

115TH CONGRESS
1ST SESSION

H. R. 1670

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

MARCH 22, 2017

Mr. DELANEY (for himself, Mr. YOHO, Mr. AGUILAR, Mr. BERA, Mrs. BUSTOS, Ms. GABBARD, Ms. HANABUSA, Ms. KELLY of Illinois, Ms. KUSTER of New Hampshire, Mr. LANGEVIN, Mr. SEAN PATRICK MALONEY of New York, Ms. MCCOLLUM, Mr. MCKINLEY, Mr. MOULTON, Mr. NORCROSS, Mr. PERLMUTTER, Mr. POLIS, Mr. QUIGLEY, Mr. RUPPERSBERGER, Ms. SINEMA, and Mr. SOTO) 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,*

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

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

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

10 (c) TABLE OF CONTENTS.—The table of contents for
11 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

1 952) shall be increased by the accumulated post-1986 de-
 2 ferred foreign income of such corporation determined as
 3 of the close of such taxable year.

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

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

21 “(2) ALLOCATION OF AGGREGATE FOREIGN E&P
 22 DEFICIT.—The aggregate foreign E&P deficit of any
 23 United States shareholder shall be allocated among
 24 the deferred foreign income corporations of such

1 United States shareholder in an amount which bears
 2 the same proportion to such aggregate as—

3 “(A) such United States shareholder’s pro
 4 rata share of the accumulated post-1986 de-
 5 ferred foreign income of each such deferred for-
 6 eign income corporation, bears to

7 “(B) the aggregate of such United States
 8 shareholder’s pro rata share of the accumulated
 9 post-1986 deferred foreign income of all de-
 10 ferred foreign income corporations of such
 11 United States shareholder.

12 “(3) DEFINITIONS RELATED TO E&P DEFI-
 13 CITS.—For purposes of this subsection—

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

21 “(B) E&P DEFICIT FOREIGN CORPORA-
 22 TION.—The term ‘E&P deficit foreign corpora-
 23 tion’ means, with respect to any taxpayer, any
 24 specified foreign corporation with respect to

1 which such taxpayer is a United States share-
2 holder, if—

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

6 “(ii) as of the date of the introduction
7 of Infrastructure 2.0 Act—

8 “(I) such corporation was a spec-
9 ified foreign corporation, and

10 “(II) such taxpayer was a United
11 States shareholder of such corpora-
12 tion.

13 “(C) SPECIFIED E&P DEFICIT.—The term
14 ‘specified E&P deficit’ means, with respect to
15 any E&P deficit foreign corporation, the
16 amount of the deficit referred to in subpara-
17 graph (B).

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

1 “(d) DEFERRED FOREIGN INCOME CORPORATION;
2 ACCUMULATED POST-1986 DEFERRED FOREIGN IN-
3 COME.—For purposes of this section—

4 “(1) DEFERRED FOREIGN INCOME CORPORA-
5 TION.—The term ‘deferred foreign income corpora-
6 tion’ means, with respect to any United States
7 shareholder, any specified foreign corporation of
8 such United States shareholder which has accumu-
9 lated post-1986 deferred foreign income (as of the
10 close of the taxable year referred to in subsection
11 (a)) greater than zero.

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

16 “(A) are attributable to income of the
17 specified foreign corporation which is effectively
18 connected with the conduct of a trade or busi-
19 ness within the United States and subject to
20 tax under this chapter,

21 “(B) if distributed, would—

22 “(i) in the case of a controlled foreign
23 corporation, be excluded from the gross in-
24 come of a United States shareholder under
25 section 959, or

1 “(ii) in the case of any passive foreign
2 investment company (as defined in section
3 1297) other than a controlled foreign cor-
4 poration, be treated as a distribution which
5 is not a dividend, or

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

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

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

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

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

5 “(e) SPECIFIED FOREIGN CORPORATION.—

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

9 “(A) any controlled foreign corporation,
10 and

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

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

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

1 F income (and by treating such specified foreign corpora-
 2 tion as a controlled foreign corporation).

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

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

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

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

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

23 “(h) ELECTION TO PAY LIABILITY IN INSTALL-
 24 MENTS.—

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

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

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

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

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

15 “(2) DATE FOR PAYMENT OF INSTALLMENTS.—
16 If an election is made under paragraph (1), the first
17 installment shall be paid on the due date (deter-
18 mined without regard to any extension of time for
19 filing the return) for the return of tax for the tax-
20 able year described in subsection (b) and each suc-
21 ceeding installment shall be paid on the due date (as
22 so determined) for the return of tax for the taxable
23 year following the taxable year with respect to which
24 the preceding installment was made.

1 “(3) ACCELERATION OF PAYMENT.—If there is
2 an addition to tax for failure to pay timely assessed
3 with respect to any installment required under this
4 subsection, a liquidation or sale of substantially all
5 the assets of the taxpayer (including in a title 11 or
6 similar case), a cessation of business by the tax-
7 payer, or any similar circumstance, then the unpaid
8 portion of all remaining installments shall be due on
9 the date of such event (or in the case of a title 11
10 or similar case, the day before the petition is filed).
11 The preceding sentence shall not apply to the sale
12 of substantially all the assets of a taxpayer to a
13 buyer if such buyer enters into an agreement with
14 the Secretary under which such buyer is liable for
15 the remaining installments due under this subsection
16 in the same manner as if such buyer were the tax-
17 payer.

18 “(4) PRORATION OF DEFICIENCY TO INSTALL-
19 MENTS.—If an election is made under paragraph (1)
20 to pay the net tax liability under this section in in-
21 stallments and a deficiency has been assessed with
22 respect to such net tax liability, the deficiency shall
23 be prorated to the installments payable under para-
24 graph (1). The part of the deficiency so prorated to
25 any installment the date for payment of which has

1 not arrived shall be collected at the same time as,
 2 and as a part of, such installment. The part of the
 3 deficiency so prorated to any installment the date
 4 for payment of which has arrived shall be paid upon
 5 notice and demand from the Secretary. This sub-
 6 section shall not apply if the deficiency is due to
 7 negligence, to intentional disregard of rules and reg-
 8 ulations, or to fraud with intent to evade tax.

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

14 “(6) 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 described in subsection
 21 (a), over

22 “(ii) such taxpayer’s net income tax
 23 for such taxable year determined without
 24 regard to this section.

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

5 “(i) INCLUSION OF DEFERRED FOREIGN INCOME
6 UNDER THIS SECTION NOT TO TRIGGER RECAPTURE OF
7 OVERALL FOREIGN LOSS.—For purposes of section
8 904(f)(1), in the case of a United States shareholder of
9 a deferred foreign income corporation, such United States
10 shareholder’s taxable income from sources without the
11 United States shall be determined without regard to this
12 section.

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

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

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

20 **SEC. 102. AMERICAN INFRASTRUCTURE FUND.**

21 (a) AMERICAN INFRASTRUCTURE FUND.—

22 (1) IN GENERAL.—There is established a wholly
23 owned Government corporation—

1 (A) which shall be called the American In-
2 frastructure Fund (referred to in this Act as
3 the “AIF”);

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

6 (C) which may have separate subaccounts
7 or subsidiaries for funds used to make loans,
8 bond guarantees, and equity investments under
9 this section;

10 (D) which shall be available to the AIF to
11 pay for the costs of carrying out this section,
12 including the compensation of the Board and
13 other employees of the AIF; and

14 (E) the funds of which may be invested by
15 the Board in such manner as the Board deter-
16 mines appropriate.

