chairman of the Committee on Environment
10 and Public Works of the Senate;

11 (G) 1 member shall be appointed by the
12 ranking minority member of the Committee on
13 Environment and Public Works of the Senate;

14 (H) 1 member shall be appointed by the
15 chairman of the Committee on Transportation
16 and Infrastructure of the House of Representa-
17 tives; and

18 (I) 1 member shall be appointed by the
19 ranking minority member of the Committee on
20 Transportation and Infrastructure of the House
21 of Representatives.

22 (2) TIMING OF APPOINTMENTS.—Each of the
23 appointments made under paragraph (1) shall be
24 made not later than 45 days after the date of the
25 enactment of this Act.

1 (3) TERMS; VACANCIES.—Each member shall be
2 appointed for the life of the Commission, and a va-
3 cancy in the Commission shall be filled in the man-
4 ner in which the original appointment was made.

5 (4) COMPENSATION.—

6 (A) IN GENERAL.—Members of the Com-
7 mission shall serve without pay.

8 (B) TRAVEL EXPENSES.—Each member
9 shall receive travel expenses, including per diem
10 in lieu of subsistence, in accordance with appli-
11 cable provisions under subchapter I of chapter
12 57 of title 5, United States Code.

13 (d) OPERATION AND POWERS OF THE COMMIS-
14 SION.—

15 (1) CHAIR.—The chairperson of the Commis-
16 sion shall be elected by the members of the Commis-
17 sion.

18 (2) MEETINGS.—The Commission shall meet
19 not later than 30 days after the members of the
20 Commission have been appointed, and at such times
21 thereafter as the chairperson shall determine.

22 (3) RULES OF PROCEDURE.—The chairperson
23 shall, with the approval of a majority of the mem-
24 bers of the Commission, establish written rules of
25 procedure for the Commission, which shall include a

1 quorum requirement to conduct the business of the
2 Commission.

3 (4) HEARINGS.—The Commission may, for the
4 purpose of carrying out this section, hold hearings,
5 sit and act at times and places, take testimony, and
6 receive evidence as the Commission considers appro-
7 priate.

8 (5) OBTAINING OFFICIAL DATA.—The Commis-
9 sion may secure directly from any department or
10 agency of the United States, including the Congres-
11 sional Budget Office and the Government Account-
12 ability Office, any information or technical assist-
13 ance necessary to enable it to carry out this section.
14 Upon request of the chairperson of the Commission,
15 the head of that department or agency shall furnish
16 that information or technical assistance to the Com-
17 mission.

18 (6) CONTRACT AUTHORITY.—The Commission
19 may contract with and compensate government and
20 private agencies or persons for any purpose nec-
21 essary to enable it to carry out this section.

22 (7) MAILS.—The Commission may use the
23 United States mails in the same manner and under
24 the same conditions as other departments and agen-
25 cies of the United States.

1 (e) PERSONNEL.—

2 (1) DIRECTOR.—The Commission shall have a
3 Director who shall be appointed by the Commission.
4 The Director shall be paid at a rate of pay equiva-
5 lent to the annual rate of basic pay for a comparable
6 position paid under the Executive Schedule, subject
7 to the approval of the chairperson of the Commis-
8 sion.

9 (2) STAFF.—The Director may appoint and fix
10 the pay of additional staff as the Director considers
11 appropriate.

12 (3) EXPERTS AND CONSULTANTS.—The Com-
13 mission may procure temporary and intermittent
14 services under section 3109(b) of title 5, United
15 States Code, but at rates for individuals not to ex-
16 ceed the daily equivalent of the annual rate of basic
17 pay for a comparable position paid under the Execu-
18 tive Schedule.

19 (4) STAFF OF FEDERAL AGENCIES.—Upon re-
20 quest of the Commission, the head of any Federal
21 department or agency may detail, without reim-
22 bursement, any of the personnel of that department
23 or agency to the Commission to assist it in carrying
24 out its duties under this section.

1 (5) ADMINISTRATIVE SUPPORT SERVICES.—

2 Upon the request of the Commission, the Adminis-
3 trator of General Services shall provide to the Com-
4 mission, on a reimbursable basis, the administrative
5 support services necessary for the Commission to
6 carry out its responsibilities under this section.

7 (f) TERMINATION.—The Commission shall terminate
8 not later than 60 days after the submission of the report
9 described in subsection (b).

10 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
11 authorized to be appropriated such sums as may be nec-
12 essary to carry out this section.

13 (h) EXPEDITED CONSIDERATION OF COMMISSION
14 RECOMMENDATIONS.—

15 (1) EXPEDITED CONSIDERATION.—

16 (A) INTRODUCTION OF APPROVAL BILL.—

17 The majority leader of each House or a des-
18 ignee shall (by request) introduce an approval
19 bill as described in paragraph (3) not later than
20 the third day of session of that House after the
21 date of receipt of the report transmitted to the
22 Congress under subsection (b).

23 (B) CONSIDERATION IN THE HOUSE OF
24 REPRESENTATIVES.—

1 (i) REFERRAL AND REPORTING.—Any
2 committee of the House of Representatives
3 to which an approval bill is referred shall
4 report it to the House without amendment
5 not later than the third legislative day
6 after the date of its introduction. If a com-
7 mittee fails to report the bill within that
8 period or the House has adopted a concur-
9 rent resolution providing for adjournment
10 sine die at the end of a Congress, such
11 committee shall be automatically dis-
12 charged from further consideration of the
13 bill and it shall be placed on the appro-
14 priate calendar.

15 (ii) PROCEEDING TO CONSIDER-
16 ATION.—Not later than 3 legislative days
17 after the approval bill is reported or a
18 committee has been discharged from fur-
19 ther consideration thereof, it shall be in
20 order to move to proceed to consider the
21 approval bill in the House. Such a motion
22 shall be in order only at a time designated
23 by the Speaker in the legislative schedule
24 within two legislative days after the day on
25 which the proponent announces an inten-

1 tion to the House to offer the motion pro-
2 vided that such notice may not be given
3 until the approval bill is reported or a com-
4 mittee has been discharged from further
5 consideration thereof. Such a motion shall
6 not be in order after the House has dis-
7 posed of a motion to proceed with respect
8 to that special message. The previous ques-
9 tion shall be considered as ordered on the
10 motion to its adoption without intervening
11 motion. A motion to reconsider the vote by
12 which the motion is disposed of shall not
13 be in order.

14 (iii) CONSIDERATION.—If the motion
15 to proceed is agreed to, the House shall
16 immediately proceed to consider the ap-
17 proval bill in the House without inter-
18 vening motion. The approval bill shall be
19 considered as read. All points of order
20 against the approval bill and against its
21 consideration are waived. The previous
22 question shall be considered as ordered on
23 the approval bill to its passage without in-
24 tervening motion except 4 hours of debate
25 equally divided and controlled by the pro-

1 ponent and an opponent and one motion to
2 limit debate on the bill. A motion to recon-
3 sider the vote on passage of the approval
4 bill shall not be in order.

5 (C) CONSIDERATION IN THE SENATE.—

6 (i) COMMITTEE ACTION.—The appro-
7 priate committee of the Senate shall report
8 without amendment the approval bill not
9 later than the third session day after intro-
10 duction. If a committee fails to report the
11 approval bill within that period or the Sen-
12 ate has adopted a concurrent resolution
13 providing for adjournment sine die at the
14 end of a Congress, the Committee shall be
15 automatically discharged from further con-
16 sideration of the approval bill and it shall
17 be placed on the appropriate calendar.

18 (ii) MOTION TO PROCEED.—Not later
19 than 3 session days after the approval bill
20 is reported in the Senate or the committee
21 has been discharged thereof, it shall be in
22 order for any Senator to move to proceed
23 to consider the approval bill in the Senate.
24 The motion shall be decided without debate
25 and the motion to reconsider shall be

1 deemed to have been laid on the table.
2 Such a motion shall not be in order after
3 the Senate has disposed of a prior motion
4 to proceed with respect to the approval bill.

5 (iii) CONSIDERATION.—If a motion to
6 proceed to the consideration of the ap-
7 proval bill is agreed to, the Senate shall
8 immediately proceed to consideration of
9 the approval bill without intervening mo-
10 tion, order, or other business, and the ap-
11 proval bill shall remain the unfinished
12 business of the Senate until disposed of.
13 Consideration on the bill in the Senate
14 under this subsection, and all debatable
15 motions and appeals in connection there-
16 with, shall not exceed 10 hours equally di-
17 vided in the usual form. All points of order
18 against the approval bill or its consider-
19 ation are waived. Consideration in the Sen-
20 ate on any debatable motion or appeal in
21 connection with the approval bill shall be
22 limited to not more than 1 hour. A motion
23 to postpone, or a motion to proceed to the
24 consideration of other business, or a mo-
25 tion to recommit the approval bill is not in

1 order. A motion to reconsider the vote by
2 which the approval bill is agreed to or dis-
3 agreed to is not in order.

4 (D) AMENDMENTS PROHIBITED.—No
5 amendment to, or motion to strike a provision
6 from, an approval bill considered under this sec-
7 tion shall be in order in either the Senate or the
8 House of Representatives.

9 (E) COORDINATION WITH ACTION BY
10 OTHER HOUSE.—

11 (i) IN GENERAL.—If, before passing
12 the approval bill, one House receives from
13 the other a bill—

14 (I) the approval bill of the other
15 House shall not be referred to a com-
16 mittee; and

17 (II) the procedure in the receiv-
18 ing House shall be the same as if no
19 approval bill had been received from
20 the other House until the vote on pas-
21 sage, when the bill received from the
22 other House shall supplant the ap-
23 proval bill of the receiving House.

1 (ii) EXCEPTION.—This paragraph
2 shall not apply to the House of Represent-
3 atives.

4 (2) LIMITATION.—Paragraph (1) shall apply
5 only to an approval bill described in paragraph (3)
6 and introduced pursuant to paragraph (1)(A).

7 (3) APPROVAL BILL DESCRIBED.—For purposes
8 of paragraph (1), a bill described in this paragraph
9 is a bill—

10 (A) which consists of the proposed legisla-
11 tion which is included in such report to carry
12 out the recommendations made by the Commis-
13 sion in the report; and

14 (B) the title of which is as follows: “A bill
15 to carry out the recommendations of the High-
16 way Trust Fund Solvency Commission.”.

17 (4) EXTENDED TIME PERIOD.—If Congress ad-
18 journs at the end of a Congress and an approval bill
19 was then pending in either House of Congress or a
20 committee thereof, or an approval bill had not yet
21 been introduced with respect to a special message,
22 then within the first 3 days of session of the next
23 Congress, the Commission shall transmit to Con-
24 gress an additional special message containing all of
25 the information in the previous, pending special mes-

1 (2) APPLICATIONS.—To be eligible for a re-
2 gional infrastructure accelerator under the Program,
3 State, local, and regional public entities shall submit
4 to the Secretary an application proposing an accel-
5 erator at such time, in such form, and containing
6 such information as the Secretary determines is ap-
7 propriate.

8 (3) NUMBER.—To the extent practicable, the
9 Secretary shall establish at least 5 regional infra-
10 structure accelerators under the Program.

11 (4) GEOGRAPHIC DIVERSITY.—In establishing
12 regional infrastructure accelerators under the Pro-
13 gram, the Secretary shall consider the need for geo-
14 graphic diversity among such accelerators.

15 (c) ACCELERATOR COMPOSITION.—

16 (1) IN GENERAL.—Each regional infrastructure
17 accelerator established under subsection (b) shall in-
18 clude a membership composed of at least the fol-
19 lowing:

20 (A) A representative of each State, local,
21 or regional public entity in the area served by
22 the accelerator that participated in the applica-
23 tion that resulted in the establishment of the
24 accelerator.

1 (B) A representative of a State, local, or
2 regional public entity located outside the area
3 served by the accelerator with experience in in-
4 novative infrastructure financing.

5 (C) A representative of a financing entity
6 that intends to finance covered infrastructure
7 projects in the area served by the accelerator.

8 (D) A representative of a construction or
9 development entity that intends to develop cov-
10 ered infrastructure projects in the area served
11 by the accelerator.

12 (E) A representative of the Department of
13 Transportation.

14 (F) A representative of the Department of
15 the Treasury.

16 (G) A representative of the Environmental
17 Protection Agency.

18 (H) A representative of another Federal
19 department or agency with jurisdiction over
20 covered infrastructure projects intended for the
21 area served by the accelerator.

22 (2) LOCAL REPRESENTATION REQUIREMENT.—
23 At least 60 percent of the membership of each re-
24 gional infrastructure accelerator established under
25 subsection (b) shall be composed of representatives

1 of State, local, and regional public entities located in
2 the area served by the accelerator.

3 (3) DIVERSE PERSPECTIVES.—Each regional
4 infrastructure accelerator established under sub-
5 section (b) shall have a membership that represents
6 a diverse set of public and private perspectives.

7 (d) REGIONAL INFRASTRUCTURE ACCELERATION
8 PLAN.—Each regional infrastructure accelerator estab-
9 lished under subsection (b) shall develop and implement
10 a regional infrastructure acceleration plan for the area
11 served by the accelerator that—

12 (1) describes how the accelerator will promote
13 investment in covered infrastructure projects, includ-
14 ing through—

15 (A) providing guidance and feedback to
16 State, local, and regional public entities with re-
17 spect to infrastructure priorities, financing
18 strategies, and other matters relating to such
19 projects;

20 (B) evaluating and promoting innovative
21 financing methods;

22 (C) connecting sources of financing to the
23 public sponsors of such projects;

1 (D) establishing standards to measure the
2 life-cycle impacts of investments in such
3 projects; and

4 (E) providing technical assistance and in-
5 formation on best practices with respect to such
6 projects from predevelopment activities through
7 maintenance;

8 (2) assesses regional and multimodal ap-
9 proaches to advancing innovative investment in cov-
10 ered infrastructure projects; and

11 (3) develops strategies for—

12 (A) transparency with respect to covered
13 infrastructure project analysis to ensure the
14 public interest is protected;

15 (B) predevelopment capital programs to fa-
16 cilitate the creation of a catalog of covered in-
17 frastructure projects available for investment;

18 (C) the bundling of smaller-scale and rural
19 projects into project pools for investment; and

20 (D) the multimodal integration of trans-
21 portation projects.

22 (e) PROGRAM TERMINATION.—The Program shall
23 terminate on the date that is 10 years after the date on
24 which the Program is established under subsection (a).

1 (f) COVERED INFRASTRUCTURE PROJECT DE-
2 FINED.—In this section, the term “covered infrastructure
3 project” means a project—

4 (1) sponsored by a State, local, or regional pub-
5 lic entity; and

6 (2) that involves the construction, maintenance,
7 improvement, or repair of a transportation, energy,
8 water, communications, or educational facility that
9 is, or will be, owned by such an entity.

10 (g) APPROPRIATION.—Out of money in the Treasury
11 not otherwise appropriated, there is hereby appropriated
12 \$25,000,000 to the Department of Transportation to
13 carry out the Program. Amounts appropriated under this
14 subsection shall remain available without fiscal year limi-
15 tation.

16 **TITLE II—DEADLINE FOR**
17 **INTERNATIONAL TAX REFORM**

18 **SEC. 201. 18-MONTH DEADLINE FOR INTERNATIONAL TAX**
19 **REFORM.**

20 Notwithstanding any provision of title III, the provi-
21 sions of, and amendments made by, title III shall not take
22 effect if a bill which reforms the corporate international
23 tax system by eliminating the incentive to hold earnings
24 in low-tax foreign jurisdictions is enacted into law during

1 the 18-month period which begins on the date of the en-
 2 actment of this Act.

3 **TITLE III—FALLBACK**
 4 **INTERNATIONAL TAX REFORM**

5 **SEC. 300. GENERAL EFFECTIVE DATE OF TITLE.**

6 For purposes of this title, the term “applicable date”
 7 means the date which is 18 months after the date of the
 8 enactment of this Act.

9 **Subtitle A—Reform of Taxation of**
 10 **Income Earned by Controlled**
 11 **Foreign Corporations**

12 **PART I—GENERAL PROVISIONS**

13 **SEC. 301. MODIFICATIONS TO SUBPART F INCOME.**

14 (a) IN GENERAL.—Subpart F of part III of sub-
 15 chapter N of chapter 1 is amended by striking sections
 16 952 through 956 and inserting the following:

17 **“SEC. 952. SUBPART F INCOME DEFINED.**

18 “(a) IN GENERAL.—For purposes of this subpart, the
 19 term ‘subpart F income’ means, with respect to any con-
 20 trolled foreign corporation, the sum of—

21 “(1) the inclusion percentage of the corpora-
 22 tion’s modified active income, plus

23 “(2) 100 percent of the corporation’s modified
 24 nonactive income.

25 “(b) MODIFIED ACTIVE INCOME.—

1 “(1) IN GENERAL.—The term ‘modified active
2 income’ means, with respect to any controlled for-
3 eign corporation, the excess (if any) of—

4 “(A) the corporation’s active foreign mar-
5 ket income, over

6 “(B) the amount of the reduction under
7 subsection (e) for deductions properly allocable
8 to such income.

