

112TH CONGRESS  
2D SESSION

# S. 2091

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2012

Mr. ENZI introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

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

8 (b) AMENDMENT OF 1986 CODE.—Except as other-  
9 wise expressly provided, whenever in this Act an amend-  
10 ment or repeal is expressed in terms of an amendment

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

4 (c) TABLE OF CONTENTS.—The table of contents of  
 5 this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

#### TITLE I—PARTICIPATION EXEMPTION SYSTEM FOR TAXATION OF FOREIGN INCOME

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

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

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

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

#### TITLE II—OTHER INTERNATIONAL TAX REFORMS

##### Subtitle A—Modifications of Subpart F

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

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

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

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

##### Subtitle B—Modifications Related to Foreign Tax Credit

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

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

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

##### Subtitle C—Allocation of Interest on Worldwide Basis

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

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

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

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

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

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

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

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

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

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

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

11 “(2) ELECTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (d) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 within which such taxable year of the con-  
2 trolled foreign corporation ends an amount  
3 equal to the shareholder's pro rata share  
4 (determined in the same manner as under  
5 section 951(a)(2)) of the amount treated  
6 as subpart F income under clause (i), and  
7 “(iii) the deduction under section  
8 245A(a) shall be allowable to the United  
9 States shareholder with respect to the sub-  
10 part F income included in gross income  
11 under clause (ii) in the same manner as if  
12 such subpart F income were a dividend re-  
13 ceived by the shareholder from the selling  
14 controlled foreign corporation.

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



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

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

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

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

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

20       “(b) QUALIFIED FOREIGN INTANGIBLE INCOME.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                 “(ii) subpart F income.

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

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

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

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

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

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

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of domestic corporations beginning after December 31, 2012.

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

“(a) DEDUCTION ALLOWED.—In the case of a do-  
mestic corporation which elects the application of this sec-  
tion to any controlled foreign corporation with respect to  
which it is a United States shareholder, there shall be al-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21       (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15                   “(e) **LOW-TAXED INCOME.**—

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

4 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) by striking the last sentence.

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

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

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

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

25 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25       (b) FOREIGN INTANGIBLE INCOME.—

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

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

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

“(ii) COORDINATION.—Passive category income and general category income shall not include foreign intangible income.”

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

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

(2) TRANSITIONAL RULE.—For purposes of section 904(d)(1) of the Internal Revenue Code of 1986 (as amended by this Act)—

(A) taxes carried from any taxable year beginning before January 1, 2013, to any taxable



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

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

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

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

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

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

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

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

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

○