17 (2) DEPOSITS TO AIF.—All funds received from
18 bond issuances, loan payments, bond guarantee fees,
19 and any other funds received in carrying out this
20 section shall be held by AIF.

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

24 (4) OVERSIGHT.—The AIF shall register with
25 the Securities and Exchange Commission and the

Chairman shall report to Congress annually as to whether the AIF is fulfilling the mission of the Board under subsection (b)(2).

(5) TREATMENT OF AIF.—

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

(i) by inserting “the American Infrastructure Fund,” after “the Regional Banks for Cooperatives,”; and

(ii) by striking “those banks” and inserting “those entities”.

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

(b) BOARD OF TRUSTEES.—

(1) IN GENERAL.—There is established a Board of Trustees of the AIF (referred to in this subsection as the “Board”), which shall be composed of 9 members who—

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

(B) to the greatest extent practicable, have extensive experience working with municipal

1 credit, risk management, and infrastructure fi-
2 nance.

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

4 (A) to operate the AIF and its subsidiaries
5 to be a low cost provider of bond guarantees,
6 loans, and equity investments to State and local
7 governments and infrastructure providers for
8 urban and rural infrastructure projects that—

9 (i) provide a positive economic impact;

10 and

11 (ii) meet such other standards as the
12 Board may develop;

13 (B) to operate the AIF in a self-sustaining
14 manner;

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

18 (i) covering its costs;

19 (ii) maintaining such reserves as may
20 be needed; and

21 (iii) applying prudent underwriting
22 standards;

23 (D) to only consider projects put forth by
24 State and local governments and not to seek
25 projects directly; and

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

(3) MEMBERSHIP.—

(A) INITIAL MEMBERS.—

(i) APPOINTMENT.—Not later than 150 days after the date of the enactment of this Act, the President shall appoint, with the advice and consent of the Senate, as members of the Board—

(I) 2 individuals from a list of at least 5 individuals selected by the Speaker of the House of Representatives;

(II) 2 individuals from a list of at least 5 individuals selected by the Minority Leader of the House of Representatives;

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

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

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

1 (ii) SUBMISSION OF LISTS.—Each of
2 the lists described in clause (i) shall be
3 submitted to the President not later than
4 90 days after the date of the enactment of
5 this Act. If any of such lists are submitted
6 after the date required under this clause,
7 the President may appoint the 2 members
8 of the Board who were to be selected from
9 such list at will.

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

20 (C) ADDITIONAL MEMBERS.—

21 (i) IN GENERAL.—Except as provided
22 in subparagraph (A), if the term of a
23 member of the Board expires or otherwise
24 becomes vacant, the President shall ap-
25 point a replacement for such member, with

1 the advice and consent of the Senate, from
2 among a list of at least 5 individuals sub-
3 mitted by the Board.

4 (ii) TERM OF SERVICE.—

5 (I) IN GENERAL.—Each member
6 of the Board appointed to replace a
7 member whose term is expiring shall
8 serve for a 7-year term.

9 (II) VACANCIES.—Any member
10 of the Board appointed to fill a va-
11 cancy occurring before the expiration
12 of the term to which that member's
13 predecessor was appointed shall be ap-
14 pointed only for the remainder of the
15 term.

16 (D) CHAIR.—The members of the Board
17 shall choose 1 member to serve as the Chair of
18 the Board for a term of 7 years, except that the
19 initial Chair shall serve for a term of 9 years,
20 pursuant to subparagraph (B).

21 (E) CONTINUATION OF SERVICE.—Each
22 member of the Board may continue to serve
23 after the expiration of the term of office to
24 which that member was appointed until a suc-
25 cessor has been appointed.

1 (F) CONFLICTS OF INTEREST.—No mem-
2 ber of the Board may have a financial interest
3 in, or be employed by, a Qualified Infrastruc-
4 ture Project (“QIP”) related to assistance pro-
5 vided under this section. Owning municipal
6 credit of any State or local government or own-
7 ing the securities of a diversified company that
8 engages in infrastructure activities, provided
9 those activities constitute less than 20 percent
10 of the company’s revenues, or investing in
11 broadly held investment funds shall not be
12 deemed to create a conflict of interest. The
13 Board may issue regulations to define terms
14 used under this subparagraph.

15 (4) COMPENSATION.—The members of the
16 Board shall be compensated at an amount to be set
17 by the Board, but under no circumstances may such
18 compensation be higher than the rate prescribed for
19 level IV of the Executive Schedule under section
20 5315 of title 5, United States Code.

21 (5) STAFF.—The Board shall employ and set
22 compensation for such staff as the Board determines
23 as is necessary to carry out the activities and mis-
24 sion of the AIF, and such staff may be paid without
25 regard to the provisions of chapter 51 and sub-

1 chapter III of chapter 53, United States Code, relat-
2 ing to classification and General Schedule pay rates.

3 (6) PROCEDURES.—The Board shall establish
4 such procedures as are necessary to carry out this
5 section.

6 (7) CORPORATE GOVERNANCE STANDARDS.—

7 (A) BOARD COMMITTEES GENERALLY.—

8 The Board shall maintain all of the committees
9 required to be maintained by the board of direc-
10 tors of an issuer listed on the New York Stock
11 Exchange as of the date of the enactment of
12 this section.

13 (B) RISK MANAGEMENT COMMITTEE.—The
14 Board shall maintain a risk management com-
15 mittee, which shall—

16 (i) employ additional staff who are
17 certified by the Board as having significant
18 and relevant experience in insurance un-
19 derwriting and credit risk management;
20 and

21 (ii) establish the risk management
22 policies used by the Board.

23 (C) STANDARDS.—The Board shall, to the
24 extent practicable, follow all standards with re-
25 spect to corporate governance that are required

1 to be followed by the board of directors of an
2 issuer listed on the New York Stock Exchange
3 as of the date of the enactment of this section.

4 (8) BIENNIAL REPORTS.—Not less frequently
5 than once every 2 years, the Board shall produce a
6 report that describes, of the materials, goods, and
7 products that were used to construct, or to support
8 the construction of, qualified infrastructure projects
9 (as described in subsection (c)) and received financ-
10 ing from the American Infrastructure Fund within
11 the most recent 2 calendar years, the percentage of
12 such materials, goods, and products that were cre-
13 ated, sourced, or manufactured in the United States.

14 (c) INFRASTRUCTURE INVESTMENT.—

15 (1) ENTITIES ELIGIBLE FOR ASSISTANCE.—The
16 AIF may provide assistance to State and local gov-
17 ernment entities, nonprofit infrastructure providers,
18 private parties, and public-private partnerships (re-
19 ferred to in this section as “eligible entities”) to help
20 finance qualified infrastructure projects (referred to
21 in this subsection as “QIPs”).

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

23 (A) provide bond guarantees to debt issued
24 by eligible entities;

1 (B) make loans, including subordinated
2 loans, to eligible entities; and

3 (C) make equity investments in QIPs.