9 “(2) REDUCTION FOR CERTAIN LOSSES.—

10 “(A) IN GENERAL.—The modified active
11 income determined under paragraph (1) for any
12 taxable year shall be reduced (but not below
13 zero)—

14 “(i) first by any active foreign market
15 loss for any prior taxable year, and

16 “(ii) then by any qualified loss for
17 such taxable year (or for any prior taxable
18 year to the extent provided in subsection
19 (c)(3)(B)).

20 “(B) LIMITATION.—An active foreign mar-
21 ket loss or qualified loss for any prior taxable
22 year shall only be taken into account under sub-
23 paragraph (A)—

24 “(i) if the prior taxable year is a tax-
25 able year which begins on or after the ap-

1 plicable date (as defined in section 300 of
2 the Infrastructure 2.0 Act), and for which
3 the controlled foreign corporation was a
4 controlled foreign corporation, and

5 “(ii) to the extent such loss has not
6 been previously taken into account under
7 this subsection.

8 “(3) ACTIVE FOREIGN MARKET LOSS.—The
9 term ‘active foreign market loss’ means, with respect
10 to any taxable year, the amount by which the
11 amount determined under paragraph (1)(B) exceeds
12 the amount determined under paragraph (1)(A).

13 “(c) MODIFIED NONACTIVE INCOME.—

14 “(1) IN GENERAL.—The term ‘modified non-
15 active income’ means, with respect to any controlled
16 foreign corporation, the excess (if any) of—

17 “(A) the corporation’s gross income deter-
18 mined without regard to active foreign market
19 income, over

20 “(B) the amount of the reduction under
21 subsection (e) for deductions properly allocable
22 to such gross income.

23 “(2) REDUCTION FOR QUALIFIED LOSSES.—
24 The amount determined under paragraph (1) for
25 any taxable year shall be reduced (but not below

1 zero) by any qualified loss for any prior taxable year
2 beginning on or after the applicable date (as defined
3 in section 300 of the Infrastructure 2.0 Act), for
4 which the controlled foreign corporation was a con-
5 trolled foreign corporation, but only to the extent
6 such loss has not been previously taken into account
7 under subsection (b)(2) or this subsection.

8 “(3) QUALIFIED LOSS.—For purposes of this
9 section—

10 “(A) IN GENERAL.—The term ‘qualified
11 loss’ means, with respect to any taxable year,
12 the amount by which the amount determined
13 under paragraph (1)(B) exceeds the amount de-
14 termined under paragraph (1)(A).

15 “(B) ORDERING RULE FOR LOSSES CAR-
16 RIED FROM PRIOR TAXABLE YEARS.—In the
17 case of any qualified losses carried to a taxable
18 year from 1 or more prior taxable years, such
19 losses shall be taken into account—

20 “(i) first under paragraph (2), and

21 “(ii) then under subsection (b)(2)(B)
22 to the extent such losses exceed the
23 amount determined under paragraph (1).

24 “(d) INCLUSION PERCENTAGE.—For purposes of this
25 section—

1 “(1) IN GENERAL.—The term ‘inclusion per-
2 centage’ means 20 percent increased by the number
3 of percentage points (if any) determined under para-
4 graph (2).

5 “(2) ADDITIONAL INCLUSION FOR EARNINGS
6 NOT SUBJECT TO OECD AVERAGE FOREIGN TAX.—
7 The number of percentage points determined under
8 this paragraph with respect to any controlled foreign
9 corporation for any taxable year, is the number of
10 percentage points (not less than zero nor more than
11 15) which bears the same ratio to 15 as—

12 “(A) the number of percentage points by
13 which 25 percent exceeds the aggregate foreign
14 rate of tax imposed on the modified active in-
15 come of such controlled foreign corporation for
16 such taxable year, bears to

17 “(B) 25.

18 “(e) EXCLUSION OF UNITED STATES INCOME.—For
19 purposes of this subpart, any item of income of the con-
20 trolled foreign corporation which is effectively connected
21 with the conduct by such corporation of a trade or busi-
22 ness within the United States shall not be taken into ac-
23 count in computing the subpart F income of such corpora-
24 tion unless such item is exempt from taxation (or is sub-
25 ject to a reduced rate of tax) pursuant to a treaty obliga-

1 tion of the United States. For purposes of this subsection,
2 any exemption (or reductions) with respect to the tax im-
3 posed by section 884 shall not be taken into account.

4 “(f) DEDUCTIONS.—For purposes of subsections
5 (b)(1)(B) and (c)(1)(B), the active foreign market income,
6 and gross income other than active foreign market income,
7 of a controlled foreign corporation shall each be reduced,
8 under regulations prescribed by the Secretary, by any de-
9 ductions (including taxes) of such corporation properly al-
10 locable to items of income taken into account in computing
11 such income.

12 **“SEC. 953. ACTIVE FOREIGN MARKET INCOME.**

13 “(a) ACTIVE FOREIGN MARKET INCOME DEFINED.—
14 For purposes of this subpart, the term ‘active foreign mar-
15 ket income’ means, with respect to any controlled foreign
16 corporation, the aggregate of all items of income which
17 are—

18 “(1) attributable to economically significant ac-
19 tivities with respect to a qualified trade or business,
20 and

21 “(2) derived in connection with—

22 “(A) property which is sold, exchanged, or
23 otherwise disposed of for use, consumption, or
24 disposition outside of the United States, or

1 “(B) services which are provided outside of
2 the United States with respect to persons or
3 property located outside of the United States.

4 “(b) TREATMENT OF PASSIVE INCOME.—

5 “(1) IN GENERAL.—Except as otherwise pro-
6 vided in this subsection, the term ‘active foreign
7 market income’ shall not include the passive income
8 (as defined in section 954) of a controlled foreign
9 corporation.

10 “(2) ACTIVE FOREIGN MARKET INCOME IN-
11 CLUDES CERTAIN INCOME.—The term ‘active foreign
12 market income’ shall include—

13 “(A) if the controlled foreign corporation
14 or a qualified business unit of the corporation
15 is an eligible controlled foreign corporation (as
16 defined in section 954(e)), any item of income
17 of the corporation or unit which is qualified
18 banking or financing income (as so defined),

19 “(B) if the controlled foreign corporation
20 or a qualified business unit of the corporation
21 is a qualifying insurance company (as defined
22 in section 954(d)) or a qualifying insurance
23 company branch (as so defined), any item of in-
24 come of the corporation or unit which is quali-
25 fied insurance income (as so defined),

1 “(C) any item of income which is rents or
2 royalties derived from the ownership and oper-
3 ation (including leasing) of real or personal
4 property which is not treated as passive income
5 under section 954(a)(2)(A), and

6 “(D) in the case of a regular dealer in
7 property which is property described in section
8 954(a)(1)(B), forward contracts, option con-
9 tracts, or similar financial instruments (includ-
10 ing notional principal contracts and all instru-
11 ments referenced to commodities), any item of
12 income from any transaction (including hedging
13 transactions and transactions involving physical
14 settlement) entered into in the ordinary course
15 of such dealer’s trade or business as such a
16 dealer.

17 “(3) GAIN OR LOSS FROM SALES OF STOCK IN
18 OTHER CFCS.—If a controlled foreign corporation
19 sells, exchanges, or otherwise disposes of stock in
20 another controlled foreign corporation which is a re-
21 lated person to the selling corporation—

22 “(A) gain from such sale, exchange, or dis-
23 position shall be treated as active foreign mar-
24 ket income to the extent that such gain would
25 have been excluded from gross income under

1 section 1203 if the selling corporation were a
2 United States shareholder in the other con-
3 trolled foreign corporation, and

4 “(B) loss from such sale, exchange, or dis-
5 position shall not be allowed to the extent such
6 loss would have been disallowed under section
7 1213 if the selling corporation were a United
8 States shareholder in the other controlled for-
9 eign corporation.

10 “(4) GAIN OR LOSS FROM SALES OF INTERESTS
11 IN 25-PERCENT OWNED PARTNERSHIPS.—

12 “(A) IN GENERAL.—

13 “(i) PORTION TREATED AS ACTIVE
14 FOREIGN MARKET INCOME.—In the case of
15 any sale or exchange by a controlled for-
16 eign corporation of an interest in a part-
17 nership with respect to which such cor-
18 poration is a 25-percent owner, gain or
19 loss on such sale shall be taken into ac-
20 count in determining active foreign market
21 income in the amount which bears the
22 same ratio to the amount of such gain or
23 loss as the controlled foreign corporation’s
24 distributable share of the active foreign
25 market income from the partnership over

1 the applicable period bears to the con-
2 trolled foreign corporation's distributable
3 share of gross income from the partnership
4 over such period. The Secretary shall pre-
5 scribe such regulations as may be appro-
6 priate to prevent abuse of the purposes of
7 this paragraph, including regulations pro-
8 viding for coordination of this paragraph
9 with the provisions of subchapter K.

10 “(ii) APPLICABLE PERIOD.—For pur-
11 poses of this subparagraph, the term ‘ap-
12 plicable period’ means, with respect to any
13 interest in a partnership, the shorter of the
14 3-taxable year period immediately pre-
15 ceding the taxable year of the sale or ex-
16 change or the controlled foreign corpora-
17 tion's holding period in the interest. In no
18 event shall the applicable period include
19 any portion of any taxable year beginning
20 before the applicable date (as defined in
21 section 300 of the Infrastructure 2.0 Act).

22 “(B) 25-PERCENT OWNER.—For purposes
23 of this paragraph, the term ‘25-percent owner’
24 means a controlled foreign corporation which
25 owns directly 25 percent or more of the capital

1 or profits interest in a partnership. For pur-
2 poses of the preceding sentence, if a controlled
3 foreign corporation is a shareholder or partner
4 of a corporation or a partnership, the controlled
5 foreign corporation shall be treated as owning
6 directly its proportionate share of any capital or
7 profits interest in any partnership held directly
8 or indirectly by such corporation or partnership.
9 If a controlled foreign corporation is treated as
10 owning a capital or profits interest in a part-
11 nership under constructive ownership rules
12 similar to the rules of section 958(b), the con-
13 trolled foreign corporation shall be treated as
14 owning such interest directly for purposes of
15 this subparagraph.

16 “(c) TREATMENT OF INSURANCE INCOME.—

17 “(1) IN GENERAL.—Except as otherwise pro-
18 vided in this subsection, the term ‘active foreign
19 market income’ shall not include the insurance in-
20 come (as defined in section 955(a)) of a controlled
21 foreign corporation.

22 “(2) ACTIVE FOREIGN MARKET INCOME IN-
23 CLUDES EXEMPT INSURANCE INCOME.—The term
24 ‘active foreign market income’ shall include exempt

1 insurance income (as defined in section 955(c)) shall
2 be treated as active foreign market income.

3 “(d) TREATMENT OF INCOME FROM PROPERTY
4 USED, CONSUMED, OR DISPOSED OF IN THE UNITED
5 STATES.—For purposes of subsection (a)(2)(A)—

6 “(1) IN GENERAL.—The term ‘active foreign
7 market income’ shall not include income derived in
8 connection with property which is sold, exchanged,
9 or otherwise disposed of to any person if it was rea-
10 sonable for the controlled foreign corporation (or a
11 related person) to expect that—

12 “(A) such property would be used, con-
13 sumed, or disposed of in the United States, or

14 “(B) such property would be used in the
15 manufacture or production of, or as a compo-
16 nent part in, other property which would be
17 used, consumed, or disposed of in the United
18 States.

19 “(2) CHAIN OF RELATED PERSONS.—If—

20 “(A) property is ultimately used, con-
21 sumed, or disposed of as described in subpara-
22 graph (A) or (B) of paragraph (1), and

23 “(B) all sales, exchanges, or dispositions of
24 such property (or of the other property de-
25 scribed in paragraph (1)(B)) before the sale for

1 use, consumption, or disposition in the United
2 States are between related persons,
3 then, for purposes of paragraph (1), there shall be
4 deemed to have been a reasonable expectation that
5 the property (or the other property described in
6 paragraph (1)(B)) would be used, consumed, or dis-
7 posed of in the United States.

8 “(3) EXCEPTION FOR PROPERTY SUBSE-
9 QUENTLY EXPORTED.—Paragraphs (1) and (2) shall
10 not apply with respect to property which, after entry
11 into the United States is—

12 “(A) sold, leased, rented, or licensed by the
13 controlled foreign corporation or a related per-
14 son for direct use, consumption, or disposition
15 outside the United States, or

16 “(B) used by the controlled foreign cor-
17 poration or a related person as a component in
18 other property which is so sold, leased, rented,
19 or licensed.

20 “(4) RELATED PERSON DEFINED.—For pur-
21 poses of this subsection, the term ‘related person’
22 has the meaning given such term under section
23 954(b).

24 “(e) ECONOMICALLY SIGNIFICANT ACTIVITIES.—For
25 purposes of this section, the term ‘economically significant

1 activities' means, with respect to any item of income, ac-
2 tivities—

3 “(1) performed outside the United States,

4 “(2) performed by officers or employees of the
5 controlled foreign corporation which are part of the
6 management and operational functions of the cor-
7 poration, and

8 “(3) which make a substantial contribution to
9 the production of such item of income.

10 “(f) QUALIFIED TRADE OR BUSINESS.—For pur-
11 poses of this section—

12 “(1) IN GENERAL.—The term ‘qualified trade
13 or business’ means any trade or business which con-
14 sists of—

15 “(A) manufacturing, producing, growing,
16 or extracting property outside of the United
17 States, or

18 “(B) providing services outside of the
19 United States.

20 “(2) SPECIAL RULE FOR SUBSTANTIAL CON-
21 TRIBUTIONS TO MANUFACTURING AND SERVICES.—

22 If a trade or business consists of making a substan-
23 tial contribution through the activities of the officers
24 and employees of the controlled foreign corporation
25 to a qualified trade or business which is described in

1 subparagraph (A) or (B) of paragraph (1) of an-
2 other person, then the trade or business shall be
3 treated as a qualified trade or business described in
4 subparagraph (A) or (B) of paragraph (1), which-
5 ever is applicable.

6 **“SEC. 954. DEFINITION OF PASSIVE INCOME.**

7 “(a) PASSIVE INCOME.—

8 “(1) IN GENERAL.—For purposes of this part,
9 the term ‘passive income’ means the portion of the
10 gross income which consists of:

11 “(A) DIVIDENDS, ETC.—Dividends, inter-
12 est, royalties, rents, and annuities.

13 “(B) CERTAIN PROPERTY TRANS-
14 ACTIONS.—The excess of gains over losses from
15 the sale or exchange of property—

16 “(i) which gives rise to income de-
17 scribed in subparagraph (A) (after applica-
18 tion of paragraph (2)(A)) other than prop-
19 erty which gives rise to income not treated
20 as passive income by reason of subsection
21 (c) or (d) for the taxable year,

22 “(ii) which is an interest in a trust,
23 partnership, or REMIC, or

24 “(iii) which does not give rise to any
25 income.

1 Gains and losses from the sale or exchange of
2 any property which, in the hands of the con-
3 trolled foreign corporation, is property de-
4 scribed in section 1221(a)(1) shall not be taken
5 into account under this subparagraph.

6 “(C) COMMODITIES TRANSACTIONS.—The
7 excess of gains over losses from transactions
8 (including futures, forward, and similar trans-
9 actions) in any commodities. This subparagraph
10 shall not apply to gains or losses which—

11 “(i) arise out of commodity hedging
12 transactions (as defined in paragraph
13 (5)(A)),

14 “(ii) are active business gains or
15 losses from the sale of commodities, but
16 only if substantially all of the controlled
17 foreign corporation’s commodities are
18 property described in paragraph (1), (2),
19 or (8) of section 1221(a), or

20 “(iii) are foreign currency gains or
21 losses (as defined in section 988(b)) attrib-
22 utable to any section 988 transactions.

23 “(D) FOREIGN CURRENCY GAINS.—The ex-
24 cess of foreign currency gains over foreign cur-
25 rency losses (as defined in section 988(b)) at-

1 tributable to any section 988 transactions. This
2 subparagraph shall not apply in the case of any
3 transaction, other than a borrowing, directly re-
4 lated to the business needs of the controlled for-
5 eign corporation.

6 “(E) INCOME EQUIVALENT TO INTER-
7 EST.—Any income equivalent to interest, in-
8 cluding income from commitment fees (or simi-
9 lar amounts) for loans actually made.

10 “(F) INCOME FROM NOTIONAL PRINCIPAL
11 CONTRACTS.—

12 “(i) IN GENERAL.—Net income from
13 notional principal contracts.

14 “(ii) COORDINATION WITH OTHER
15 CATEGORIES OF PASSIVE INCOME.—Any
16 item of income, gain, deduction, or loss
17 from a notional principal contract entered
18 into for purposes of hedging any item de-
19 scribed in any preceding subparagraph
20 shall not be taken into account for pur-
21 poses of this subparagraph but shall be
22 taken into account under such other sub-
23 paragraph.

24 “(G) PAYMENTS IN LIEU OF DIVIDENDS.—
25 Payments in lieu of dividends which are made

1 pursuant to an agreement to which section
2 1058 applies.

3 “(H) PERSONAL SERVICE CONTRACTS.—

4 “(i) Amounts received under a con-
5 tract under which the corporation is to fur-
6 nish personal services if—

7 “(I) some person other than the
8 corporation has the right to designate
9 (by name or by description) the indi-
10 vidual who is to perform the services,
11 or

12 “(II) the individual who is to per-
13 form the services is designated (by
14 name or by description) in the con-
15 tract, and

16 “(ii) amounts received from the sale
17 or other disposition of such a contract.