4 (3) QUALIFIED INFRASTRUCTURE PROJECTS.—

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

6 (A) the project is sponsored by a State or
7 local government;

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

10 (C) the project involves the construction,
11 maintenance, improvement, or repair of a trans-
12 portation, energy, water, communications, or
13 educational facility;

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

23 (E) in the case of a public transportation
24 capital project as defined in section 5302 of
25 title 49, United States Code, the recipient of

1 bond guarantees, loans, equity investments, or
2 any other innovative financing technique au-
3 thorized under this Act complies with the grant
4 requirements applicable to grants made under
5 section 5309 of such title.

6 (4) APPLICATION FOR ASSISTANCE.—

7 (A) IN GENERAL.—A State or local gov-
8 ernment that wishes to receive a loan or bond
9 guarantee under this section shall submit an
10 application to the Board in such form and man-
11 ner and containing such information as the
12 Board may require.

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

23 (5) LIMITATIONS ON SINGLE STATE AWARDS.—

24 (A) ANNUAL LIMITATION.—The Board
25 shall set an annual limit, as a percentage of

1 total assistance provided under this section dur-
2 ing a year, on the amount of assistance a single
3 State (including local governments and other
4 infrastructure providers within such State) may
5 receive in assistance provided under this sec-
6 tion.

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

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

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

21 (8) EQUITY INVESTMENTS.—With respect to a
22 QIP, the amount of an equity investment made by
23 the AIF in such QIP may not exceed 20 percent of
24 the total cost of the QIP.

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

6 (10) PROHIBITION ON PRINCIPAL FORGIVE-
7 NESS.—With respect to a loan made under this sec-
8 tion, the Board may not forgive any amount of prin-
9 cipal on such loan.

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

11 (1) INFRASTRUCTURE PROVIDER.—The term
12 “infrastructure provider” means an entity that seeks
13 to finance a QIP.

14 (2) SECRETARY.—The term “Secretary” means
15 the Secretary of the Treasury.

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

20 (e) APPROPRIATION.—Out of money in the Treasury
21 not otherwise appropriated, there is hereby appropriated
22 \$50,000,000,000 to the American Infrastructure Fund.
23 Amounts appropriated under this subsection shall remain
24 available without fiscal year limitation.

1 **SEC. 103. DEDICATION OF REMAINING REVENUES TO HIGH-**
 2 **WAY TRUST FUND.**

3 (a) IN GENERAL.—Section 9503(f) is amended by re-
 4 designating paragraphs (5) through (10) as paragraphs
 5 (6) through (11), respectively, and by inserting after para-
 6 graph (4) the following new paragraph:

7 “(5) APPROPRIATION OF REVENUES ATTRIB-
 8 UTABLE TO SECTION 965.—

9 “(A) INITIAL APPROPRIATION.—Out of
 10 money in the Treasury not otherwise appro-
 11 priated, there is hereby appropriated
 12 \$100,000,000,000 to the Highway Trust Fund.

13 “(B) REMAINING REVENUES.—

14 “(i) IN GENERAL.—Out of money in
 15 the Treasury not otherwise appropriated,
 16 there are hereby appropriated to the High-
 17 way Trust Fund the excess of—

18 “(I) amounts equivalent to the
 19 aggregate net tax liabilities under sec-
 20 tion 965 (as defined in such section)
 21 received in the Treasury, over

22 “(II) \$150,025,000,000.

23 “(ii) ADDITIONAL TRANSFERS ONLY
 24 AFTER REVENUES EQUALING INITIAL
 25 TRANSFERS HAVE BEEN RECEIVED IN THE
 26 TREASURY.—For purposes of applying sec-

1 tion 9601 to clause (i), no transfer shall be
 2 made under clause (i) until the Secretary
 3 estimates that the amount described in
 4 clause (i)(I) has exceeded the amount de-
 5 scribed in clause (i)(II).”.

6 (b) TRANSFERS TO MASS TRANSIT ACCOUNT.—Sec-
 7 tion 9503(e)(2) of such Code is amended by striking “the
 8 mass transit portion” and inserting “20 percent of the
 9 amounts appropriated to the Highway Trust Fund under
 10 subsection (f)(5), and the mass transit portion”.

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

12 (a) ESTABLISHMENT.—There is established in the
 13 legislative branch a commission to be known as the “High-
 14 way Trust Fund Solvency Commission” (in this section
 15 referred to as the “Commission”).

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

21 (c) MEMBERS.—

22 (1) NUMBER AND APPOINTMENT.—The Com-
 23 mission shall be composed of 9 members. Of the
 24 members of the Commission—

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

3 (B) 1 member shall be appointed by the
4 chairman of the Committee on Finance of the
5 Senate;

6 (C) 1 member shall be appointed by the
7 ranking minority member of the Committee on
8 Finance of the Senate;

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

12 (E) 1 member shall be appointed by the
13 ranking minority member of the Committee on
14 Ways and Means of the House of Representa-
15 tives;

16 (F) 1 member shall be appointed by the
17 chairman of the Committee on Environment
18 and Public Works of the Senate;

19 (G) 1 member shall be appointed by the
20 ranking minority member of the Committee on
21 Environment and Public Works of the Senate;

22 (H) 1 member shall be appointed by the
23 chairman of the Committee on Transportation
24 and Infrastructure of the House of Representa-
25 tives; and

1 (I) 1 member shall be appointed by the
2 ranking minority member of the Committee on
3 Transportation and Infrastructure of the House
4 of Representatives.

5 (2) TIMING OF APPOINTMENTS.—Each of the
6 appointments made under paragraph (1) shall be
7 made not later than 45 days after the date of the
8 enactment of this Act.

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

13 (4) COMPENSATION.—

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

16 (B) TRAVEL EXPENSES.—Each member
17 shall receive travel expenses, including per diem
18 in lieu of subsistence, in accordance with appli-
19 cable provisions under subchapter I of chapter
20 57 of title 5, United States Code.

21 (d) OPERATION AND POWERS OF THE COMMIS-
22 SION.—

23 (1) CHAIR.—The chairperson of the Commis-
24 sion shall be elected by the members of the Commis-
25 sion.

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

5 (3) RULES OF PROCEDURE.—The chairperson
6 shall, with the approval of a majority of the mem-
7 bers of the Commission, establish written rules of
8 procedure for the Commission, which shall include a
9 quorum requirement to conduct the business of the
10 Commission.

11 (4) HEARINGS.—The Commission may, for the
12 purpose of carrying out this section, hold hearings,
13 sit and act at times and places, take testimony, and
14 receive evidence as the Commission considers appro-
15 priate.

16 (5) OBTAINING OFFICIAL DATA.—The Commis-
17 sion may secure directly from any department or
18 agency of the United States, including the Congres-
19 sional Budget Office and the Government Account-
20 ability Office, any information or technical assist-
21 ance necessary to enable it to carry out this section.
22 Upon request of the chairperson of the Commission,
23 the head of that department or agency shall furnish
24 that information or technical assistance to the Com-
25 mission.

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

5 (7) MAILS.—The Commission may use the
6 United States mails in the same manner and under
7 the same conditions as other departments and agen-
8 cies of the United States.

9 (e) PERSONNEL.—

10 (1) DIRECTOR.—The Commission shall have a
11 Director who shall be appointed by the Commission.
12 The Director shall be paid at a rate of pay equiva-
13 lent to the annual rate of basic pay for a comparable
14 position paid under the Executive Schedule, subject
15 to the approval of the chairperson of the Commis-
16 sion.

17 (2) STAFF.—The Director may appoint and fix
18 the pay of additional staff as the Director considers
19 appropriate.

20 (3) EXPERTS AND CONSULTANTS.—The Com-
21 mission may procure temporary and intermittent
22 services under section 3109(b) of title 5, United
23 States Code, but at rates for individuals not to ex-
24 ceed the daily equivalent of the annual rate of basic

1 pay for a comparable position paid under the Execu-
2 tive Schedule.

3 (4) STAFF OF FEDERAL AGENCIES.—Upon re-
4 quest of the Commission, the head of any Federal
5 department or agency may detail, without reim-
6 bursement, any of the personnel of that department
7 or agency to the Commission to assist it in carrying
8 out its duties under this section.

9 (5) ADMINISTRATIVE SUPPORT SERVICES.—
10 Upon the request of the Commission, the Adminis-
11 trator of General Services shall provide to the Com-
12 mission, on a reimbursable basis, the administrative
13 support services necessary for the Commission to
14 carry out its responsibilities under this section.

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

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

21 (h) EXPEDITED CONSIDERATION OF COMMISSION
22 RECOMMENDATIONS.—

23 (1) EXPEDITED CONSIDERATION.—

24 (A) INTRODUCTION OF APPROVAL BILL.—

25 The majority leader of each House or a des-

1 ignee shall (by request) introduce an approval
2 bill as described in paragraph (3) not later than
3 the third day of session of that House after the
4 date of receipt of the report transmitted to the
5 Congress under subsection (b).

6 (B) CONSIDERATION IN THE HOUSE OF
7 REPRESENTATIVES.—

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

22 (ii) PROCEEDING TO CONSIDER-
23 ATION.—Not later than 3 legislative days
24 after the approval bill is reported or a
25 committee has been discharged from fur-

1 ther consideration thereof, it shall be in
2 order to move to proceed to consider the
3 approval bill in the House. Such a motion
4 shall be in order only at a time designated
5 by the Speaker in the legislative schedule
6 within two legislative days after the day on
7 which the proponent announces an inten-
8 tion to the House to offer the motion pro-
9 vided that such notice may not be given
10 until the approval bill is reported or a com-
11 mittee has been discharged from further
12 consideration thereof. Such a motion shall
13 not be in order after the House has dis-
14 posed of a motion to proceed with respect
15 to that special message. The previous ques-
16 tion shall be considered as ordered on the
17 motion to its adoption without intervening
18 motion. A motion to reconsider the vote by
19 which the motion is disposed of shall not
20 be in order.

21 (iii) CONSIDERATION.—If the motion
22 to proceed is agreed to, the House shall
23 immediately proceed to consider the ap-
24 proval bill in the House without inter-
25 vening motion. The approval bill shall be

1 considered as read. All points of order
2 against the approval bill and against its
3 consideration are waived. The previous
4 question shall be considered as ordered on
5 the approval bill to its passage without in-
6 tervening motion except 4 hours of debate
7 equally divided and controlled by the pro-
8 ponent and an opponent and one motion to
9 limit debate on the bill. A motion to recon-
10 sider the vote on passage of the approval
11 bill shall not be in order.

12 (C) CONSIDERATION IN THE SENATE.—

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

1 (ii) MOTION TO PROCEED.—Not later
2 than 3 session days after the approval bill
3 is reported in the Senate or the committee
4 has been discharged thereof, it shall be in
5 order for any Senator to move to proceed
6 to consider the approval bill in the Senate.
7 The motion shall be decided without debate
8 and the motion to reconsider shall be
9 deemed to have been laid on the table.
10 Such a motion shall not be in order after
11 the Senate has disposed of a prior motion
12 to proceed with respect to the approval bill.

13 (iii) CONSIDERATION.—If a motion to
14 proceed to the consideration of the ap-
15 proval bill is agreed to, the Senate shall
16 immediately proceed to consideration of
17 the approval bill without intervening mo-
18 tion, order, or other business, and the ap-
19 proval bill shall remain the unfinished
20 business of the Senate until disposed of.
21 Consideration on the bill in the Senate
22 under this subsection, and all debatable
23 motions and appeals in connection there-
24 with, shall not exceed 10 hours equally di-
25 vided in the usual form. All points of order

1 against the approval bill or its consider-
2 ation are waived. Consideration in the Sen-
3 ate on any debatable motion or appeal in
4 connection with the approval bill shall be
5 limited to not more than 1 hour. A motion
6 to postpone, or a motion to proceed to the
7 consideration of other business, or a mo-
8 tion to recommit the approval bill is not in
9 order. A motion to reconsider the vote by
10 which the approval bill is agreed to or dis-
11 agreed to is not in order.

12 (D) AMENDMENTS PROHIBITED.—No
13 amendment to, or motion to strike a provision
14 from, an approval bill considered under this sec-
15 tion shall be in order in either the Senate or the
16 House of Representatives.

17 (E) COORDINATION WITH ACTION BY
18 OTHER HOUSE.—

19 (i) IN GENERAL.—If, before passing
20 the approval bill, one House receives from
21 the other a bill—

22 (I) the approval bill of the other
23 House shall not be referred to a com-
24 mittee; and

1 (II) the procedure in the receiv-
2 ing House shall be the same as if no
3 approval bill had been received from
4 the other House until the vote on pas-
5 sage, when the bill received from the
6 other House shall supplant the ap-
7 proval bill of the receiving House.

8 (ii) EXCEPTION.—This paragraph
9 shall not apply to the House of Represent-
10 atives.

11 (2) LIMITATION.—Paragraph (1) shall apply
12 only to an approval bill described in paragraph (3)
13 and introduced pursuant to paragraph (1)(A).

14 (3) APPROVAL BILL DESCRIBED.—For purposes
15 of paragraph (1), a bill described in this paragraph
16 is a bill—

17 (A) which consists of the proposed legisla-
18 tion which is included in such report to carry
19 out the recommendations made by the Commis-
20 sion in the report; and

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

24 (4) EXTENDED TIME PERIOD.—If Congress ad-
25 journs at the end of a Congress and an approval bill

1 was then pending in either House of Congress or a
2 committee thereof, or an approval bill had not yet
3 been introduced with respect to a special message,
4 then within the first 3 days of session of the next
5 Congress, the Commission shall transmit to Con-
6 gress an additional special message containing all of
7 the information in the previous, pending special mes-
8 sage. An approval bill may be introduced within the
9 first five days of session of such next Congress and
10 shall be treated as an approval bill under this sec-
11 tion, and the time periods described in subpara-
12 graphs (B) and (C) of paragraph (1) shall com-
13 mence on the day of introduction of that approval
14 bill.

15 **SEC. 105. REGIONAL INFRASTRUCTURE ACCELERATOR**
16 **PILOT PROGRAM.**

17 (a) IN GENERAL.—Not later than 90 days after the
18 date of enactment of this Act, the Secretary of Transpor-
19 tation shall establish a regional infrastructure accelerator
20 pilot program (in this section referred to as the “Pro-
21 gram”) to assist certain State, local, and regional public
22 entities to develop improved priorities and financing strat-
23 egies for the accelerated development of covered infra-
24 structure projects.

25 (b) ACCELERATOR ESTABLISHMENT AUTHORITY.—

1 (1) IN GENERAL.—In carrying out the Pro-
2 gram, the Secretary is authorized to establish re-
3 gional infrastructure accelerators that will—

4 (A) serve a defined geographic area; and

5 (B) act as a resource to State, local, and
6 regional public entities in that area in accord-
7 ance with this section.