18 This subparagraph shall apply with respect to
19 amounts received for services under a particular
20 contract only if at some time during the taxable
21 year 25 percent or more in value of the out-
22 standing stock of the corporation is owned, di-
23 rectly or indirectly, by or for the individual who
24 has performed, is to perform, or may be des-

1 ignated (by name or by description) as the one
2 to perform, such services.

3 “(2) EXCEPTION FOR CERTAIN AMOUNTS.—

4 “(A) RENTS AND ROYALTIES DERIVED IN
5 ACTIVE BUSINESS.—Passive income shall not
6 include rents and royalties which are derived in
7 the active conduct of a trade or business and
8 which are received from a person other than a
9 related person. For purposes of the preceding
10 sentence, rents derived from leasing an aircraft
11 or vessel in foreign commerce shall not fail to
12 be treated as derived in the active conduct of a
13 trade or business if, as determined under regu-
14 lations prescribed by the Secretary, the active
15 leasing expenses are not less than 10 percent of
16 the profit on the lease.

17 “(B) EXCEPTION FOR DEALERS.—Except
18 as provided by regulations, in the case of a reg-
19 ular dealer in property which is property de-
20 scribed in paragraph (1)(B), forward contracts,
21 option contracts, or similar financial instru-
22 ments (including notional principal contracts
23 and all instruments referenced to commodities),
24 there shall not be taken into account in com-
25 puting passive income any item of income, gain,

1 deduction, or loss from any transaction (includ-
2 ing hedging transactions and transactions in-
3 volving physical settlement) entered into in the
4 ordinary course of such dealer's trade or busi-
5 ness as such a dealer.

6 “(3) LOOK-THRU RULE FOR CERTAIN PARTNER-
7 SHIP SALES.—

8 “(A) IN GENERAL.—In the case of any
9 sale or exchange by a controlled foreign cor-
10 poration of an interest in a partnership with re-
11 spect to which such corporation is a 25-percent
12 owner, gain or loss on such sale shall be treated
13 as being described in paragraph (1)(B)(ii) in
14 the amount which bears the same ratio to the
15 amount of such gain or loss as the controlled
16 foreign corporation's distributable share of pas-
17 sive income from the partnership over the appli-
18 cable period (as defined in section
19 953(b)(4)(A)(ii)) bears to the controlled foreign
20 corporation's distributable share of gross in-
21 come from the partnership over such period.
22 The Secretary shall prescribe such regulations
23 as may be appropriate to prevent abuse of the
24 purposes of this paragraph, including regula-

1 tions providing for the coordination of this
2 paragraph with the provisions of subchapter K.

3 “(B) 25-PERCENT OWNER.—For purposes
4 of this paragraph, the term ‘25-percent owner’
5 has the meaning given such term under section
6 953(b)(4)(B).

7 “(4) DEFINITION AND SPECIAL RULES RELAT-
8 ING TO COMMODITY TRANSACTIONS.—

9 “(A) COMMODITY HEDGING TRANS-
10 ACTIONS.—For purposes of paragraph
11 (1)(C)(i), the term ‘commodity hedging trans-
12 action’ means any transaction with respect to a
13 commodity if such transaction—

14 “(i) is a hedging transaction as de-
15 fined in section 1221(b)(2), determined—

16 “(I) without regard to subpara-
17 graph (A)(ii) thereof,

18 “(II) by applying subparagraph
19 (A)(i) thereof by substituting ‘ordi-
20 nary property or property described in
21 section 1231(b)’ for ‘ordinary prop-
22 erty’, and

23 “(III) by substituting ‘controlled
24 foreign corporation’ for ‘taxpayer’
25 each place it appears, and

1 “(ii) is clearly identified as such in ac-
2 cordance with section 1221(a)(7).

3 “(B) TREATMENT OF DEALER ACTIVITIES
4 UNDER PARAGRAPH (1)(C).—Commodities with
5 respect to which gains and losses are not taken
6 into account under paragraph (2)(B) in com-
7 puting a controlled foreign corporation’s passive
8 income shall not be taken into account in apply-
9 ing the substantially all test under paragraph
10 (1)(C)(ii) to such corporation.

11 “(C) REGULATIONS.—The Secretary shall
12 prescribe such regulations as are appropriate to
13 carry out the purposes of paragraph (1)(C) in
14 the case of transactions involving related per-
15 sons.

16 “(b) RELATED PERSON DEFINED.—For purposes of
17 this section, a person is a related person with respect to
18 a controlled foreign corporation, if—

19 “(1) such person is an individual, corporation,
20 partnership, trust, or estate which controls, or is
21 controlled by, the controlled foreign corporation, or

22 “(2) such person is a corporation, partnership,
23 trust, or estate which is controlled by the same per-
24 son or persons which control the controlled foreign
25 corporation.

1 For purposes of the preceding sentence, control means,
2 with respect to a corporation, the ownership, directly or
3 indirectly, of stock possessing more than 50 percent of the
4 total voting power of all classes of stock entitled to vote
5 or of the total value of stock of such corporation. In the
6 case of a partnership, trust, or estate, control means the
7 ownership, directly or indirectly, of more than 50 percent
8 (by value) of the beneficial interests in such partnership,
9 trust, or estate. For purposes of this subsection, rules
10 similar to the rules of section 958 shall apply.

11 “(c) SPECIAL RULE FOR INCOME DERIVED IN THE
12 ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR
13 BUSINESSES.—

14 “(1) IN GENERAL.—For purposes of subsection
15 (a)(1), passive income shall not include qualified
16 banking or financing income of an eligible controlled
17 foreign corporation.

18 “(2) ELIGIBLE CONTROLLED FOREIGN COR-
19 PORATION.—For purposes of this subsection, the
20 term ‘eligible controlled foreign corporation’ means
21 any controlled foreign corporation if—

22 “(A) more than 80 percent of the gross in-
23 come of the controlled foreign corporation is de-
24 rived directly from the active and regular con-
25 duct of a lending, finance, or financial services

1 business from transactions with customers
2 which are located outside the United States and
3 are not related persons, or

4 “(B) it is a regulated financial institution.

5 “(3) QUALIFIED BANKING OR FINANCING IN-
6 COME.—For purposes of this subsection—

7 “(A) IN GENERAL.—The term ‘qualified
8 banking or financing income’ means income of
9 an eligible controlled foreign corporation
10 which—

11 “(i) is derived in the active conduct of
12 a banking, financing, or similar business
13 by such eligible controlled foreign corpora-
14 tion,

15 “(ii) is derived from one or more
16 transactions—

17 “(I) with customers located in a
18 country other than the United States,
19 and

20 “(II) substantially all of the ac-
21 tivities in connection with which are
22 conducted directly by the corporation
23 in its home country, and

1 “(iii) is treated as earned by such cor-
2 poration in its home country for purposes
3 of such country’s tax laws.

4 “(B) INCOME DERIVED FROM CUSTOMERS
5 TO INCLUDE CERTAIN INVESTMENT INCOME.—
6 For purposes of subparagraph (A), in the case
7 of a regulated financial institution, income de-
8 rived from customers includes income derived
9 from—

10 “(i) reserves that are required to be
11 held pursuant to banking regulations,

12 “(ii) deposits placed with the central
13 bank (or equivalent thereof) in the cor-
14 poration’s home country, and

15 “(iii) investments in debt instruments
16 issued by the home country.

17 “(C) SUBSTANTIAL ACTIVITY REQUIRE-
18 MENT FOR CROSS BORDER INCOME.—The term
19 ‘qualified banking or financing income’ shall
20 not include income derived from 1 or more
21 transactions with customers located in a coun-
22 try other than the home country of the eligible
23 controlled foreign corporation unless such cor-
24 poration conducts substantial activity with re-

1 spect to a banking, financing, or similar busi-
2 ness in its home country.

3 “(D) DIRECT CONDUCT OF ACTIVITIES.—
4 For purposes of subparagraph (A)(ii)(II), an
5 activity shall be treated as conducted directly by
6 an eligible controlled foreign corporation in its
7 home country if the activity is performed by
8 employees of a related person and—

9 “(i) the related person is a resident
10 subject to tax under the laws of the home
11 country of the corporation to which sub-
12 paragraph (A)(ii)(II) is being applied,

13 “(ii) the activity is performed in such
14 home country, and

15 “(iii) the related person is com-
16 pensated on an arm’s-length basis for the
17 performance of the activity by its employ-
18 ees and such compensation is treated as
19 earned by such person in such home coun-
20 try for purposes of the home country’s tax
21 laws.

22 “(4) LENDING, FINANCE, OR FINANCIAL SERV-
23 ICES BUSINESS.—For purposes of this subsection,
24 except as provided in regulations, the term ‘lending,

1 finance, or financial services business’ means the
2 business of—

3 “(A) making loans,

4 “(B) purchasing, selling, discounting, or
5 negotiating on a regular basis accounts receiv-
6 able, notes, or installment obligations,

7 “(C) engaging in leasing (including enter-
8 ing into leases and purchasing, servicing, and
9 disposing of leases and leased assets),

10 “(D) issuing letters of credit or providing
11 guarantees,

12 “(E) providing charge and credit card
13 services,

14 “(F) performing trust services, including
15 as a fiduciary, agent, or custodian, other than
16 trust services provided by a broker or dealer in
17 stock, securities, or other financial instruments,

18 “(G) arranging interest rate or currency
19 futures, forwards, options, or notional principal
20 contracts for, or entering into such transactions
21 with, customers,

22 “(H) providing traveler’s check and money
23 order services for customers,

24 “(I) providing correspondent bank services
25 for customers,

1 “(J) engaging in hedging activities directly
2 related to an activity described in any other
3 subparagraph of this paragraph,

4 “(K) underwriting issues of stock, debt, or
5 other securities for customers,

6 “(L) providing financial, investment advi-
7 sory, or investment management services,

8 “(M) purchasing or selling stock, debt in-
9 struments, interest rate or currency futures, or
10 other securities or derivative financial products
11 (including notional principal contracts) from or
12 to customers and holding such stock, debt in-
13 struments, futures, or other securities or prod-
14 ucts as inventory for sale to customers, unless
15 such stock, debt instruments, futures, or other
16 securities or products are not held in a dealer
17 capacity,

18 “(N) effecting transactions in securities for
19 customers as a securities broker, or

20 “(O) rendering services or making facilities
21 available in connection with activities described
22 in subparagraphs (A) through (N) carried on
23 by—

24 “(i) the corporation rendering services
25 or making facilities available, or

1 “(ii) another corporation which is a
2 member of the same affiliated group (as
3 defined in section 1504, but determined
4 without regard to section 1504(b)(3)).

5 “(5) OTHER DEFINITIONS.—For purposes of
6 this subsection—

7 “(A) CUSTOMER.—The term ‘customer’
8 means, with respect to any controlled foreign
9 corporation, any person which has a customer
10 relationship with such corporation and which is
11 acting in its capacity as such.

12 “(B) HOME COUNTRY.—Except as pro-
13 vided in regulations, the term ‘home country’
14 means, with respect to any entity, the country
15 with respect to which the entity is a resident for
16 purposes of the country’s income tax laws.

17 “(C) LOCATED.—Except as provided in
18 regulations, for purposes of paragraph (3)(A)—

19 “(i) if a customer is a natural person,
20 the customer is considered to be located in
21 the country in which the customer is phys-
22 ically located when entering into the trans-
23 action, and

24 “(ii) if a customer is not a natural
25 person, the customer is considered to be lo-

1 cated in the country from which the cus-
2 tomer enters into the transaction.

3 “(D) QUALIFIED BUSINESS UNIT.—The
4 term ‘qualified business unit’ has the meaning
5 given such term by section 989(a).

6 “(E) REGULATED FINANCIAL INSTITU-
7 TION.—Except as provided in regulations, the
8 term ‘regulated financial institution’ means a
9 controlled foreign corporation which—

10 “(i) is engaged in the active conduct
11 of a banking business and is an institution
12 licensed to do business as a bank in the
13 United States (or is any other corporation
14 not so licensed which is specified by the
15 Secretary in regulations), or

16 “(ii) satisfies each of the following
17 conditions:

18 “(I) The corporation is directly
19 or indirectly wholly owned by a do-
20 mestic corporation that is a bank (as
21 defined in section 581) or a depository
22 institution holding company (as de-
23 fined in section 3(w)(1) of the Federal
24 Deposit Insurance Act (12 U.S.C.
25 1813(w)(1))).

1 “(II) The corporation is subject
2 to bank regulatory supervision in a ju-
3 risdiction the central bank of which
4 (or equivalent thereof) is a member of
5 the Basel Committee on Banking Su-
6 pervision.

7 “(III) The corporation is licensed
8 and regulated in such jurisdiction as a
9 bank.

10 “(6) SEPARATE APPLICATION TO QUALIFIED
11 BUSINESS UNITS.—

12 “(A) IN GENERAL.—If a controlled foreign
13 corporation has 1 or more qualified business
14 units—

15 “(i) this subsection shall be applied
16 separately to each such unit in the same
17 manner as if it were a controlled foreign
18 corporation, and

19 “(ii) if any such unit is treated as an
20 eligible controlled foreign corporation after
21 application of clause (i), the qualified
22 banking or financing income of such unit
23 shall be treated as qualified banking or fi-
24 nancing income of the controlled foreign
25 corporation of which such unit is a part.

1 “(B) DETERMINATIONS MADE SEPA-
2 RATELY.—For purposes of the separate applica-
3 tion of this subsection to a controlled foreign
4 corporation and its qualified business units—

5 “(i) in the case of the controlled for-
6 eign corporation, only activities and items
7 of income, deduction, gain, or loss and ac-
8 tivities of such corporation not properly al-
9 locable or attributable to any qualified
10 business unit of such corporation shall be
11 taken into account, and

12 “(ii) in the case of a qualified busi-
13 ness unit, only activities and items of in-
14 come, deduction, gain, or loss and activities
15 properly allocable or attributable to such
16 unit shall be taken into account.

17 “(C) HOME COUNTRY.—For purposes of
18 this subsection, except as provided in regula-
19 tions, notwithstanding paragraph (5)(B), the
20 home country with respect to any qualified
21 business unit treated as a controlled foreign
22 corporation under subparagraph (A) shall be
23 the country in which such unit maintains its
24 principal office.

1 “(7) ANTI-ABUSE RULES.—For purposes of ap-
2 plying this subsection—

3 “(A) there shall be disregarded any item of
4 income, gain, loss, or deduction with respect to
5 any transaction or series of transactions one of
6 the principal purposes of which is qualifying in-
7 come or gain for the exclusion under this sec-
8 tion, including any transaction or series of
9 transactions a principal purpose of which is the
10 acceleration or deferral of any item in order to
11 claim the benefits of such exclusion through the
12 application of this subsection,

13 “(B) there shall be disregarded any item of
14 income, gain, loss, or deduction of an entity
15 which is not engaged in regular and continuous
16 transactions with customers which are not re-
17 lated persons,

18 “(C) there shall be disregarded any item of
19 income, gain, loss, or deduction with respect to
20 any transaction or series of transactions uti-
21 lizing, or doing business with—

22 “(i) one or more entities in order to
23 satisfy any home country requirement
24 under this subsection, or

1 “(ii) a special purpose entity or ar-
2 rangement, including a securitization, fi-
3 nancing, or similar entity or arrangement,
4 if one of the principal purposes of such trans-
5 action or series of transactions is qualifying in-
6 come or gain for the exclusion under this sub-
7 section, and

8 “(D) a related person, an officer, a direc-
9 tor, or an employee with respect to any con-
10 trolled foreign corporation which would other-
11 wise be treated as a customer of such corpora-
12 tion with respect to any transaction shall not be
13 so treated if a principal purpose of such trans-
14 action is to satisfy any requirement of this sub-
15 section.

16 “(8) REGULATIONS.—The Secretary shall pre-
17 scribe such regulations as may be necessary or ap-
18 propriate to carry out the purposes of this sub-
19 section and subsection (a)(1)(B)(i).

20 “(d) SPECIAL RULE FOR INCOME DERIVED IN THE
21 ACTIVE CONDUCT OF INSURANCE BUSINESS.—

22 “(1) IN GENERAL.—For purposes of subsection
23 (a)(1), passive income shall not include qualified in-
24 surance income of a qualifying insurance company.

1 “(2) QUALIFIED INSURANCE INCOME.—For
2 purposes of this subsection, the term ‘qualified in-
3 surance income’ means income of a qualifying insur-
4 ance company which is—

5 “(A) received from a person other than a
6 related person and derived from the invest-
7 ments made by a qualifying insurance company
8 or a qualifying insurance company branch of its
9 reserves allocable to exempt contracts or of 80
10 percent of its unearned premiums from exempt
11 contracts (as both are determined in the man-
12 ner prescribed under paragraph (4)), or

13 “(B) received from a person other than a
14 related person and derived from investments
15 made by a qualifying insurance company or a
16 qualifying insurance company branch of an
17 amount of its assets allocable to exempt con-
18 tracts equal to—

19 “(i) in the case of property, casualty,
20 or health insurance contracts, one-third of
21 its premiums earned on such insurance
22 contracts during the taxable year (as de-
23 fined in section 832(b)(4)), and

24 “(ii) in the case of life insurance or
25 annuity contracts, 10 percent of the re-

1 serves described in subparagraph (A) for
2 such contracts.