8 (2) APPLICATIONS.—To be eligible for a re-
9 gional infrastructure accelerator under the Program,
10 State, local, and regional public entities shall submit
11 to the Secretary an application proposing an accel-
12 erator at such time, in such form, and containing
13 such information as the Secretary determines is ap-
14 propriate.

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

18 (4) GEOGRAPHIC DIVERSITY.—In establishing
19 regional infrastructure accelerators under the Pro-
20 gram, the Secretary shall consider the need for geo-
21 graphic diversity among such accelerators.

22 (c) ACCELERATOR COMPOSITION.—

23 (1) IN GENERAL.—Each regional infrastructure
24 accelerator established under subsection (b) shall in-

1 clude a membership composed of at least the fol-
2 lowing:

3 (A) A representative of each State, local,
4 or regional public entity in the area served by
5 the accelerator that participated in the applica-
6 tion that resulted in the establishment of the
7 accelerator.

8 (B) A representative of a State, local, or
9 regional public entity located outside the area
10 served by the accelerator with experience in in-
11 novative infrastructure financing.

12 (C) A representative of a financing entity
13 that intends to finance covered infrastructure
14 projects in the area served by the accelerator.

15 (D) A representative of a construction or
16 development entity that intends to develop cov-
17 ered infrastructure projects in the area served
18 by the accelerator.

19 (E) A representative of the Department of
20 Transportation.

21 (F) A representative of the Department of
22 the Treasury.

23 (G) A representative of the Environmental
24 Protection Agency.

1 (H) A representative of another Federal
2 department or agency with jurisdiction over
3 covered infrastructure projects intended for the
4 area served by the accelerator.

5 (2) LOCAL REPRESENTATION REQUIREMENT.—

6 At least 60 percent of the membership of each re-
7 gional infrastructure accelerator established under
8 subsection (b) shall be composed of representatives
9 of State, local, and regional public entities located in
10 the area served by the accelerator.

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

15 (d) REGIONAL INFRASTRUCTURE ACCELERATION
16 PLAN.—Each regional infrastructure accelerator estab-
17 lished under subsection (b) shall develop and implement
18 a regional infrastructure acceleration plan for the area
19 served by the accelerator that—

20 (1) describes how the accelerator will promote
21 investment in covered infrastructure projects, includ-
22 ing through—

23 (A) providing guidance and feedback to
24 State, local, and regional public entities with re-
25 spect to infrastructure priorities, financing

1 strategies, and other matters relating to such
2 projects;

3 (B) evaluating and promoting innovative
4 financing methods;

5 (C) connecting sources of financing to the
6 public sponsors of such projects;

7 (D) establishing standards to measure the
8 life-cycle impacts of investments in such
9 projects; and

10 (E) providing technical assistance and in-
11 formation on best practices with respect to such
12 projects from predevelopment activities through
13 maintenance;

14 (2) assesses regional and multimodal ap-
15 proaches to advancing innovative investment in cov-
16 ered infrastructure projects; and

17 (3) develops strategies for—

18 (A) transparency with respect to covered
19 infrastructure project analysis to ensure the
20 public interest is protected;

21 (B) predevelopment capital programs to fa-
22 cilitate the creation of a catalog of covered in-
23 frastructure projects available for investment;

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

1 (D) the multimodal integration of trans-
2 portation projects.

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

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

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

11 (2) that involves the construction, maintenance,
12 improvement, or repair of a transportation, energy,
13 water, communications, or educational facility that
14 is, or will be, owned by such an entity.

15 (g) APPROPRIATION.—Out of money in the Treasury
16 not otherwise appropriated, there is hereby appropriated
17 \$25,000,000 to the Department of Transportation to
18 carry out the Program. Amounts appropriated under this
19 subsection shall remain available without fiscal year limi-
20 tation.

1 **TITLE II—DEADLINE FOR**
2 **INTERNATIONAL TAX REFORM**

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

5 Notwithstanding any provision of title III, the provi-
6 sions of, and amendments made by, title III shall not take
7 effect if a bill which reforms the corporate international
8 tax system by eliminating the incentive to hold earnings
9 in low-tax foreign jurisdictions is enacted into law during
10 the 18-month period which begins on the date of the en-
11 actment of this Act.

12 **TITLE III—FALLBACK**
13 **INTERNATIONAL TAX REFORM**

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

15 For purposes of this title, the term “applicable date”
16 means the date which is 18 months after the date of the
17 enactment of this Act.

18 **Subtitle A—Reform of Taxation of**
19 **Income Earned by Controlled**
20 **Foreign Corporations**

21 **PART I—GENERAL PROVISIONS**

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

23 (a) IN GENERAL.—Subpart F of part III of sub-
24 chapter N of chapter 1 is amended by striking sections
25 952 through 956 and inserting the following:

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

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

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

7 “(2) 100 percent of the corporation’s modified
8 nonactive income.

9 **“(b) MODIFIED ACTIVE INCOME.—**

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

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

15 “(B) the amount of the reduction under
16 subsection (e) for deductions properly allocable
17 to such income.

18 **“(2) REDUCTION FOR CERTAIN LOSSES.—**

19 “(A) IN GENERAL.—The modified active
20 income determined under paragraph (1) for any
21 taxable year shall be reduced (but not below
22 zero)—

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

25 “(ii) then by any qualified loss for
26 such taxable year (or for any prior taxable

1 year to the extent provided in subsection
2 (c)(3)(B)).

3 “(B) LIMITATION.—An active foreign mar-
4 ket loss or qualified loss for any prior taxable
5 year shall only be taken into account under sub-
6 paragraph (A)—

7 “(i) if the prior taxable year is a tax-
8 able year which begins on or after the ap-
9 plicable date (as defined in section 300 of
10 the Infrastructure 2.0 Act), and for which
11 the controlled foreign corporation was a
12 controlled foreign corporation, and

13 “(ii) to the extent such loss has not
14 been previously taken into account under
15 this subsection.

16 “(3) ACTIVE FOREIGN MARKET LOSS.—The
17 term ‘active foreign market loss’ means, with respect
18 to any taxable year, the amount by which the
19 amount determined under paragraph (1)(B) exceeds
20 the amount determined under paragraph (1)(A).

21 “(c) MODIFIED NONACTIVE INCOME.—

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

1 “(A) the corporation’s gross income deter-
 2 mined without regard to active foreign market
 3 income, over

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

7 “(2) REDUCTION FOR QUALIFIED LOSSES.—
 8 The amount determined under paragraph (1) for
 9 any taxable year shall be reduced (but not below
 10 zero) by any qualified loss for any prior taxable year
 11 beginning on or after the applicable date (as defined
 12 in section 300 of the Infrastructure 2.0 Act), for
 13 which the controlled foreign corporation was a con-
 14 trolled foreign corporation, but only to the extent
 15 such loss has not been previously taken into account
 16 under subsection (b)(2) or this subsection.

17 “(3) QUALIFIED LOSS.—For purposes of this
 18 section—

19 “(A) IN GENERAL.—The term ‘qualified
 20 loss’ means, with respect to any taxable year,
 21 the amount by which the amount determined
 22 under paragraph (1)(B) exceeds the amount de-
 23 termined under paragraph (1)(A).

24 “(B) ORDERING RULE FOR LOSSES CAR-
 25 RIED FROM PRIOR TAXABLE YEARS.—In the

1 case of any qualified losses carried to a taxable
 2 year from 1 or more prior taxable years, such
 3 losses shall be taken into account—

4 “(i) first under paragraph (2), and

5 “(ii) then under subsection (b)(2)(B)

6 to the extent such losses exceed the
 7 amount determined under paragraph (1).

8 “(d) INCLUSION PERCENTAGE.—For purposes of this
 9 section—

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

14 “(2) ADDITIONAL INCLUSION FOR EARNINGS
 15 NOT SUBJECT TO OECD AVERAGE FOREIGN TAX.—

16 The number of percentage points determined under
 17 this paragraph with respect to any controlled foreign
 18 corporation for any taxable year, is the number of
 19 percentage points (not less than zero nor more than
 20 15) which bears the same ratio to 15 as—

21 “(A) the number of percentage points by
 22 which 25 percent exceeds the aggregate foreign
 23 rate of tax imposed on the modified active in-
 24 come of such controlled foreign corporation for
 25 such taxable year, bears to

1 “(B) 25.

2 “(e) EXCLUSION OF UNITED STATES INCOME.—For
3 purposes of this subpart, any item of income of the con-
4 trolled foreign corporation which is effectively connected
5 with the conduct by such corporation of a trade or busi-
6 ness within the United States shall not be taken into ac-
7 count in computing the subpart F income of such corpora-
8 tion unless such item is exempt from taxation (or is sub-
9 ject to a reduced rate of tax) pursuant to a treaty obliga-
10 tion of the United States. For purposes of this subsection,
11 any exemption (or reductions) with respect to the tax im-
12 posed by section 884 shall not be taken into account.

13 “(f) DEDUCTIONS.—For purposes of subsections
14 (b)(1)(B) and (c)(1)(B), the active foreign market income,
15 and gross income other than active foreign market income,
16 of a controlled foreign corporation shall each be reduced,
17 under regulations prescribed by the Secretary, by any de-
18 ductions (including taxes) of such corporation properly al-
19 locable to items of income taken into account in computing
20 such income.

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

22 “(a) ACTIVE FOREIGN MARKET INCOME DEFINED.—
23 For purposes of this subpart, the term ‘active foreign mar-
24 ket income’ means, with respect to any controlled foreign

1 corporation, the aggregate of all items of income which
2 are—

3 “(1) attributable to economically significant ac-
4 tivities with respect to a qualified trade or business,
5 and

6 “(2) derived in connection with—

7 “(A) property which is sold, exchanged, or
8 otherwise disposed of for use, consumption, or
9 disposition outside of the United States, or

10 “(B) services which are provided outside of
11 the United States with respect to persons or
12 property located outside of the United States.

13 “(b) TREATMENT OF PASSIVE INCOME.—

14 “(1) IN GENERAL.—Except as otherwise pro-
15 vided in this subsection, the term ‘active foreign
16 market income’ shall not include the passive income
17 (as defined in section 954) of a controlled foreign
18 corporation.

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

22 “(A) if the controlled foreign corporation
23 or a qualified business unit of the corporation
24 is an eligible controlled foreign corporation (as
25 defined in section 954(c)), any item of income

1 of the corporation or unit which is qualified
2 banking or financing income (as so defined),

3 “(B) if the controlled foreign corporation
4 or a qualified business unit of the corporation
5 is a qualifying insurance company (as defined
6 in section 954(d)) or a qualifying insurance
7 company branch (as so defined), any item of in-
8 come of the corporation or unit which is quali-
9 fied insurance income (as so defined),

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

15 “(D) in the case of a regular dealer in
16 property which is property described in section
17 954(a)(1)(B), forward contracts, option con-
18 tracts, or similar financial instruments (includ-
19 ing notional principal contracts and all instru-
20 ments referenced to commodities), any item of
21 income from any transaction (including hedging
22 transactions and transactions involving physical
23 settlement) entered into in the ordinary course
24 of such dealer’s trade or business as such a
25 dealer.

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

6 “(A) gain from such sale, exchange, or dis-
7 position shall be treated as active foreign mar-
8 ket income to the extent that such gain would
9 have been excluded from gross income under
10 section 1203 if the selling corporation were a
11 United States shareholder in the other con-
12 trolled foreign corporation, and

13 “(B) loss from such sale, exchange, or dis-
14 position shall not be allowed to the extent such
15 loss would have been disallowed under section
16 1213 if the selling corporation were a United
17 States shareholder in the other controlled for-
18 eign corporation.

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

21 “(A) IN GENERAL.—

22 “(i) PORTION TREATED AS ACTIVE
23 FOREIGN MARKET INCOME.—In the case of
24 any sale or exchange by a controlled for-
25 eign corporation of an interest in a part-

nership with respect to which such corporation is a 25-percent owner, gain or loss on such sale shall be taken into account in determining active foreign market income in the amount which bears the same ratio to the amount of such gain or loss as the controlled foreign corporation's distributable share of the active foreign market income from the partnership over the applicable period bears to the controlled foreign corporation's distributable share of gross income from the partnership over such period. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

“(ii) APPLICABLE PERIOD.—For purposes of this subparagraph, the term ‘applicable period’ means, with respect to any interest in a partnership, the shorter of the 3-taxable-year period immediately preceding the taxable year of the sale or exchange or the controlled foreign corpora-

tion’s holding period in the interest. In no event shall the applicable period include any portion of any taxable year beginning before the applicable date (as defined in section 300 of the Infrastructure 2.0 Act).

“(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term ‘25-percent owner’ means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or a partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any capital or profits interest in any partnership held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

“(c) TREATMENT OF INSURANCE INCOME.—

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

6 “(2) ACTIVE FOREIGN MARKET INCOME IN-
 7 CLUDES EXEMPT INSURANCE INCOME.—The term
 8 ‘active foreign market income’ shall include exempt
 9 insurance income (as defined in section 955(c)) shall
 10 be treated as active foreign market income.

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

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

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

22 “(B) such property would be used in the
 23 manufacture or production of, or as a compo-
 24 nent part in, other property which would be

1 used, consumed, or disposed of in the United
2 States.

3 “(2) CHAIN OF RELATED PERSONS.—If—

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

7 “(B) all sales, exchanges, or dispositions of
8 such property (or of the other property de-
9 scribed in paragraph (1)(B)) before the sale for
10 use, consumption, or disposition in the United
11 States are between related persons,

12 then, for purposes of paragraph (1), there shall be
13 deemed to have been a reasonable expectation that
14 the property (or the other property described in
15 paragraph (1)(B)) would be used, consumed, or dis-
16 posed of in the United States.

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

21 “(A) sold, leased, rented, or licensed by the
22 controlled foreign corporation or a related per-
23 son for direct use, consumption, or disposition
24 outside the United States, or

1 “(B) used by the controlled foreign cor-
2 poration or a related person as a component in
3 other property which is so sold, leased, rented,
4 or licensed.

5 “(4) RELATED PERSON DEFINED.—For pur-
6 poses of this subsection, the term ‘related person’
7 has the meaning given such term under section
8 954(b).