3 “(3) PRINCIPLES FOR DETERMINING QUALI-
4 FIED INSURANCE INCOME.—Except as provided by
5 the Secretary, for purposes of subparagraphs (A)
6 and (B) of paragraph (2)—

7 “(A) in the case of any contract which is
8 a separate account-type contract (including any
9 variable contract not meeting the requirements
10 of section 817), income credited under such
11 contract shall be allocable only to such contract,
12 and

13 “(B) income not allocable under subpara-
14 graph (A) shall be allocated ratably among con-
15 tracts not described in subparagraph (A).

16 “(4) METHODS FOR DETERMINING UNEARNED
17 PREMIUMS AND RESERVES.—For purposes of para-
18 graph (2)(A)—

19 “(A) PROPERTY AND CASUALTY CON-
20 TRACTS.—The unearned premiums and reserves
21 of a qualifying insurance company or a quali-
22 fying insurance company branch with respect to
23 property, casualty, or health insurance con-
24 tracts shall be determined using the same meth-
25 ods and interest rates which would be used if

1 such company or branch were subject to tax
2 under subchapter L, except that—

3 “(i) the interest rate determined for
4 the functional currency of the company or
5 branch, and which, except as provided by
6 the Secretary, is calculated in the same
7 manner as the Federal mid-term rate
8 under section 1274(d), shall be substituted
9 for the applicable Federal interest rate,
10 and

11 “(ii) such company or branch shall
12 use the appropriate foreign loss payment
13 pattern.

14 “(B) LIFE INSURANCE AND ANNUITY CON-
15 TRACTS.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in clause (ii), the amount of the re-
18 serve of a qualifying insurance company or
19 qualifying insurance company branch for
20 any life insurance or annuity contract shall
21 be equal to the greater of—

22 “(I) the net surrender value of
23 such contract (as defined in section
24 807(e)(1)(A)), or

1 “(II) the reserve determined
2 under paragraph (5).

3 “(ii) RULING REQUEST, ETC.—The
4 amount of the reserve under clause (i)
5 shall be the foreign statement reserve for
6 the contract (less any catastrophe, defi-
7 ciency, equalization, or similar reserves), if,
8 pursuant to a ruling request submitted by
9 the taxpayer or as provided in published
10 guidance, the Secretary determines that
11 the factors taken into account in deter-
12 mining the foreign statement reserve pro-
13 vide an appropriate means of measuring
14 income.

15 “(C) LIMITATION ON RESERVES.—In no
16 event shall the reserve determined under this
17 paragraph for any contract as of any time ex-
18 ceed the amount which would be taken into ac-
19 count with respect to such contract as of such
20 time in determining foreign statement reserves
21 (less any catastrophe, deficiency, equalization,
22 or similar reserves).

23 “(5) AMOUNT OF RESERVE.—The amount of
24 the reserve determined under this paragraph with
25 respect to any contract shall be determined in the

1 same manner as it would be determined if the quali-
2 fying insurance company or qualifying insurance
3 company branch were subject to tax under sub-
4 chapter L, except that in applying such sub-
5 chapter—

6 “(A) the interest rate determined for the
7 functional currency of the company or branch,
8 and which, except as provided by the Secretary,
9 is calculated in the same manner as the Federal
10 mid-term rate under section 1274(d), shall be
11 substituted for the applicable Federal interest
12 rate,

13 “(B) the highest assumed interest rate
14 permitted to be used in determining foreign
15 statement reserves shall be substituted for the
16 prevailing State assumed interest rate, and

17 “(C) tables for mortality and morbidity
18 which reasonably reflect the current mortality
19 and morbidity risks in the company’s or
20 branch’s home country shall be substituted for
21 the mortality and morbidity tables otherwise
22 used for such subchapter.

23 The Secretary may provide that the interest rate
24 and mortality and morbidity tables of a qualifying
25 insurance company may be used for 1 or more of its

1 qualifying insurance company branches when appro-
2 priate.

3 “(6) DEFINITIONS.—For purposes of this sec-
4 tion, any term used in this subsection which is also
5 used in section 955(c) shall have the meaning given
6 such term under section 955(c).

7 **“SEC. 955. DEFINITION OF INSURANCE INCOME.**

8 “(a) INSURANCE INCOME.—

9 “(1) IN GENERAL.—For purposes of section
10 953(c), the term ‘insurance income’ means the gross
11 income which—

12 “(A) is attributable to the issuing (or rein-
13 suring) of an insurance or annuity contract,
14 and

15 “(B) is of a kind that would be subject to
16 tax under subchapter L of this chapter if such
17 income were the income of a domestic insurance
18 company.

19 “(2) EXCEPTION.—Such term shall not include
20 any exempt insurance income (as defined in sub-
21 section (c)).

22 “(b) SPECIAL RULES FOR DETERMINATION OF
23 GROSS INCOME AND ALLOCABLE DEDUCTIONS.—For
24 purposes of determining gross income under subsection (a)

1 and deductions allocable to insurance income under sec-
2 tion 952(e), the following rules shall apply:

3 “(1) CERTAIN DEDUCTIONS NOT ALLOWED.—

4 The following provisions of subchapter L shall not
5 apply:

6 “(A) The small life insurance company de-
7 duction.

8 “(B) Section 805(a)(5) (relating to oper-
9 ations loss deduction).

10 “(C) Section 832(c)(5) (relating to certain
11 capital losses).

12 “(2) SPECIAL RULES FOR AMOUNTS INCLUDED
13 IN INCOME.—The items referred to in—

14 “(A) section 803(a)(1) (relating to gross
15 amount of premiums and other considerations),

16 “(B) section 803(a)(2) (relating to net de-
17 crease in reserves),

18 “(C) section 805(a)(2) (relating to net in-
19 crease in reserves), and

20 “(D) section 832(b)(4) (relating to pre-
21 miums earned on insurance contracts),

22 shall be taken into account only to the extent they
23 are in respect of any reinsurance or the issuing of
24 any insurance or annuity contract described in sub-
25 section (a)(1).

1 “(3) TREATMENT OF RESERVES.—Reserves for
2 any insurance or annuity contract shall be deter-
3 mined in the same manner as under section 954(d).

4 “(c) EXEMPT INSURANCE INCOME.—For purposes of
5 this section—

6 “(1) EXEMPT INSURANCE INCOME DEFINED.—

7 “(A) IN GENERAL.—The term ‘exempt in-
8 surance income’ means income derived by a
9 qualifying insurance company which—

10 “(i) is attributable to the issuing (or
11 reinsuring) of an exempt contract by such
12 company or a qualifying insurance com-
13 pany branch of such company, and

14 “(ii) is treated as earned by such com-
15 pany or branch in its home country for
16 purposes of such country’s tax laws.

17 “(B) EXCEPTION FOR CERTAIN ARRANGE-
18 MENTS.—Such term shall not include income
19 attributable to the issuing (or reinsuring) of an
20 exempt contract as the result of any arrange-
21 ment whereby another corporation receives a
22 substantially equal amount of premiums or
23 other consideration in respect of issuing (or re-
24 insuring) a contract which is not an exempt
25 contract.

1 “(C) DETERMINATIONS MADE SEPA-
2 RATELY.—For purposes of this subsection and
3 section 954(d), the exempt insurance income
4 and exempt contracts of a qualifying insurance
5 company or any qualifying insurance company
6 branch of such company shall be determined
7 separately for such company and each such
8 branch by taking into account—

9 “(i) in the case of the qualifying in-
10 surance company, only items of income, de-
11 duction, gain, or loss, and activities of such
12 company not properly allocable or attrib-
13 utable to any qualifying insurance com-
14 pany branch of such company, and

15 “(ii) in the case of a qualifying insur-
16 ance company branch, only items of in-
17 come, deduction, gain, or loss and activities
18 properly allocable or attributable to such
19 branch.

20 “(2) EXEMPT CONTRACT.—

21 “(A) IN GENERAL.—The term ‘exempt
22 contract’ means an insurance or annuity con-
23 tract issued or reinsured by a qualifying insur-
24 ance company or qualifying insurance company
25 branch in connection with property in, liability

1 arising out of activity in, or the lives or health
2 of residents of, a country other than the United
3 States.

4 “(B) MINIMUM NON-RELATED INCOME RE-
5 QUIRED.—No contract of a qualifying insurance
6 company or of a qualifying insurance company
7 branch shall be treated as an exempt contract
8 unless such company or branch derives more
9 than 30 percent of its net written premiums
10 from exempt contracts (determined without re-
11 gard to this subparagraph) with respect to
12 which no policyholder, insured, annuitant, or
13 beneficiary is a related person (as defined in
14 section 954(b)).

15 “(C) SUBSTANTIAL ACTIVITY REQUIRE-
16 MENTS.—A contract issued by a qualifying in-
17 surance company or qualifying insurance com-
18 pany branch shall not be treated as an exempt
19 contract unless such company or branch, as the
20 case may be—

21 “(i) conducts substantial activity with
22 respect to an insurance business in its
23 home country, and

24 “(ii) performs in its home country
25 substantially all of the activities necessary

1 to give rise to the income generated by
2 such contract.

3 “(3) QUALIFYING INSURANCE COMPANY.—

4 “(A) IN GENERAL.—The term ‘qualifying
5 insurance company’ means any controlled for-
6 eign corporation—

7 “(i) which—

8 “(I) is subject to regulation as an
9 insurance (or reinsurance) company
10 by its home country, and is licensed,
11 authorized, or regulated by the appli-
12 cable insurance regulatory body for its
13 home country to sell insurance, rein-
14 surance, or annuity contracts to per-
15 sons other than related persons (with-
16 in the meaning of section 954(b)) in
17 such home country, and

18 “(II) is engaged in the insurance
19 business and would be subject to tax
20 under subchapter L if it were a do-
21 mestic corporation,

22 “(ii) which derives more than 50 per-
23 cent of its aggregate net written premiums
24 from the issuance or reinsurance by such
25 controlled foreign corporation and each of

1 its qualifying insurance company branches
2 of contracts with respect to which no pol-
3 icyholder, insured, annuitant, or bene-
4 ficiary is a related person (as defined in
5 section 954(b)), except that in the case of
6 a branch, such premiums shall only be
7 taken into account to the extent such pre-
8 miums are treated as earned by such
9 branch in its home country for purposes of
10 such country's tax laws,

11 “(iii) more than 50 percent of the
12 gross receipts of which for the taxable
13 year—

14 “(I) consist of premiums for in-
15 surance or reinsurance in connection
16 with property, liability, or the lives or
17 health of individuals, and

18 “(II) are treated as earned by
19 such controlled foreign corporation in
20 its home country for purposes of such
21 country's tax laws, and

22 “(iv) the applicable insurance liabil-
23 ities of which constitute more than 35 per-
24 cent of its total assets as reported on the
25 company's applicable financial statement

1 for the year with which or in which the
2 taxable year ends.

3 “(B) APPLICABLE INSURANCE LIABIL-
4 ITIES.—For purposes of subparagraph (A)(iv),
5 the term ‘applicable insurance liabilities’
6 means—

7 “(i) loss and loss adjustment ex-
8 penses,

9 “(ii) unearned premiums, and

10 “(iii) reserves (other than any catas-
11 trophe, deficiency, equalization, or similar
12 reserves) for life and health insurance risks
13 and life and health insurance claims with
14 respect to contracts providing coverage for
15 mortality or morbidity risks (not to exceed
16 the amount of such reserve that is required
17 to be reported to the home country insur-
18 ance regulatory body).

19 “(C) APPLICABLE FINANCIAL STATE-
20 MENT.—For purposes of subparagraph (A)(iv),
21 the term ‘applicable financial statement’ means
22 a statement for financial reporting purposes
23 which—

24 “(i) is made on the basis of generally
25 accepted accounting principles,

1 “(ii) is made on the basis of inter-
2 national financial reporting standards, but
3 only if there is no statement that meets
4 the requirement of clause (i), or

5 “(iii) except as otherwise provided by
6 the Secretary in regulations, is the annual
7 statement which is required to be filed
8 with the home country insurance regu-
9 latory body, but only if there is no state-
10 ment which meets the requirements of
11 clause (i) or (ii).

12 “(D) REGULATIONS.—The Secretary shall
13 prescribe such regulations as necessary to carry
14 out the purposes of this paragraph.

15 “(4) QUALIFYING INSURANCE COMPANY
16 BRANCH.—The term ‘qualifying insurance company
17 branch’ means a qualified business unit (within the
18 meaning of section 989(a)) of a controlled foreign
19 corporation if—

20 “(A) such unit is licensed, authorized, or
21 regulated by the applicable insurance regulatory
22 body for its home country to sell insurance, re-
23 insurance, or annuity contracts to persons other
24 than related persons (within the meaning of
25 section 954(b)) in such home country, and

1 “(B) such controlled foreign corporation is
2 a qualifying insurance company, determined
3 under paragraph (3) as if such unit were a
4 qualifying insurance company branch.

5 “(5) LIFE INSURANCE OR ANNUITY CON-
6 TRACT.—For purposes of this section and section
7 954, the determination of whether a contract issued
8 by a controlled foreign corporation or a qualifying
9 insurance company branch is a life insurance con-
10 tract or an annuity contract shall be made without
11 regard to sections 72(s), 101(f), 817(h), and 7702
12 if—

13 “(A) such contract is regulated as a life in-
14 surance or annuity contract by the corpora-
15 tion’s or branch’s home country, and

16 “(B) no policyholder, insured, annuitant,
17 or beneficiary with respect to the contract is a
18 United States person.

19 “(6) HOME COUNTRY.—For purposes of this
20 subsection, except as provided in regulations—

21 “(A) CONTROLLED FOREIGN CORPORA-
22 TION.—The term ‘home country’ means, with
23 respect to a controlled foreign corporation, the
24 country in which such corporation is created or
25 organized.

1 “(B) QUALIFYING INSURANCE COMPANY
2 BRANCH.—The term ‘home country’ means,
3 with respect to a qualifying insurance company
4 branch, the country in which the principal office
5 of such branch is located and in which such
6 branch is licensed, authorized, or regulated by
7 the applicable insurance regulatory body to sell
8 insurance, reinsurance, or annuity contracts to
9 persons other than related persons (as defined
10 in section 954(b)) in such country.

11 “(7) ANTI-ABUSE RULES.—For purposes of ap-
12 plying this subsection and section 954(d)—

13 “(A) the rules of section 954(c)(7) (other
14 than subparagraph (B) thereof) shall apply,

15 “(B) there shall be disregarded any item of
16 income, gain, loss, or deduction of, or derived
17 from, an entity which is not engaged in regular
18 and continuous transactions with persons which
19 are not related persons,

20 “(C) there shall be disregarded any change
21 in the method of computing reserves a principal
22 purpose of which is the acceleration or deferral
23 of any item in order to claim the benefits of
24 this subsection or section 954(d),

1 “(D) a contract of insurance or reinsur-
2 ance shall not be treated as an exempt contract
3 (and premiums from such contract shall not be
4 taken into account for purposes of paragraph
5 (2)(B) or (3)) if—

6 “(i) any policyholder, insured, annu-
7 itant, or beneficiary is a resident of the
8 United States and such contract was mar-
9 keted to such resident and was written to
10 cover a risk outside the United States, or

11 “(ii) the contract covers risks located
12 within and without the United States and
13 the qualifying insurance company or quali-
14 fying insurance company branch does not
15 maintain such contemporaneous records,
16 and file such reports, with respect to such
17 contract as the Secretary may require,

18 “(E) the Secretary may prescribe rules for
19 the allocation of contracts (and income from
20 contracts) among 2 or more qualifying insur-
21 ance company branches of a qualifying insur-
22 ance company in order to clearly reflect the in-
23 come of such branches, and

24 “(F) premiums from a contract shall not
25 be taken into account for purposes of para-

1 graph (2)(B) or (3) if such contract reinsures
2 a contract issued or reinsured by a related per-
3 son (as defined in section 954(b)).

4 “(8) COORDINATION WITH SECTION 956(a).—

5 “(A) IN GENERAL.—In determining insur-
6 ance income for purposes of section 956(a), ex-
7 empt insurance income shall not include income
8 derived from exempt contracts which cover risks
9 other than applicable home country risks.

10 “(B) APPLICABLE HOME COUNTRY
11 RISKS.—For purposes of subparagraph (A), the
12 term ‘applicable home country risks’ means
13 risks in connection with property in, liability
14 arising out of activity in, or the lives or health
15 of residents of, the home country of the quali-
16 fying insurance company or qualifying insur-
17 ance company branch, as the case may be,
18 issuing or reinsuring the contract covering the
19 risks.

20 “(9) REGULATIONS.—The Secretary shall pre-
21 scribe such regulations as may be necessary or ap-
22 propriate to carry out the purposes of this sub-
23 section and section 954(d).

1 “(10) CROSS REFERENCE.—For treatment of
2 certain investment income derived by qualifying in-
3 surance companies, see section 954(d).

4 **“SEC. 956. SPECIAL RULE FOR CERTAIN CAPTIVE INSUR-**
5 **ANCE COMPANIES.**

6 “(a) TREATMENT AS CONTROLLED FOREIGN COR-
7 PORATIONS AND UNITED STATES SHAREHOLDERS.—

8 “(1) IN GENERAL.—For purposes only of tak-
9 ing into account related person insurance income—

10 “(A) the term ‘United States shareholder’
11 means, with respect to any foreign corporation,
12 a United States person (as defined in section
13 957(c)) who owns (within the meaning of sec-
14 tion 958(a)) any stock of the foreign corpora-
15 tion,

16 “(B) the term ‘controlled foreign corpora-
17 tion’ has the meaning given to such term by
18 section 957(a) determined by substituting ‘25
19 percent or more’ for ‘more than 50 percent’,
20 and

21 “(C) the pro rata share referred to in sec-
22 tion 951(a)(1) shall be determined under para-
23 graph (5) of this subsection.

24 “(2) RELATED PERSON INSURANCE INCOME.—
25 For purposes of this subsection, the term ‘related

1 person insurance income' means any insurance in-
2 come (within the meaning of section 955(a)) attrib-
3 utable to a policy of insurance or reinsurance with
4 respect to which the person (directly or indirectly)
5 insured is a United States shareholder in the foreign
6 corporation or a related person to such a share-
7 holder.

8 “(3) EXCEPTIONS.—

9 “(A) CORPORATIONS NOT HELD BY IN-
10 SURED.—Paragraph (1) shall not apply to any
11 foreign corporation if at all times during the
12 taxable year of such foreign corporation—

13 “(i) less than 20 percent of the total
14 combined voting power of all classes of
15 stock of such corporation entitled to vote,
16 and

17 “(ii) less than 20 percent of the total
18 value of such corporation,

19 is owned (directly or indirectly under the prin-
20 ciples of section 883(e)(4)) by persons who are
21 (directly or indirectly) insured under any policy
22 of insurance or reinsurance issued by such cor-
23 poration or who are related persons to any such
24 person.

1 “(B) DE MINIMIS EXCEPTION.—Paragraph
2 (1) shall not apply to any foreign corporation
3 for a taxable year of such corporation if the re-
4 lated person insurance income (determined on a
5 gross basis) of such corporation for such tax-
6 able year is less than 20 percent of its insur-
7 ance income (as so determined) for such taxable
8 year.

9 “(C) ELECTION TO TREAT INCOME AS EF-
10 FFECTIVELY CONNECTED.—Paragraph (1) shall
11 not apply to any foreign corporation for any
12 taxable year if—

13 “(i) such corporation elects (at such
14 time and in such manner as the Secretary
15 may prescribe)—

16 “(I) to treat its related person in-
17 surance income for such taxable year
18 as income effectively connected with
19 the conduct of a trade or business in
20 the United States, and

21 “(II) to waive all benefits (other
22 than with respect to section 884) with
23 respect to related person insurance in-
24 come granted by the United States

1 under any treaty between the United
2 States and any foreign country, and

3 “(ii) such corporation meets such re-
4 quirements as the Secretary shall prescribe
5 to ensure that the tax imposed by this
6 chapter on such income is paid.

7 An election under this subparagraph made for
8 any taxable year shall not be effective if the
9 corporation (or any predecessor thereof) was a
10 disqualified corporation for the taxable year for
11 which the election was made or for any prior
12 taxable year beginning after 1986.

13 “(D) SPECIAL RULES FOR SUBPARAGRAPH
14 (C).—

15 “(i) PERIOD DURING WHICH ELEC-
16 TION IN EFFECT.—

17 “(I) IN GENERAL.—Except as
18 provided in subclause (II), any elec-
19 tion under subparagraph (C) shall
20 apply to the taxable year for which
21 made and all subsequent taxable years
22 unless revoked with the consent of the
23 Secretary.

24 “(II) TERMINATION.—If a for-
25 eign corporation which made an elec-

1 tion under subparagraph (C) for any
2 taxable year is a disqualified corpora-
3 tion for any subsequent taxable year,
4 such election shall not apply to any
5 taxable year beginning after such sub-
6 sequent taxable year.

7 “(ii) EXEMPTION FROM TAX IMPOSED
8 BY SECTION 4371.—The tax imposed by
9 section 4371 shall not apply with respect
10 to any related person insurance income
11 treated as effectively connected with the
12 conduct of a trade or business within the
13 United States under subparagraph (C).

14 “(E) DISQUALIFIED CORPORATION.—For
15 purposes of this paragraph the term ‘disquali-
16 fied corporation’ means, with respect to any
17 taxable year, any foreign corporation which is a
18 controlled foreign corporation at any time dur-
19 ing such taxable year (determined without re-
20 gard to this subsection) but only if a United
21 States shareholder (determined without regard
22 to this subsection) owns (within the meaning of
23 section 958(a)) stock in such corporation at
24 some time during such taxable year.

1 “(4) TREATMENT OF MUTUAL INSURANCE COM-
2 PANIES.—In the case of a mutual insurance com-
3 pany—

4 “(A) this subsection shall apply,

5 “(B) policyholders of such company shall
6 be treated as shareholders, and

7 “(C) appropriate adjustments in the appli-
8 cation of this subpart shall be made under reg-
9 ulations prescribed by the Secretary.

10 “(5) DETERMINATION OF PRO RATA SHARE.—

11 “(A) IN GENERAL.—The pro rata share
12 determined under this paragraph for any
13 United States shareholder is the lesser of—

14 “(i) the amount which would be deter-
15 mined under paragraph (2) of section
16 951(a) if—

17 “(I) only related person insur-
18 ance income were taken into account,

19 “(II) stock owned (within the
20 meaning of section 958(a)) by United
21 States shareholders on the last day of
22 the taxable year were the only stock
23 in the foreign corporation, and

24 “(III) only distributions received
25 by United States shareholders were

1 taken into account under subpara-
2 graph (B) of such paragraph (2), or

3 “(ii) the amount which would be de-
4 termined under paragraph (2) of section
5 951(a) if the entire earnings and profits of
6 the foreign corporation for the taxable year
7 were subpart F income.

8 “(B) COORDINATION WITH OTHER PROVI-
9 SIONS.—The Secretary shall prescribe regula-
10 tions providing for such modifications to the
11 provisions of this subpart as may be necessary
12 or appropriate by reason of subparagraph (A).

13 “(6) RELATED PERSON.—For purposes of this
14 subsection—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), the term ‘related person’ has
17 the meaning given such term by section 954(b).

18 “(B) TREATMENT OF CERTAIN LIABILITY
19 INSURANCE POLICIES.—In the case of any pol-
20 icy of insurance covering liability arising from
21 services performed as a director, officer, or em-
22 ployee of a corporation or as a partner or em-
23 ployee of a partnership, the person performing
24 such services and the entity for which such

1 services are performed shall be treated as re-
2 lated persons.

3 “(7) REGULATIONS.—The Secretary shall pre-
4 scribe such regulations as may be necessary to carry
5 out the purposes of this subsection, including—

6 “(A) regulations preventing the avoidance
7 of this subsection through cross insurance ar-
8 rangements or otherwise, and

9 “(B) regulations which may provide that a
10 person will not be treated as a United States
11 shareholder under paragraph (1) with respect
12 to any foreign corporation if neither such per-
13 son (nor any related person to such person) is
14 (directly or indirectly) insured under any policy
15 of insurance or reinsurance issued by such for-
16 eign corporation.

17 “(b) ELECTION BY FOREIGN INSURANCE COMPANY
18 TO BE TREATED AS DOMESTIC CORPORATION.—

19 “(1) IN GENERAL.—If—

20 “(A) a foreign corporation is a controlled
21 foreign corporation (as defined in section
22 957(a) by substituting ‘25 percent or more’ for
23 ‘more than 50 percent’ and by using the defini-
24 tion of United States shareholder under sub-
25 section (a)(1)(B)),

1 “(B) such foreign corporation would qual-
2 ify under part I or II of subchapter L for the
3 taxable year if it were a domestic corporation,

4 “(C) such foreign corporation meets such
5 requirements as the Secretary shall prescribe to
6 ensure that the taxes imposed by this chapter
7 on such foreign corporation are paid, and

8 “(D) such foreign corporation makes an
9 election to have this paragraph apply and
10 waives all benefits to such corporation granted
11 by the United States under any treaty,

12 for purposes of this title, such corporation shall be
13 treated as a domestic corporation.

14 “(2) PERIOD DURING WHICH ELECTION IS IN
15 EFFECT.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), an election under paragraph
18 (1) shall apply to the taxable year for which
19 made and all subsequent taxable years unless
20 revoked with the consent of the Secretary.

21 “(B) TERMINATION.—If a corporation
22 which made an election under paragraph (1) for
23 any taxable year fails to meet the requirements
24 of subparagraphs (A), (B), and (C) of para-
25 graph (1) for any subsequent taxable year, such

1 election shall not apply to any taxable year be-
2 ginning after such subsequent taxable year.

3 “(3) EFFECT OF ELECTION.—

4 “(A) IN GENERAL.—For purposes of sec-
5 tion 367, any foreign corporation making an
6 election under paragraph (1) shall be treated as
7 transferring (as of the 1st day of the 1st tax-
8 able year to which such election applies) all of
9 its assets to a domestic corporation in connec-
10 tion with an exchange to which section 354 ap-
11 plies.

12 “(B) EXCEPTION FOR PRE-1988 EARNINGS
13 AND PROFITS.—

14 “(i) IN GENERAL.—Earnings and
15 profits of the foreign corporation accumu-
16 lated in taxable years beginning before
17 January 1, 1988, shall not be included in
18 the gross income of the persons holding
19 stock in such corporation by reason of sub-
20 paragraph (A).

21 “(ii) TREATMENT OF DISTRIBUTIONS.—For purposes of this title, any dis-
22 tribution made by a corporation to which
23 an election under paragraph (1) applies
24 out of earnings and profits accumulated in
25

1 taxable years beginning before January 1,
2 1988, shall be treated as a distribution
3 made by a foreign corporation.

4 “(iii) CERTAIN RULES TO CONTINUE
5 TO APPLY TO PRE-1988 EARNINGS.—Sec-
6 tion 884 to the extent the foreign corpora-
7 tion reinvested 1987 earnings and profits
8 in United States assets shall be applied
9 without regard to paragraph (1), except
10 that, in the case of a corporation to which
11 an election under paragraph (1) applies,
12 only earnings and profits accumulated in
13 taxable years beginning before January 1,
14 1988, shall be taken into account.

15 “(4) EFFECT OF TERMINATION.—For purposes
16 of section 367, if—

17 “(A) an election is made by a corporation
18 under paragraph (1) for any taxable year, and

19 “(B) such election ceases to apply for any
20 subsequent taxable year,

21 such corporation shall be treated as a domestic cor-
22 poration transferring (as of the 1st day of such sub-
23 sequent taxable year) all of its property to a foreign
24 corporation in connection with an exchange to which
25 section 354 applies.

1 “(5) ADDITIONAL TAX ON CORPORATION MAK-
2 ING ELECTION.—

3 “(A) IN GENERAL.—If a corporation
4 makes an election under paragraph (1), the
5 amount of tax imposed by this chapter for the
6 1st taxable year to which such election applies
7 shall be increased by the amount determined
8 under subparagraph (B).

9 “(B) AMOUNT OF TAX.—The amount of
10 tax determined under this paragraph shall be
11 equal to the lesser of—

12 “(i) $\frac{3}{4}$ of 1 percent of the aggregate
13 amount of capital and accumulated surplus
14 of the corporation as of December 31,
15 1987, or

16 “(ii) \$1,500,000.”.

17 (b) TREATMENT OF CERTAIN EXCLUDED SUBPART
18 F INCOME AS PREVIOUSLY TAXED INCOME.—Section
19 959(g), as added by section 331, is amended to read as
20 follows:

21 “(g) SPECIAL RULES FOR NONTAXED PORTION OF
22 CERTAIN INCOME.—For purposes of this section—

23 “(1) IN GENERAL.—A United States share-
24 holder’s pro rata share of the excludable portion of
25 the controlled foreign corporation’s subpart F in-

1 come shall be treated as an amount which has been
2 included in gross income under section 951(a).

3 “(2) ORDERING RULE.—Notwithstanding sub-
4 section (c), for purposes of subsections (a) and (b),
5 section 316(a) shall be applied by applying para-
6 graph (2) thereof and then paragraph (1) thereof—

7 “(A) first to the deductible portion (as de-
8 fined in section 965(c)(3)) of the increase in
9 subpart F income described in section
10 965(a)(1) included in the gross income of
11 United States shareholders under section
12 951(a)(1) (after application of section
13 965(a)(2)(A)),

14 “(B) second to the excludable portion of
15 the controlled foreign corporation’s subpart F
16 income, and

17 “(C) then to the amounts described in
18 paragraphs (1), (2), or (3) of subsection (c) in
19 accordance with the provisions of subsection (c).

20 “(3) DEFINITIONS.—For purposes of this sub-
21 section—

22 “(A) DEDUCTIBLE PORTION.—The term
23 ‘deductible portion’ has the meaning given such
24 term by section 965(c)(3).

1 “(B) EXCLUDABLE PORTION.—The term
2 ‘excludable portion’ means, with respect to the
3 subpart F income of a controlled foreign cor-
4 poration, so much of such controlled foreign
5 corporation’s modified active income as is not
6 taken into account in computing subpart F in-
7 come under section 952(a)(1).”.

8 (c) GAINS AND LOSSES FROM THE SALE OF CFC
9 STOCK.—

10 (1) GAINS.—

11 (A) IN GENERAL.—Part I of subchapter P
12 of chapter 1 is amended by adding at the end
13 the following new section:

14 **“SEC. 1203. GAINS FROM SALES OR EXCHANGES OF STOCK**
15 **IN CONTROLLED FOREIGN CORPORATIONS.**

16 “(a) IN GENERAL.—In the case of a United States
17 shareholder (as defined in section 951), there shall be ex-
18 cluded from gross income an amount equal to the applica-
19 ble portion of the amount of any gain recognized from the
20 sale or exchange of stock in a controlled foreign corpora-
21 tion.

22 “(b) APPLICABLE PORTION.—For purposes of this
23 section—

24 “(1) IN GENERAL.—The term ‘applicable por-
25 tion’ means the amount which bears the same ratio

1 to the gain recognized from such sale or exchange
2 as—

3 “(A) the shareholder’s pro rata share (de-
4 termined under section 951(a)(2)) of the ex-
5 cludable portion of the aggregate subpart F in-
6 come of the controlled foreign corporation for
7 the applicable period, bears to

8 “(B) the sum of the amount determined
9 under subparagraph (A) plus the shareholder’s
10 pro rata share (determined under section
11 951(a)(2)) of the aggregate subpart F income
12 of the controlled foreign corporation for the ap-
13 plicable period.

14 “(2) EXCLUDABLE PORTION.—For purposes of
15 this section, the term ‘excludable portion’ has the
16 meaning given such term by section 959(g)(3)(B).

17 “(3) APPLICABLE PERIOD.—The term ‘applica-
18 ble period’ means, with respect to any stock, the
19 shorter of the 3-taxable year period immediately pre-
20 ceding the taxable year of the sale or exchange or
21 the shareholder’s holding period in the stock. In no
22 event shall the applicable period include any portion
23 of any taxable year beginning before the applicable
24 date (as defined in section 300 of the Infrastructure
25 2.0 Act).”.

1 (B) CLERICAL AMENDMENT.—The table of
2 sections for part I of subchapter P of chapter
3 1 is amended by adding at the end the following
4 new item:

“Sec. 1203. Gains from sales or exchanges of stock in controlled foreign corporations.”.

5 (2) LOSSES.—

6 (A) IN GENERAL.—Part II of subchapter P
7 of chapter 1 is amended by adding at the end
8 the following new section:

9 **“SEC. 1213. LOSSES FROM SALES OR EXCHANGES OF STOCK**
10 **IN CONTROLLED FOREIGN CORPORATIONS.**

11 “(a) IN GENERAL.—In the case of a United States
12 shareholder (as defined in section 951), any loss from the
13 sale or exchange of stock in a controlled foreign corpora-
14 tion shall be reduced (but not below zero) by an amount
15 equal to the shareholder’s aggregate pro rata share (deter-
16 mined under section 951(a)(2)) of the excludable portion
17 of the subpart F income of the controlled foreign corpora-
18 tion during the shareholder’s holding period in the stock.

19 “(b) EXCLUDABLE PORTION.—For purposes of this
20 section, the term ‘excludable portion’ has the meaning
21 given such term by section 959(g)(3)(B).”.

22 (B) CLERICAL AMENDMENT.—The table of
23 sections for part I of subchapter P of chapter

1 1 is amended by adding at the end the following
2 new item:

“Sec. 1213. Losses from sales or exchanges of stock in controlled foreign corporations.”.

3 (d) REPEAL OF ORDINARY INCOME TREATMENT FOR
4 GAINS FROM THE SALE OF STOCK IN CERTAIN FOREIGN
5 CORPORATIONS.—

6 (1) IN GENERAL.—Part IV of subchapter P of
7 chapter 1 is amended by striking section 1248.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section (a) is amended by striking
10 paragraph (11).