9 “(e) ECONOMICALLY SIGNIFICANT ACTIVITIES.—For
10 purposes of this section, the term ‘economically significant
11 activities’ means, with respect to any item of income, ac-
12 tivities—

13 “(1) performed outside the United States,

14 “(2) performed by officers or employees of the
15 controlled foreign corporation which are part of the
16 management and operational functions of the cor-
17 poration, and

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

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

22 “(1) IN GENERAL.—The term ‘qualified trade
23 or business’ means any trade or business which con-
24 sists of—

1 “(A) manufacturing, producing, growing,
2 or extracting property outside of the United
3 States, or

4 “(B) providing services outside of the
5 United States.

6 “(2) SPECIAL RULE FOR SUBSTANTIAL CON-
7 TRIBUTIONS TO MANUFACTURING AND SERVICES.—
8 If a trade or business consists of making a substan-
9 tial contribution through the activities of the officers
10 and employees of the controlled foreign corporation
11 to a qualified trade or business which is described in
12 subparagraph (A) or (B) of paragraph (1) of an-
13 other person, then the trade or business shall be
14 treated as a qualified trade or business described in
15 subparagraph (A) or (B) of paragraph (1), which-
16 ever is applicable.

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

18 “(a) PASSIVE INCOME.—

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

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

1 “(B) CERTAIN PROPERTY TRANS-
2 ACTIONS.—The excess of gains over losses from
3 the sale or exchange of property—

4 “(i) which gives rise to income de-
5 scribed in subparagraph (A) (after applica-
6 tion of paragraph (2)(A)) other than prop-
7 erty which gives rise to income not treated
8 as passive income by reason of subsection
9 (c) or (d) for the taxable year,

10 “(ii) which is an interest in a trust,
11 partnership, or REMIC, or

12 “(iii) which does not give rise to any
13 income.

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

19 “(C) COMMODITIES TRANSACTIONS.—The
20 excess of gains over losses from transactions
21 (including futures, forward, and similar trans-
22 actions) in any commodities. This subparagraph
23 shall not apply to gains or losses which—

1 “(i) arise out of commodity hedging
2 transactions (as defined in paragraph
3 (5)(A)),

4 “(ii) are active business gains or
5 losses from the sale of commodities, but
6 only if substantially all of the controlled
7 foreign corporation’s commodities are
8 property described in paragraph (1), (2),
9 or (8) of section 1221(a), or

10 “(iii) are foreign currency gains or
11 losses (as defined in section 988(b)) attrib-
12 utable to any section 988 transactions.

13 “(D) FOREIGN CURRENCY GAINS.—The ex-
14 cess of foreign currency gains over foreign cur-
15 rency losses (as defined in section 988(b)) at-
16 tributable to any section 988 transactions. This
17 subparagraph shall not apply in the case of any
18 transaction, other than a borrowing, directly re-
19 lated to the business needs of the controlled for-
20 eign corporation.

21 “(E) INCOME EQUIVALENT TO INTER-
22 EST.—Any income equivalent to interest, in-
23 cluding income from commitment fees (or simi-
24 lar amounts) for loans actually made.

1 “(F) INCOME FROM NOTIONAL PRINCIPAL
2 CONTRACTS.—

3 “(i) IN GENERAL.—Net income from
4 notional principal contracts.

5 “(ii) COORDINATION WITH OTHER
6 CATEGORIES OF PASSIVE INCOME.—Any
7 item of income, gain, deduction, or loss
8 from a notional principal contract entered
9 into for purposes of hedging any item de-
10 scribed in any preceding subparagraph
11 shall not be taken into account for pur-
12 poses of this subparagraph but shall be
13 taken into account under such other sub-
14 paragraph.

15 “(G) PAYMENTS IN LIEU OF DIVIDENDS.—
16 Payments in lieu of dividends which are made
17 pursuant to an agreement to which section
18 1058 applies.

19 “(H) PERSONAL SERVICE CONTRACTS.—

20 “(i) Amounts received under a con-
21 tract under which the corporation is to fur-
22 nish personal services if—

23 “(I) some person other than the
24 corporation has the right to designate
25 (by name or by description) the indi-

1 vidual who is to perform the services,
2 or

3 “(II) the individual who is to per-
4 form the services is designated (by
5 name or by description) in the con-
6 tract, and

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

9 This subparagraph shall apply with respect to
10 amounts received for services under a particular
11 contract only if at some time during the taxable
12 year 25 percent or more in value of the out-
13 standing stock of the corporation is owned, di-
14 rectly or indirectly, by or for the individual who
15 has performed, is to perform, or may be des-
16 ignated (by name or by description) as the one
17 to perform, such services.

18 “(2) EXCEPTION FOR CERTAIN AMOUNTS.—

19 “(A) RENTS AND ROYALTIES DERIVED IN
20 ACTIVE BUSINESS.—Passive income shall not
21 include rents and royalties which are derived in
22 the active conduct of a trade or business and
23 which are received from a person other than a
24 related person. For purposes of the preceding
25 sentence, rents derived from leasing an aircraft

1 or vessel in foreign commerce shall not fail to
2 be treated as derived in the active conduct of a
3 trade or business if, as determined under regu-
4 lations prescribed by the Secretary, the active
5 leasing expenses are not less than 10 percent of
6 the profit on the lease.

7 “(B) EXCEPTION FOR DEALERS.—Except
8 as provided by regulations, in the case of a reg-
9 ular dealer in property which is property de-
10 scribed in paragraph (1)(B), forward contracts,
11 option contracts, or similar financial instru-
12 ments (including notional principal contracts
13 and all instruments referenced to commodities),
14 there shall not be taken into account in com-
15 puting passive income any item of income, gain,
16 deduction, or loss from any transaction (includ-
17 ing hedging transactions and transactions in-
18 volving physical settlement) entered into in the
19 ordinary course of such dealer’s trade or busi-
20 ness as such a dealer.

21 “(3) LOOK-THRU RULE FOR CERTAIN PARTNER-
22 SHIP SALES.—

23 “(A) IN GENERAL.—In the case of any
24 sale or exchange by a controlled foreign cor-
25 poration of an interest in a partnership with re-

spect to which such corporation is a 25-percent owner, gain or loss on such sale shall be treated as being described in paragraph (1)(B)(ii) in the amount which bears the same ratio to the amount of such gain or loss as the controlled foreign corporation's distributable share of passive income from the partnership over the applicable period (as defined in section 953(b)(4)(A)(ii)) bears to the controlled foreign corporation's distributable share of gross income from the partnership over such period. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for the coordination of this paragraph with the provisions of subchapter K.

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

“(4) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

“(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term ‘commodity hedging trans-

1 action’ means any transaction with respect to a
 2 commodity if such transaction—

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

5 “(I) without regard to subpara-
 6 graph (A)(ii) thereof,

7 “(II) by applying subparagraph
 8 (A)(i) thereof by substituting ‘ordi-
 9 nary property or property described in
 10 section 1231(b)’ for ‘ordinary prop-
 11 erty’, and

12 “(III) by substituting ‘controlled
 13 foreign corporation’ for ‘taxpayer’
 14 each place it appears, and

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

17 “(B) TREATMENT OF DEALER ACTIVITIES
 18 UNDER PARAGRAPH (1)(C).—Commodities with
 19 respect to which gains and losses are not taken
 20 into account under paragraph (2)(B) in com-
 21 puting a controlled foreign corporation’s passive
 22 income shall not be taken into account in apply-
 23 ing the substantially all test under paragraph
 24 (1)(C)(ii) to such corporation.