11 (B) Section 338(h) is amended—

12 (i) in paragraph (6)(B)(ii), by striking
13 “or described in section 1248(e)”, and

14 (ii) in paragraph (16), by striking the
15 second sentence.

16 (C) Section 751 is amended—

17 (i) in subsection (c), by striking
18 “stock in certain foreign corporations (as
19 described in section 1248),”, and

20 (ii) by striking subsection (e) and re-
21 designating subsection (f) as subsection
22 (e).

23 (D) Section 865(k) is amended to read as
24 follows:

1 “(k) CROSS REFERENCE.—For sourcing of income
2 from certain foreign currency transactions, see section
3 988.”.

4 (E) Section 904(h)(7) is amended by strik-
5 ing “or as a dividend under section 1248”.

6 (F) Section 951(a)(2) is amended by strik-
7 ing the last sentence thereof.

8 (G) Section 964 is amended by striking
9 subsection (e).

10 (H) Section 989(b) is amended by striking
11 paragraph (2) and by redesignating paragraphs
12 (3) and (4) as paragraphs (2) and (3), respec-
13 tively.

14 (e) COORDINATION WITH AMOUNTS INCLUDED IN
15 GROSS INCOME OF UNITED STATES SHAREHOLDERS.—

16 (1) IN GENERAL.—Paragraph (1) of section
17 951(a) is amended by striking “such taxable year of
18 the corporation ends—” and all that follows through
19 the end period and inserting: “such taxable year of
20 the corporation ends, the shareholder’s pro rata
21 share (determined under paragraph (2)) of the cor-
22 poration’s subpart F income for such taxable year.”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 951(a) is amended—

1 (i) by striking “paragraph (1)(A)(i)”
2 in paragraph (2) and inserting “paragraph
3 (1)”, and

4 (ii) by striking paragraph (3).

5 (B) Subparagraph (A) of section
6 512(b)(17) is amended by striking
7 “951(a)(1)(A)” and inserting “951(a)(1)”.

8 (C) Section 851(b) is amended by striking
9 “951(a)(1)(A)(i)” in the first sentence following
10 paragraph (3) and inserting “951(a)(1)”.

11 (D) Section 959(a) is amended—

12 (i) by striking “shall not, when” and
13 all that follows through “such shareholder”
14 and inserting “shall not, when actually dis-
15 tributed to such shareholder”, and

16 (ii) by striking “and the rules of sub-
17 section (f) shall apply for purposes of para-
18 graph (2) of this subsection”.

19 (E) Section 959(c) is amended by adding
20 at the end the following: “References in this
21 subsection and subsection (f) to section
22 951(a)(1)(B) shall be treated as references to
23 such provisions as in effect on the day before
24 the enactment of the Infrastructure 2.0 Act.”.

1 (F) Section 959(e) is amended by striking
2 “951(a)(1)(A)” and inserting “951(a)(1)”.

3 (G) Section 989(b)(3) is amended by strik-
4 ing “951(a)(1)(A)” and inserting “951(a)(1)”.

5 (H) Section 1298(b) is amended by strik-
6 ing paragraph (8).

7 (f) APPLICATION OF ANTI-LOSS IMPORTATION
8 RULES.—Section 362(e)(1)(B) is amended by adding at
9 the end the following new sentence: “For purposes of
10 clause (i), except as provided under regulations, a con-
11 trolled foreign corporation shall be considered to be sub-
12 ject to tax under this subtitle.”.

13 (g) OTHER CONFORMING AMENDMENTS.—

14 (1) Sections 163(e)(3)(B)(i) and
15 267(a)(3)(B)(i) are each amended by striking “and
16 qualified deficits under section 952(c)(1)(B)” and
17 inserting “and loss carryforwards under sections
18 952(d) and 953(b)”.

19 (2) Section 304(b)(5)(B)(ii) is amended by
20 striking “953(e)” and inserting “956(a)”.

21 (3) Section 355(g)(2)(B)(ii)(I) is amended by
22 striking “section 954(h)(4)” and inserting “section
23 954(c)(4)”.

24 (4) Section 512(b)(17) is amended by striking
25 “953” and inserting “section 955”.

1 (5) Section 864(d)(8) is amended by striking
2 “or section 956(b)(3)”.

3 (6) Section 864(d)(5)(A) is amended—

4 (A) by striking clause (iii) and redesignig-
5 nating clause (iv) as clause (iii), and

6 (B) by striking “954(c)(3)(A)” in clause
7 (iii) (as redesignated by subparagraph (A)) and
8 inserting “954(a)(3)(A)”.

9 (7) Section 864(d)(7)(B) is amended by strik-
10 ing “foreign base company income (as defined in
11 section 954(a), determined without regard to section
12 954(b)(3)(A))” and inserting “passive income (as
13 defined in section 954(a))”.

14 (8) Section 881(c)(5)(A)(iii) is amended by
15 striking “954(c)(3)(A)” and inserting
16 “954(a)(3)(A)”.

17 (9) Section 884(d)(2)(D) is amended by strik-
18 ing “953(c)(3)(C)” and inserting “956(a)(3)(C)”.

19 (10) Section 898(b)(3) is amended—

20 (A) by striking “953(c)(2)” and inserting
21 “956(a)(2)”, and

22 (B) by striking “953(c)(1)” and inserting
23 “956(a)(1)”.

24 (11) Section 936(h)(5) is amended—

1 (A) by inserting “(as in effect on the day
2 before the enactment of the Infrastructure 2.0
3 Act)” after “section 954” in the last sentence
4 of subparagraph (B)(ii), and

5 (B) in subparagraph (F)(iv)(II)—

6 (i) by inserting “(as in effect on the
7 day before the enactment of the Infrastruc-
8 ture 2.0 Act)” after “section 954”, and

9 (ii) by inserting “(as so in effect)”
10 after “section 954(a)”.

11 (12) Section 957(b) is amended—

12 (A) by striking “income described in sec-
13 tion 953(a)” and inserting “income described in
14 section 955(a)”, and

15 (B) by striking “contracts described in sec-
16 tion 953(a)(1)” and inserting “contracts de-
17 scribed in section 955(a)(1)”.

18 (13) Section 958(b) is amended—

19 (A) by striking “956(c)(2),” before “and
20 957”,

21 (B) by striking “to treat the stock of a do-
22 mestic corporation as owned by a United States
23 shareholder of the controlled foreign corpora-
24 tion for purposes of section 956(c)(2),”, and

25 (C) by striking the last sentence.

1 (14) Section 964(b) is amended by striking
2 “sections 952, 955, and 956” and inserting “section
3 952”.

4 (15) Section 964(e)(2) is amended by striking
5 “954(e)(3)(A)” and inserting “954(a)(3)(A)”.

6 (16)(A) Part III of subchapter N of chapter 1
7 is amended by striking subpart G.

8 (B) Section 865(e)(2)(A) is amended by strik-
9 ing the last sentence.

10 (C) The table of subparts for part III of sub-
11 chapter N of chapter 1 is amended by striking the
12 item relating to subpart G.

13 (17) Section 999(c) is amended—

14 (A) by striking “, 952(a)(3)” in paragraph
15 (1), and

16 (B) by striking “, the addition to subpart
17 F income under section 952(a)(3),” in para-
18 graph (2).

19 (18) Section 1296(f)(2) is amended—

20 (A) by striking “foreign personal holding
21 company income described in section
22 954(c)(1)(A)” in subparagraph (A) and insert-
23 ing “passive income (as defined in section
24 954(a))”, and

1 (B) by striking “foreign personal holding
2 company income so described” and inserting
3 “such passive income”.

4 (19) Section 1297(b) is amended to read as fol-
5 lows:

6 “(b) PASSIVE INCOME.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), the term ‘passive income’ means any in-
9 come received or accrued by any foreign corporation
10 which is of a kind which would be passive income as
11 defined in section 954 if the foreign corporation
12 were a controlled foreign corporation.

13 “(2) EXCEPTION.—Except as provided in regu-
14 lations, the term ‘passive income’ does not include
15 any income which is interest, a dividend, or a rent
16 or royalty, which is received or accrued from a re-
17 lated person (within the meaning of section 954(b))
18 to the extent that such amount is properly allocable
19 (under regulations prescribed by the Secretary) to
20 income of such related person which is not passive
21 income.”.

22 (20) Section 2057(e)(2)(D)(ii) is amended by
23 striking “section 954(c)(1)” and inserting “section
24 954(a)(1)”.

1 (21) The following sections are amended by
2 striking “954(d)(3)” each place it appears and in-
3 sserting “954(b)”:

4 (A) Section 861(c)(2)(B).

5 (B) Section 958(b).

6 (C) Section 988(a)(3)(C).

7 (D) Subsections (d)(3)(A) and (e)(2)(B)(i)
8 of section 1298.

9 (E) Section 1471(e)(2).

10 (F) Section 3121(z)(2).

11 (22) The table of sections for subpart F of part
12 III of subchapter 1 is amended by striking the items
13 relating to sections 952 through 956 and inserting
14 the following:

“Sec. 952. Subpart F income defined.

“Sec. 953. Active foreign market income.

“Sec. 954. Definition of passive income.

“Sec. 955. Definition of insurance income.

“Sec. 956. Special rule for certain captive insurance companies.”.

15 (h) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply to taxable years of foreign corporations
19 beginning on or after the applicable date, and to tax-
20 able years of United States shareholders with or
21 within which such taxable years of foreign corpora-
22 tions end.

1 (2) GAINS AND LOSSES FROM THE SALE OF CFC
2 STOCK; REPEAL OF SECTION 1248.—The amend-
3 ments made by subsections (c) and (d) shall apply
4 to sales or exchanges on or after the applicable date.

5 **SEC. 302. DEEMED REPATRIATION UPON TRANSITION TO**
6 **FALLBACK INTERNATIONAL TAX REFORM.**

7 (a) IN GENERAL.—Subpart F of part III of sub-
8 chapter N of chapter 1 of the Internal Revenue Code of
9 1986 is amended by adding at the end the following new
10 section:

11 **“SEC. 966. DEEMED REPATRIATION UPON TRANSITION TO**
12 **FALLBACK INTERNATIONAL TAX REFORM.**

13 “(a) TREATMENT OF DEFERRED FOREIGN INCOME
14 AS SUBPART F INCOME.—In the case of the last taxable
15 year of a deferred foreign income corporation which begins
16 before the applicable date (as defined in section 300 of
17 the Infrastructure 2.0 Act), the subpart F income of such
18 foreign corporation (as otherwise determined for such tax-
19 able year under section 952) shall be increased by the in-
20 clusion percentage (as defined in section 952(d) as in ef-
21 fect for taxable years beginning on or after the applicable
22 date (as so defined))) of the accumulated post-1986 de-
23 ferred foreign income of such corporation determined as
24 of the close of such last taxable year.

1 “(b) APPLICATION OF CERTAIN RULES.—Rules simi-
2 lar to the rules of subsections (b), (f), (g), (i), and (j)
3 of section 965 shall apply for purposes of this section.

4 “(c) DEFINITIONS.—Terms used in this section
5 which are also used in section 965 shall have the same
6 meanings when used in this section as when such terms
7 are used in section 965.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for subpart F of part III of subchapter N of chapter 1
10 of such Code is amended by adding at the end the fol-
11 lowing:

“Sec. 966. Deemed repatriation upon transition to fallback international tax re-
form.”.

12 **PART II—FOREIGN TAX CREDIT LIMITATIONS**

13 **SEC. 311. REFORM OF FOREIGN TAX CREDIT LIMITATION.**

14 (a) IN GENERAL.—Subsection (d) of section 904 is
15 amended to read as follows:

16 “(d) SEPARATE APPLICATION OF SECTION WITH RE-
17 SPECT TO CERTAIN CATEGORIES OF INCOME.—

18 “(1) IN GENERAL.—The provisions of sub-
19 sections (a), (b), and (c) and section 907 and 960
20 shall be applied separately with respect to—

21 “(A) amounts included under section
22 951(a) which are attributable to active foreign
23 market income (as defined in section 953),

24 “(B) passive category income, and

1 “(C) income other than income described
2 in either of the preceding subparagraphs.

3 “(2) DEFINITIONS AND SPECIAL RULES.—

4 “(A) PASSIVE CATEGORY INCOME.—

5 “(i) IN GENERAL.—The term ‘passive
6 category income’ means—

7 “(I) United States taxpayer pas-
8 sive income described in subparagraph
9 (B), and

10 “(II) income which is included in
11 gross income of the taxpayer under
12 section 951(a)(1) to the extent such
13 income is attributable to passive in-
14 come (as defined in section 954(a)).

15 “(ii) EXCEPTION FOR HIGH-TAXED
16 INCOME.—Passive category income shall
17 not include any high-taxed income.

18 “(iii) CLARIFICATION OF APPLICATION
19 OF SECTION 864(d)(6).—In determining
20 whether any income is passive category in-
21 come, the rules of section 864(d)(6) shall
22 apply only in the case of income of a con-
23 trolled foreign corporation.

24 “(B) UNITED STATES TAXPAYER PASSIVE
25 INCOME.—United States taxpayer passive in-

1 come described in this subparagraph is income
2 received or accrued by the taxpayer which is of
3 a kind that would be passive income as defined
4 under section 954(a) if such taxpayer were a
5 controlled foreign corporation.

6 “(C) TREATMENT OF FINANCIAL SERVICES
7 INCOME AND COMPANIES.—

8 “(i) IN GENERAL.—Financial services
9 income which is not active foreign market
10 category income shall be treated as income
11 described in paragraph (1)(C) in the case
12 of—

13 “(I) a member of a financial
14 services group, and

15 “(II) any other person if such
16 person is predominantly engaged in
17 the active conduct of a banking, insur-
18 ance, financing, or similar business.

19 “(ii) FINANCIAL SERVICES GROUP.—
20 The term ‘financial services group’ means
21 any affiliated group (as defined in section
22 1504(a) without regard to paragraphs (2)
23 and (3) of section 1504(b)) which is pre-
24 dominantly engaged in the active conduct
25 of a banking, insurance, financing, or simi-

1 lar business. In determining whether such
2 a group is so engaged, there shall be taken
3 into account only the income of members
4 of the group that are—

5 “(I) United States corporations,

6 or

7 “(II) controlled foreign corpora-
8 tions in which such United States cor-
9 porations own, directly or indirectly,
10 at least 80 percent of the total voting
11 power and value of the stock.

12 “(iii) PASS-THRU ENTITIES.—The
13 Secretary shall by regulation specify for
14 purposes of this subparagraph the treat-
15 ment of financial services income received
16 or accrued by partnerships and by other
17 pass-thru entities which are not members
18 of a financial services group.

19 “(D) FINANCIAL SERVICES INCOME.—

20 “(i) IN GENERAL.—Except as other-
21 wise provided in this subparagraph, the
22 term ‘financial services income’ means any
23 income which is received or accrued by any
24 person predominantly engaged in the active

1 conduct of a banking, insurance, financing,
2 or similar business, and which is—

3 “(I) described in clause (ii), or

4 “(II) United States taxpayer pas-
5 sive income (determined without re-
6 gard to subparagraph (A)(ii)).

7 “(ii) GENERAL DESCRIPTION OF FI-
8 NANCIAL SERVICES INCOME.—Income is
9 described in this clause if such income is—

10 “(I) derived in the active conduct
11 of a banking, financing, or similar
12 business,

13 “(II) derived from the investment
14 by an insurance company of its un-
15 earned premiums or reserves ordinary
16 and necessary for the proper conduct
17 of its insurance business, or

18 “(III) of a kind which would be
19 insurance income as defined in section
20 955(a).

21 “(E) HIGH-TAXED INCOME.—The term
22 ‘high-taxed income’ means any income which
23 (but for this subparagraph) would be passive
24 category income if the sum of—

1 “(i) the foreign income taxes paid or
2 accrued by the taxpayer with respect to
3 such income, and

4 “(ii) the foreign income taxes deemed
5 paid by the taxpayer with respect to such
6 income under section 960,
7 exceeds the highest rate of tax specified in sec-
8 tion 1 or 11 (whichever applies) multiplied by
9 the amount of such income (determined with re-
10 gard to section 78). For purposes of the pre-
11 ceding sentence, the term ‘foreign income taxes’
12 means any income, war profits, or excess profits
13 tax imposed by any foreign country or posses-
14 sion of the United States.

15 “(F) TREATMENT OF INCOME TAX BASE
16 DIFFERENCES.—

17 “(i) IN GENERAL.—In the case of tax-
18 able years beginning after December 31,
19 2006, tax imposed under the law of a for-
20 eign country or possession of the United
21 States on an amount which does not con-
22 stitute income under United States tax
23 principles shall be treated as imposed on
24 income described in paragraph (1)(C).

1 “(ii) SPECIAL RULES FOR YEARS
2 AFTER 2006 AND BEFORE THE APPLICABLE
3 DATE.—In the case of taxable years begin-
4 ning after December 31, 2006, and on or
5 before the applicable date (as defined in
6 section 300 of the Infrastructure 2.0 Act),
7 tax imposed under the law of a foreign
8 country or possession of the United States
9 on an amount which does not constitute in-
10 come under United States tax principles
11 shall be treated as imposed on income de-
12 scribed in paragraph (1)(B) (as in effect
13 for taxable years beginning the day before
14 such applicable date).

15 “(iii) SPECIAL RULE FOR YEARS BE-
16 FORE 2007.—

17 “(I) IN GENERAL.—In the case
18 of taxes paid or accrued in taxable
19 years beginning after December 31,
20 2004, and before January 1, 2007, a
21 taxpayer may elect to treat tax im-
22 posed under the law of a foreign coun-
23 try or possession of the United States
24 on an amount which does not con-
25 stitute income under United States

1 tax principles as tax imposed on in-
2 come described in subparagraph (C)
3 or (I) of paragraph (1) (as in effect
4 for taxable years beginning in 2006).

5 “(II) REVOCATION.—Any such
6 election shall apply to the taxable year
7 for which made and all subsequent
8 taxable years described in subclause
9 (I) unless revoked with the consent of
10 the Secretary.

11 “(G) TRANSITION RULES FOR CERTAIN
12 CARRYFORWARDS AND CARRYBACKS.—For pur-
13 poses of paragraph (1)—

14 “(i) in the case of any taxes carried
15 from any taxable year beginning before the
16 applicable date (as defined in section 300
17 of the Infrastructure 2.0 Act), to any tax-
18 able year beginning on or after such
19 date—

20 “(I) if such taxes were treated as
21 attributable to income described in
22 paragraph (1)(A) (as in effect for tax-
23 able years beginning the day before
24 such applicable date), such taxes shall

1 be treated as attributable to income
2 described in paragraph (1)(B), and

3 “(II) if such taxes were treated
4 as attributable to income described in
5 paragraph (1)(B) (as in effect for tax-
6 able years beginning the day before
7 such applicable date), such taxes shall
8 be treated as attributable to income
9 described in paragraph (1)(C), and

10 “(ii) the Secretary may by regulations
11 provide for the allocation of any carryback
12 of taxes with respect to income from a tax-
13 able year beginning on or after such appli-
14 cable date, to a taxable year beginning be-
15 fore such date for purposes of allocating
16 such income among the separate categories
17 in effect for the taxable year to which car-
18 ried.

19 “(3) CONTROLLED FOREIGN CORPORATION;
20 UNITED STATES SHAREHOLDER.—For purposes of
21 this subsection—

22 “(A) CONTROLLED FOREIGN CORPORA-
23 TION.—The term ‘controlled foreign corpora-
24 tion’ has the meaning given such term by sec-
25 tion 957 (taking into account section 956(a)).

1 “(B) UNITED STATES SHAREHOLDER.—

2 The term ‘United States shareholder’ has the
3 meaning given such term by section 951(b)
4 (taking into account section 956(a)).

5 “(4) SEPARATE APPLICATION TO ITEMS
6 RESOURCED UNDER TREATIES.—

7 “(A) IN GENERAL.—If—

8 “(i) without regard to any treaty obli-
9 gation of the United States, any item of
10 income would be treated as derived from
11 sources within the United States,

12 “(ii) under a treaty obligation of the
13 United States, such item would be treated
14 as arising from sources outside the United
15 States, and

16 “(iii) the taxpayer chooses the bene-
17 fits of such treaty obligation,
18 subsections (a), (b), and (c) of this section and
19 sections 907 and 960 shall be applied sepa-
20 rately with respect to each such item.

21 “(B) COORDINATION WITH OTHER PROVI-
22 SIONS.—This paragraph shall not apply to any
23 item of income to which subsection (h)(10) or
24 section 865(h) applies.

1 “(C) REGULATIONS.—The Secretary may
2 issue such regulations as may be necessary or
3 appropriate to carry out the purposes of this
4 paragraph, including regulations which provide
5 that related items of income may be aggregated
6 for purposes of this paragraph.

7 “(5) REGULATIONS.—The Secretary shall pre-
8 scribe such regulations as may be necessary or ap-
9 propriate for the purposes of this subsection, includ-
10 ing preventing the manipulation of the character of
11 income the effect of which is to avoid the purposes
12 of this subsection.”.

13 (b) APPLICATION OF PER COUNTRY LIMITATION.—
14 Section 904 is amended by inserting after subsection (d)
15 the following new subsection:

16 “(e) LIMITATIONS APPLIED ON A PER COUNTRY
17 BASIS.—The provisions of subsections (a), (b), (c), and
18 (d) and sections 907 and 960 shall be applied separately
19 with respect to each foreign country or possession with
20 respect to which taxes described in section 901(b) are paid
21 or accrued.”.

22 (c) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years beginning on or
24 after the applicable date.

1 **SEC. 312. DENIAL OF CREDIT AND DEDUCTION FOR FOR-**
2 **EIGN TAXES WITH RESPECT TO EXCLUDED**
3 **SUBPART F INCOME.**

4 (a) IN GENERAL.—Section 901 is amended by redess-
5 ignating subsection (n) as subsection (o) and by inserting
6 after subsection (m) the following:

7 “(n) DENIAL OF FOREIGN TAX CREDIT AND DEDUC-
8 TION WITH RESPECT TO EXCLUDED SUBPART F IN-
9 COME.—

10 “(1) IN GENERAL.—Notwithstanding section
11 960(b), no credit shall be allowed under subsection
12 (a) for any income, war profits, or excess profits
13 taxes paid or accrued (or deemed paid or accrued
14 under section 960) with respect to the excludable
15 portion of subpart F income or any distribution re-
16 ceived by a United States shareholder (as defined in
17 section 951(b)) which is properly attributable to
18 such excludable portion. No deduction shall be al-
19 lowed to a taxpayer under this chapter for any tax
20 for which a credit is not allowable by reason of the
21 preceding sentence.

22 “(2) EXCLUDABLE PORTION.—The term ‘ex-
23 cludable portion’ has the meaning given such term
24 by section 959(g)(3)(B).

25 “(3) COORDINATION WITH SECTION 78.—Sec-
26 tion 78 shall not apply to any tax which is not allow-

1 able as a credit under this section by reason of this
2 subsection.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to taxable years of foreign corpora-
5 tions beginning on or after the applicable date, and to tax-
6 able years of United States shareholders with or within
7 which such taxable years of foreign corporations end.

8 **PART III—EXPENSE DISALLOWANCE**

9 **SEC. 321. DISALLOWANCE OF DEDUCTION FOR EXPENSES**

10 **ALLOCABLE TO EXEMPT INCOME OF A CON-** 11 **TROLLED FOREIGN CORPORATION.**

12 (a) **IN GENERAL.**—Part IX of subchapter B of chap-
13 ter 1 is amended by adding at the end the following:

14 **“SEC. 265A. EXPENSES ALLOCABLE TO EXEMPT INCOME OF** 15 **A CONTROLLED FOREIGN CORPORATION.**

16 “(a) **IN GENERAL.**—In the case of a United States
17 shareholder of a controlled foreign corporation for any tax-
18 able year, no deduction shall be allowed under this chapter
19 for—

20 “(1) the disallowed portion of any allocable
21 CFC interest, or

22 “(2) expenses directly allocable to the exclud-
23 able portion of subpart F income (as defined in sec-
24 tion 959(g)(3)(B)).

1 “(b) DISALLOWED PORTION.—For purposes of this
2 section—

3 “(1) IN GENERAL.—The term ‘disallowed por-
4 tion’ means, with respect to any allocable CFC inter-
5 est in connection with a controlled foreign corpora-
6 tion, the exclusion percentage of the amount which
7 bears the same ratio to the amount of such interest
8 as—

9 “(A) the corporation’s modified active in-
10 come (as defined in section 952) for the appli-
11 cable taxable year, bears to

12 “(B) the corporation’s current earnings
13 and profits.

14 “(2) CURRENT EARNINGS AND PROFITS.—For
15 purposes of this subsection—

16 “(A) IN GENERAL.—The term ‘current
17 earnings and profits’ means the earnings and
18 profits of the controlled foreign corporation for
19 the applicable taxable year, without diminution
20 by reason of distributions made during the tax-
21 able year.

22 “(B) SPECIAL RULE FOR DETERMINING
23 EARNINGS AND PROFITS.—Earnings and profits
24 of any controlled foreign corporation shall be
25 determined without regard to paragraphs (4),

1 (5), and (6) of section 312(n). Under regula-
2 tions, the preceding sentence shall not apply to
3 the extent it would increase earnings and prof-
4 its by an amount which was previously distrib-
5 uted by the controlled foreign corporation.

6 “(3) EXCLUSION PERCENTAGE.—The term ‘ex-
7 clusion percentage’ means, with respect to any con-
8 trolled foreign corporation for any taxable year, the
9 number of percentage points by which 100 percent
10 exceeds the inclusion percentage determined under
11 section 952(d) with respect to such controlled for-
12 eign corporation for such taxable year.

13 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
14 poses of this section—

15 “(1) ALLOCABLE CFC INTEREST.—The term
16 ‘allocable CFC interest’ means any interest expense
17 paid or accrued during the taxable year by a United
18 States shareholder of a controlled foreign corpora-
19 tion which under section 861, and subsection (e) or
20 (f) of section 864 (whichever is applicable), is appor-
21 tioned to income of the controlled foreign corpora-
22 tion.

23 “(2) APPLICABLE TAXABLE YEAR.—The term
24 ‘applicable taxable year’ means, with respect to any
25 controlled foreign corporation, the taxable year of

1 such corporation which ends with or within the tax-
2 able year of the United States shareholder described
3 in subsection (a).

4 “(3) UNITED STATES SHAREHOLDER; CON-
5 TROLLED FOREIGN CORPORATION.—The term
6 ‘United States shareholder’ has the meaning given
7 such term by section 951(b) and the term ‘controlled
8 foreign corporation’ shall have the meaning given
9 such term by section 957(a).

10 “(4) SPECIAL RULE FOR MEMBERS OF AN AF-
11 FILLATED GROUP.—If a United States shareholder
12 to which subsection (a) applies is a domestic cor-
13 poration which is a member of a group all members
14 of which are treated as a single corporation under
15 subsection (e) or (f) of section 864, whichever is ap-
16 plicable, all domestic corporations which are mem-
17 bers of such group shall be treated as a single cor-
18 poration for purposes of this section.

19 “(5) SPECIAL RULES.—

20 “(A) COORDINATION WITH OTHER PROVI-
21 SIONS.—Except as provided in regulations, this
22 section shall be applied before any other provi-
23 sion of this chapter limiting the deductibility of
24 any allocable CFC interest.

1 “(B) SEPARATE APPLICATION TO INCOME
2 IN SEPARATE BASKETS.—This section shall be
3 applied separately with respect to the categories
4 of income under section 904(d)(1).

5 “(d) REGULATIONS.—The Secretary shall prescribe
6 such regulations as may be necessary to carry out the pur-
7 poses of this section, including regulations providing—

8 “(1) for the sharing of information between
9 shareholders if necessary to carry out the provisions
10 of this section,

11 “(2) for directly associating interest or other
12 expenses disallowed under this section with income
13 of a controlled foreign corporation and for coordi-
14 nating this section with other provisions of this
15 chapter limiting the deductibility of interest or other
16 expenses, and

17 “(3) for the proper application of this section
18 with respect to the taxpayer’s share of net operating
19 losses of a controlled foreign corporation.”.

20 (b) CONFORMING AMENDMENT.—The table of sec-
21 tions for part IX of subchapter B of chapter 1 is amended
22 by inserting after the item relating to section 265 the fol-
23 lowing:

“Sec. 265A. Expense allocable to exempt income of a controlled foreign cor-
poration.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years of foreign corpora-
3 tions beginning on or after the applicable date, and to tax-
4 able years of United States shareholders with or within
5 which such taxable years of foreign corporations end.

6 **PART IV—OTHER PROVISIONS RELATING TO**
7 **SUBPART F**

8 **Subpart A—Previously Deferred Foreign Income**

9 **SEC. 331. TREATMENT OF PREVIOUSLY DEFERRED FOR-**
10 **EIGN INCOME.**

11 (a) IN GENERAL.—Subpart F of part III of sub-
12 chapter N of chapter 1 is amended by adding at the end
13 the following new section:

14 **“SEC. 966. INCLUSION OF PREVIOUSLY DEFERRED FOR-**
15 **EIGN INCOME.**

16 **“(a) INCLUSION AS SUBPART F INCOME.—**

17 **“(1) IN GENERAL.—**Subject to the provisions of
18 paragraph (2), the subpart F income (determined
19 under section 952 without regard to this section) of
20 a controlled foreign corporation for its last taxable
21 year beginning before the applicable date (as defined
22 in section 300 of the Infrastructure 2.0 Act), shall
23 be increased by the accumulated deferred foreign in-
24 come of the corporation.

1 “(2) INCLUSION ONLY TO APPLY TO DOMESTIC
2 CORPORATIONS.—In the case of any increase in sub-
3 part F income of a controlled foreign corporation by
4 reason of paragraph (1)—

5 “(A) notwithstanding section 951(a)(1),
6 the inclusion in gross income under such section
7 of a United States shareholder’s pro rata por-
8 tion (as determined under section 951(a)(2)) of
9 such increased subpart F income shall only
10 apply if the United States shareholder is a do-
11 mestic corporation, and

12 “(B) there shall be allowed as a deduction
13 for the taxable year of such United States
14 shareholder in which such increased subpart F
15 income is included in such shareholder’s gross
16 income under section 951(a)(1) an amount
17 equal to the applicable percentage of the
18 amount of the income so included.

19 “(b) ACCUMULATED DEFERRED FOREIGN IN-
20 COME.—For purposes of this section—

21 “(1) IN GENERAL.—The term ‘accumulated de-
22 ferred foreign income’ means the excess of—

23 “(A) the undistributed earnings of the con-
24 trolled foreign corporation, over

1 “(B) the undistributed U.S. earnings of
2 such controlled foreign corporation.

3 “(2) UNDISTRIBUTED EARNINGS.—

4 “(A) IN GENERAL.—The term ‘undistrib-
5 uted earnings’ means the earnings and profits
6 of the controlled foreign corporation described
7 in section 959(c)(3), determined—

8 “(i) as of the close of the taxable year
9 described in subsection (a)(1),

10 “(ii) without diminution by reason of
11 distributions made during such taxable
12 year, and

13 “(iii) without regard to this section.

14 “(B) SPECIAL RULE FOR CURRENT YEAR
15 DISTRIBUTIONS.—For purposes of this chapter,
16 any determination with respect to the treatment
17 of distributions described in subparagraph
18 (A)(ii) shall be made after the application of
19 this section to the earnings and profits de-
20 scribed in subparagraph (A).

21 “(3) UNDISTRIBUTED U.S. EARNINGS.—The
22 term ‘undistributed U.S. earnings’ has the meaning
23 given the term ‘post-1986 undistributed U.S. earn-
24 ings’ in section 245(a)(5) (as in effect for taxable
25 years beginning the day before the applicable date

1 (as defined in section 300 of the Infrastructure 2.0
2 Act)), determined—

3 “(A) without regard to ‘post-1986’ each
4 place it appears in the matter before subpara-
5 graph (A), and

6 “(B) without regard to the last sentence
7 thereof.

8 “(c) DISALLOWANCE OF FOREIGN TAX CREDIT,
9 ETC.—

10 “(1) IN GENERAL.—No credit shall be allowed
11 under section 901 to a United States shareholder of
12 a controlled foreign corporation for any taxes paid
13 or accrued (or treated as paid or accrued) with re-
14 spect to the deductible portion of—

15 “(A) the increased subpart F income of
16 the corporation included in the gross income of
17 the shareholder under subsection (a)(2)(A), or

18 “(B) any distribution received by the
19 shareholder which is properly attributable to
20 such increased subpart F income.

21 “(2) DENIAL OF DEDUCTION.—No deduction
22 shall be allowed under this chapter to a United
23 States shareholder of a controlled foreign corpora-
24 tion for any tax for which a credit is not allowable
25 under section 901 by reason of paragraph (1).

1 “(3) DEDUCTIBLE PORTION.—For purposes of
2 this subsection, the term ‘deductible portion’ means,
3 with respect to the increased subpart F income of
4 the corporation included in the gross income of the
5 shareholder under subsection (a)(2)(A), the applica-
6 ble percentage of such income with respect to which
7 a deduction is allowable under subsection (a)(2)(B).

8 “(4) COORDINATION WITH SECTION 78.—Sec-
9 tion 78 shall not apply to the portion of any tax for
10 which credit is not allowable under section 901 by
11 reason of paragraph (1).

12 “(d) APPLICABLE PERCENTAGE.—For purposes of
13 this section, the term ‘applicable percentage’ means the
14 percentage which is equal to the ratio of—

15 “(1) the excess of—

16 “(A) the highest rate of tax in effect under
17 section 11(b) for the taxable year of the United
18 States shareholder described in subsection
19 (a)(2)(B), over

20 “(B) 20 percent, to

21 “(2) the highest rate of tax in effect under sec-
22 tion 11(b) for the taxable year of the United States
23 shareholder described in subsection (a)(2)(B).

24 The percentage determined under the preceding sentence
25 shall be rounded to the nearest whole percentage point.

1 “(e) ELECTION TO PAY LIABILITY IN INSTALL-
2 MENTS.—

3 “(1) IN GENERAL.—In the case of a United
4 States shareholder with respect to one or more con-
5 trolled foreign corporations to which subsection (a)
6 applies, such United States shareholder may elect to
7 pay the net tax liability under this section in 2 or
8 more (but not exceeding 8) equal installments.

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

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

22 “(A) an assessment of an addition to tax
23 for failure to pay timely with respect to any in-
24 stallment required under this subsection,

1 “(B) a liquidation or sale of substantially
2 all the assets of the taxpayer (including in a
3 title 11 or similar case),

4 “(C) a cessation of business by the tax-
5 payer, or

6 “(D) any similar circumstance,
7 then the unpaid portion of all remaining installments
8 shall be due on the date of such event (or in the case
9 of a title 11 or similar case, the day before the peti-
10 tion is filed).

11 “(4) PRORATION OF DEFICIENCY TO INSTALL-
12 MENTS.—If an election is made under paragraph (1)
13 to pay the net tax liability under this section in in-
14 stallments and a deficiency has been assessed, the
15 deficiency shall be prorated to the installments pay-
16 able under paragraph (1). The part of the deficiency
17 so prorated to any installment the date for payment
18 of which has not arrived shall be collected at the
19 same time as, and as a part of, such installment.
20 The part of the deficiency so prorated to any install-
21 ment the date for payment of which has arrived
22 shall be paid upon notice and demand from the Sec-
23 retary. This paragraph shall not apply if the defi-
24 ciency is due to negligence, to intentional disregard

1 of rules and regulations, or to fraud with intent to
2 evade tax.

3 “(5) RULES RELATING TO INTEREST.—

4 “(A) IN GENERAL.—In the case of any net
5 tax liability prorated to an installment under
6 this subsection, the last date prescribed for pay-
7 ment of the tax for purposes of section 6601(a)
8 shall be the last date for payment of the install-
9 ment rather than the last date for payment of
10 tax for the taxable year in which the net tax li-
11 ability arose.

12 “(B) SPECIAL RULES FOR DEFICI-
13 CIENCIES.—

14 “(i) INTEREST PAYABLE FOR ENTIRE
15 PERIOD.—Subparagraph (A) shall not
16 apply to any deficiency prorated to an in-
17 stallment under paragraph (4).

18 “(ii) PAYMENT OF INTEREST ATTRIB-
19 UTABLE TO PRIOR PERIODS.—In the case
20 of a deficiency to which paragraph (4) ap-
21 plies, interest with respect to such defi-
22 ciency which is assigned under paragraph
23 (4) to any installment the date for pay-
24 ment of which has arrived on or before the
25 date of the assessment of the deficiency,

1 shall be paid upon notice and demand from
2 the Secretary.

3 “(6) PERIOD OF ASSESSMENT.—Notwith-
4 standing section 6501, the period for assessing the
5 net tax liability under this section for which an elec-
6 tion is made under paragraph (1) shall not expire
7 before the due date for the last installment.

8 “(7) ELECTION.—Any election under paragraph
9 (1) shall be made not later than the due date for the
10 return of tax for the taxable year of the United
11 States shareholder described in subsection (a)(2)(B)
12 and shall be made in such manner as the Secretary
13 may provide.

14 “(8) NET TAX LIABILITY UNDER THIS SEC-
15 TION.—For purposes of this subsection—

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

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

21 “(ii) such taxpayer’s net income tax
22 for such taxable year determined without
23 regard to this section.

24 “(B) NET INCOME TAX.—The term ‘net
25 income tax’ means the net income tax (as de-

1 fined in section 38(c)(1)) reduced by the credit
2 allowed under section 38.

3 “(C) REGULATIONS.—The Secretary shall
4 prescribe such regulations as may be necessary
5 for the determination under this subsection of
6 the net tax liability under this section in the
7 case of any pass-thru entity.

8 “(f) REGULATIONS.—The Secretary shall promulgate
9 such regulations as necessary to carry out the purposes
10 of this section, including regulations for the application
11 of this section to pass-through entities all or part of which
12 are owned by 1 or more domestic corporations.”.

13 (b) ORDERING RULE FOR PURPOSES OF TREATMENT
14 OF PREVIOUSLY TAXED INCOME.—

15 (1) IN GENERAL.—Section 959 is amended by
16 adding at the end the following new subsection:

17 “(g) SPECIAL ORDERING RULE.—Notwithstanding
18 subsection (c), for purposes of subsections (a) and (b), sec-
19 tion 316(a) shall be applied by applying paragraph (2)
20 thereof and then paragraph (1) thereof—

21 “(1) first to the deductible portion (as defined
22 in section 965(c)(3)) of the increase in subpart F in-
23 come described in section 965(a)(1) included in the
24 gross income of United States shareholders under

1 section 951(a)(1) (after application of section
2 965(a)(2)(A)), and

3 “(2) then to amounts described in paragraphs
4 (1), (2), or (3) of subsection (c).”.

5 (2) CONFORMING AMENDMENT.—Section
6 959(c) is amended by inserting “except as provided
7 in subsection (g),” after “subsections (a) and (b),”.

8 (c) CONFORMING AMENDMENTS.—

9 (1) Clause (vi) of section 56(g)(4)(C) is amend-
10 ed—

11 (A) by inserting “or section 966(a)(2)”
12 after “section 965”, and

13 (B) by inserting “AND INCLUSIONS” after
14 “CERTAIN DISTRIBUTIONS” in the heading
15 thereof.

16 (2) Paragraph (3) of section 245(a) is amend-
17 ed—

18 (A) by striking “post-1986” in subpara-
19 graph (A), and

20 (B) by striking “total post-1986” in sub-
21 paragraph (B).

22 (3) Paragraph (4) of section 245(a) is amended
23 to read as follows:

24 “(4) UNDISTRIBUTED EARNINGS.—The term
25 ‘undistributed earnings’ means the amount of the

1 earnings and profits of the controlled foreign cor-
2 poration (computed in accordance with sections
3 964(a) and 986)—

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

7 “(B) without diminution by reason of divi-
8 dends distributed during such taxable year.”.

9 (4) Paragraph (5) of section 245(a) is amend-
10 ed—

11 (A) by striking “post-1986” both places it
12 appears in the matter preceding subparagraph
13 (A), and

14 (B) by striking “POST-1986 UNDISTRI-
15 B-UTED” in the heading thereof and inserting
16 “UNDISTRIBUTED”.

17 (5) Paragraph (6) of section 245(a) is amend-
18 ed—

19 (A) by striking “beginning after December
20 31, 1986” and inserting “which is after the
21 first taxable year of such corporation”, and

22 (B) by striking “post-1986” both places it
23 appears.

24 (6) Paragraph (2) of section 6601(b) is amend-
25 ed—

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

4 (B) by striking “section 6156(b)” in sub-
5 paragraph (A) and inserting “section 965(d)(2)
6 or 6156(b), as the case may be”.

7 (7) The table of sections for subpart F of part
8 III of subchapter N of chapter 1 is amended by
9 striking the item relating to section 965 and insert-
10 ing the following:

“Sec. 965. Inclusion of previously deferred foreign income.”.

11 (d) EFFECTIVE DATE.—

12 (1) IN GENERAL.—Except as provided in para-
13 graph (2), the amendments made by this section
14 shall apply to the last taxable year of foreign cor-
15 porations beginning before the applicable date, and
16 to taxable years of United States shareholders with
17 or within which such taxable years of foreign cor-
18 porations end.

19 (2) CONFORMING AMENDMENTS RELATED TO
20 SECTION 245.—The amendments made by para-
21 graphs (2), (3), (4), and (5) of subsection (c) shall
22 apply to taxable years of foreign corporations begin-
23 ning on or after the applicable date, and to taxable
24 years of United States shareholders with or within

1 which such taxable years of foreign corporations
2 end.

3 **Subpart B—Other Provisions**

4 **SEC. 336. ELIMINATION OF 30-DAY REQUIREMENT.**

5 (a) IN GENERAL.—Section 951(a)(1) is amended by
6 striking “for an uninterrupted period of 30 days or more”
7 and inserting “at any time”.

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to taxable years of foreign corpora-
10 tions beginning on or after the applicable date, and to tax-
11 able years of United States shareholders with or within
12 which such taxable years of foreign corporations end.

13 **SEC. 337. MODIFICATION OF DEFINITION OF UNITED**
14 **STATES SHAREHOLDER.**

15 (a) IN GENERAL.—Section 951(b) is amended by in-
16 serting “, or 10 percent or more of the total value of
17 shares of all classes of stock of such foreign corporation”
18 after “such foreign corporation”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 this section shall apply to taxable years of foreign corpora-
21 tions beginning on or after the applicable date, and to tax-
22 able years of United States shareholders with or within
23 which such taxable years of foreign corporations end.

1 **Subtitle B—Reform of Foreign Tax**
2 **Credit Provisions**

3 **SEC. 341. REPEAL OF SECTION 902 INDIRECT FOREIGN TAX**
4 **CREDITS; FOREIGN TAX CREDIT RELATED TO**
5 **SUBPART F INCOME.**

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

9 (b) FOREIGN TAX CREDIT RELATED TO SUBPART F
10 INCOME.—

11 (1) IN GENERAL.—Section 960 is amended by
12 redesignating subsections (b) and (c) as subsections
13 (c) and (d), respectively, and by striking subsection
14 (a) and inserting the following:

15 “(a) DETERMINATION OF CREDIT ON CURRENT
16 YEAR BASIS.—For purposes of this subpart, if there is
17 included in the gross income of a domestic corporation any
18 amount under section 951(a) with respect to any con-
19 trolled foreign corporation with respect to which such do-
20 mestic corporation is a United States shareholder, such
21 domestic corporation shall be deemed to have paid so
22 much of such foreign corporation’s foreign income taxes
23 as are properly attributable to the amount so included.

24 “(b) TREATMENT OF FOREIGN TAXES NOT PRE-
25 VIOUSLY DEEMED PAID.—For purposes of this subpart—

1 “(1) IN GENERAL.—If any portion of a dis-
2 tribution from a controlled foreign corporation re-
3 ceived by a domestic corporation is excluded from
4 gross income under section 959(a), such domestic
5 corporation shall be deemed to have paid so much of
6 such foreign corporation’s foreign income taxes as
7 are properly attributable to the amount so excluded
8 to the extent such taxes were not deemed paid by
9 the domestic corporation under this section for any
10 prior taxable year.

11 “(2) TAXES OF LOWER-TIER CFCS.—If a con-
12 trolled foreign corporation receives a distribution
13 any portion of which is described in section 959(b)
14 from another controlled foreign corporation, such
15 foreign corporation shall be deemed to have paid so
16 much of such other foreign corporation’s foreign in-
17 come taxes as are properly attributable to the
18 amount so described to the extent such taxes were
19 not deemed paid by a domestic corporation under
20 this section for any prior taxable year.”.

21 (2) APPLICATION WITH RESPECT TO FOREIGN
22 TAX CREDIT LIMITATION.—Section 960(c), as reded-
23 icated by paragraph (1), is amended by adding at
24 the end the following new paragraph:

1 “(6) APPLICATION WITH RESPECT TO FOREIGN
2 TAX CREDIT LIMITATION.—This subsection shall be
3 applied separately with respect to each category of
4 income described in section 904(d)(1).”.

5 (3) CONFORMING AMENDMENTS.—

6 (A) Section 960 is amended by striking
7 subsection (d), as redesignated by paragraph
8 (1), and inserting the following:

9 “(d) FOREIGN INCOME TAXES.—For purposes of this
10 section, the term ‘foreign income taxes’ means any income,
11 war profits, or excess profits taxes paid or accrued by a
12 foreign corporation to any foreign country or possession
13 of the United States.

14 “(e) REGULATIONS.—The Secretary shall provide
15 such regulations as may be necessary or appropriate to
16 carry out the provisions of this section, including rules for
17 the application of this section to domestic partnerships
18 with partners that are domestic corporations.”.

19 (B) Section 960 is amended by striking the
20 heading and inserting “**DEEMED PAID CRED-**
21 **IT FOR SUBPART F INCLUSIONS**”.

22 (c) MODIFICATION TO SECTION 78 GROSS UP.—Sec-
23 tion 78 is amended to read as follows:

1 **“SEC. 78. AMOUNTS RECEIVED FROM CERTAIN FOREIGN**
2 **CORPORATIONS BY DOMESTIC CORPORA-**
3 **TIONS CHOOSING FOREIGN TAX CREDIT.**

4 “If a domestic corporation which is a United States
5 shareholder chooses to have the benefits of subpart A of
6 part III of subchapter N (relating to foreign tax credits)
7 for any taxable year, an amount equal to the taxes deemed
8 to be paid by such corporation under section 960 for such
9 taxable year—

10 “(1) shall be treated as an amount included in
11 the gross income under section 951(a), and

12 “(2) for purposes of section 904, shall be
13 deemed to be attributable to the same category of
14 income described in section 904(d)(1) as the income
15 which gave rise to the taxes deemed paid by such
16 corporation.”.

17 (d) CONFORMING AMENDMENTS.—

18 (1) Subclause (III) of section 56(g)(4)(C)(iii) is
19 amended by inserting “as in effect before its repeal”
20 after “section 902”.

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

24 (3) Subparagraph (B) of section 814(f)(1) is
25 repealed.

1 (4) Subsection (a) of section 901 is amended by
2 striking “sections 902 and 960” and inserting “sec-
3 tion 960”.

4 (5) Paragraph (2) of section 901(e) is amended
5 by striking “but is not limited to—” and all that fol-
6 lows through “that portion” and inserting “but is
7 not limited to that portion”.

8 (6) Subsection (f) of section 901 is amended by
9 striking “sections 902 and 960” and inserting “sec-
10 tion 960”.

11 (7) Subparagraph (A) of section 901(j)(1) is
12 amended by striking “902 or”.

13 (8) Subparagraph (A) of section 904(h)(10) is
14 amended by striking “sections 902, 907, and 960”
15 and inserting “sections 907 and 960”.

16 (9) Subsection (k) of section 904 is amended to
17 read as follows:

18 “(k) CROSS REFERENCE.—For modification of limi-
19 tation under subsection (a) for purposes of determining
20 the amount of credit which can be taken against the alter-
21 native minimum tax, see section 59(a).”.

22 (10) Paragraph (1) of section 905(c) is amend-
23 ed by striking the last sentence.

24 (11) Subclause (I) of section 905(c)(2)(B) is
25 amended by striking “902 or”.

1 (12) Subsection (a) of section 906 is amended
2 by striking “(or deemed, under section 902, paid or
3 accrued during the taxable year)”.

4 (13) Subsection (b) of section 906 is amended
5 by striking paragraphs (4) and (5).

6 (14) Subparagraph (B) of section 907(b)(2) is
7 amended by striking “902 or”.

8 (15) Paragraph (3) of section 907(c) is amend-
9 ed—

10 (A) by striking subparagraph (A) and re-
11 designating subparagraphs (B) and (C) as sub-
12 paragraphs (A) and (B), respectively, and

13 (B) by striking “section 960(a)” in sub-
14 paragraph (A) (as so redesignated) and insert-
15 ing “section 960”.

16 (16) Paragraph (5) of section 907(c) is amend-
17 ed by striking “902 or”.

18 (17) Clause (i) of section 907(f)(2)(B) is
19 amended by striking “902 or”.

20 (18) Subsection (a) of section 908 is amended
21 by striking “902 or”.

22 (19) Paragraph (1) of section 958(a) is amend-
23 ed by striking “960(a)(1)” and inserting “960”.

24 (20) Subparagraph (B) of section 6038(c)(1) is
25 amended by striking “sections 902 (relating to for-

1 foreign tax credit for corporate stockholder in foreign
2 corporation) and 960 (relating to special rules for
3 foreign tax credit)” and inserting “section 960”.

4 (21) Paragraph (4) of section 6038(c) is
5 amended by striking subparagraph (C).

6 (22) The table of sections for subpart A of part
7 III of subchapter N of chapter 1 is amended by
8 striking the item relating to section 902.

9 (23) The table of sections for part II of sub-
10 chapter B of chapter 1 is amended by striking
11 “Dividends” in the item relating to section 78 and
12 inserting “Amounts”.

13 (24) The table of sections for subpart F of part
14 III of subchapter N of chapter 1 is amended by
15 striking the item relating to section 960 and insert-
16 ing the following:

“Sec. 960. Deemed paid credit for subpart F inclusions.”.

17 (e) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years of foreign corpora-
19 tions beginning on or after the applicable date, and to tax-
20 able years of United States shareholders with or within
21 which such taxable years of foreign corporations end.

1 **SEC. 342. REPEAL OF RULE SUSPENDING FOREIGN TAXES**
2 **AND CREDITS UNTIL RELATED INCOME IS**
3 **TAKEN INTO ACCOUNT.**

4 (a) **IN GENERAL.**—Subpart A of part III of sub-
5 chapter N of chapter 1 is amended by striking section 909.

6 (b) **CONFORMING AMENDMENTS.**—

7 (1) Section 901(m)(1)(B) is amended by strik-
8 ing “a section 902 corporation (as defined in section
9 909(d)(5))” and inserting “a controlled foreign cor-
10 poration (as defined in section 957(a))”.

11 (2) The table of sections of subpart A of part
12 III of subchapter N of chapter 1 is amended by
13 striking the item relating to section 909.

14 (c) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to foreign taxes paid or accrued
16 in taxable years beginning on or after the applicable date.

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