1 “(C) REGULATIONS.—The Secretary shall
2 prescribe such regulations as are appropriate to
3 carry out the purposes of paragraph (1)(C) in
4 the case of transactions involving related per-
5 sons.

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

9 “(1) such person is an individual, corporation,
10 partnership, trust, or estate which controls, or is
11 controlled by, the controlled foreign corporation, or

12 “(2) such person is a corporation, partnership,
13 trust, or estate which is controlled by the same per-
14 son or persons which control the controlled foreign
15 corporation.

16 For purposes of the preceding sentence, control means,
17 with respect to a corporation, the ownership, directly or
18 indirectly, of stock possessing more than 50 percent of the
19 total voting power of all classes of stock entitled to vote
20 or of the total value of stock of such corporation. In the
21 case of a partnership, trust, or estate, control means the
22 ownership, directly or indirectly, of more than 50 percent
23 (by value) of the beneficial interests in such partnership,
24 trust, or estate. For purposes of this subsection, rules
25 similar to the rules of section 958 shall apply.

1 “(c) SPECIAL RULE FOR INCOME DERIVED IN THE
2 ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR
3 BUSINESSES.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (a)(1), passive income shall not include qualified
6 banking or financing income of an eligible controlled
7 foreign corporation.

8 “(2) ELIGIBLE CONTROLLED FOREIGN COR-
9 PORATION.—For purposes of this subsection, the
10 term ‘eligible controlled foreign corporation’ means
11 any controlled foreign corporation if—

12 “(A) more than 80 percent of the gross in-
13 come of the controlled foreign corporation is de-
14 rived directly from the active and regular con-
15 duct of a lending, finance, or financial services
16 business from transactions with customers
17 which are located outside the United States and
18 are not related persons, or

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

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

22 “(A) IN GENERAL.—The term ‘qualified
23 banking or financing income’ means income of
24 an eligible controlled foreign corporation
25 which—

1 “(i) is derived in the active conduct of
2 a banking, financing, or similar business
3 by such eligible controlled foreign corpora-
4 tion,

5 “(ii) is derived from one or more
6 transactions—

7 “(I) with customers located in a
8 country other than the United States,
9 and

10 “(II) substantially all of the ac-
11 tivities in connection with which are
12 conducted directly by the corporation
13 in its home country, and

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

17 “(B) INCOME DERIVED FROM CUSTOMERS
18 TO INCLUDE CERTAIN INVESTMENT INCOME.—

19 For purposes of subparagraph (A), in the case
20 of a regulated financial institution, income de-
21 rived from customers includes income derived
22 from—

23 “(i) reserves that are required to be
24 held pursuant to banking regulations,

1 “(ii) deposits placed with the central
2 bank (or equivalent thereof) in the cor-
3 poration’s home country, and

4 “(iii) investments in debt instruments
5 issued by the home country.

6 “(C) SUBSTANTIAL ACTIVITY REQUIRE-
7 MENT FOR CROSS BORDER INCOME.—The term
8 ‘qualified banking or financing income’ shall
9 not include income derived from 1 or more
10 transactions with customers located in a coun-
11 try other than the home country of the eligible
12 controlled foreign corporation unless such cor-
13 poration conducts substantial activity with re-
14 spect to a banking, financing, or similar busi-
15 ness in its home country.

16 “(D) DIRECT CONDUCT OF ACTIVITIES.—
17 For purposes of subparagraph (A)(ii)(II), an
18 activity shall be treated as conducted directly by
19 an eligible controlled foreign corporation in its
20 home country if the activity is performed by
21 employees of a related person and—

22 “(i) the related person is a resident
23 subject to tax under the laws of the home
24 country of the corporation to which sub-
25 paragraph (A)(ii)(II) is being applied,

1 “(ii) the activity is performed in such
2 home country, and

3 “(iii) the related person is com-
4 pensated on an arm’s-length basis for the
5 performance of the activity by its employ-
6 ees and such compensation is treated as
7 earned by such person in such home coun-
8 try for purposes of the home country’s tax
9 laws.

10 “(4) LENDING, FINANCE, OR FINANCIAL SERV-
11 ICES BUSINESS.—For purposes of this subsection,
12 except as provided in regulations, the term ‘lending,
13 finance, or financial services business’ means the
14 business of—

15 “(A) making loans,

16 “(B) purchasing, selling, discounting, or
17 negotiating on a regular basis accounts receiv-
18 able, notes, or installment obligations,

19 “(C) engaging in leasing (including enter-
20 ing into leases and purchasing, servicing, and
21 disposing of leases and leased assets),

22 “(D) issuing letters of credit or providing
23 guarantees,

24 “(E) providing charge and credit card
25 services,

1 “(F) performing trust services, including
2 as a fiduciary, agent, or custodian, other than
3 trust services provided by a broker or dealer in
4 stock, securities, or other financial instruments,

5 “(G) arranging interest rate or currency
6 futures, forwards, options, or notional principal
7 contracts for, or entering into such transactions
8 with, customers,

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

11 “(I) providing correspondent bank services
12 for customers,

13 “(J) engaging in hedging activities directly
14 related to an activity described in any other
15 subparagraph of this paragraph,

16 “(K) underwriting issues of stock, debt, or
17 other securities for customers,

18 “(L) providing financial, investment advi-
19 sory, or investment management services,

20 “(M) purchasing or selling stock, debt in-
21 struments, interest rate or currency futures, or
22 other securities or derivative financial products
23 (including notional principal contracts) from or
24 to customers and holding such stock, debt in-
25 struments, futures, or other securities or prod-

1 ucts as inventory for sale to customers, unless
2 such stock, debt instruments, futures, or other
3 securities or products are not held in a dealer
4 capacity,

5 “(N) effecting transactions in securities for
6 customers as a securities broker, or

7 “(O) rendering services or making facilities
8 available in connection with activities described
9 in subparagraphs (A) through (N) carried on
10 by—

11 “(i) the corporation rendering services
12 or making facilities available, or

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

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

19 “(A) CUSTOMER.—The term ‘customer’
20 means, with respect to any controlled foreign
21 corporation, any person which has a customer
22 relationship with such corporation and which is
23 acting in its capacity as such.

24 “(B) HOME COUNTRY.—Except as pro-
25 vided in regulations, the term ‘home country’

1 means, with respect to any entity, the country
2 with respect to which the entity is a resident for
3 purposes of the country's income tax laws.

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

6 “(i) if a customer is a natural person,
7 the customer is considered to be located in
8 the country in which the customer is phys-
9 ically located when entering into the trans-
10 action, and

11 “(ii) if a customer is not a natural
12 person, the customer is considered to be lo-
13 cated in the country from which the cus-
14 tomer enters into the transaction.

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

18 “(E) REGULATED FINANCIAL INSTITU-
19 TION.—Except as provided in regulations, the
20 term ‘regulated financial institution’ means a
21 controlled foreign corporation which—

22 “(i) is engaged in the active conduct
23 of a banking business and is an institution
24 licensed to do business as a bank in the
25 United States (or is any other corporation

1 not so licensed which is specified by the
2 Secretary in regulations), or

3 “(ii) satisfies each of the following
4 conditions:

5 “(I) The corporation is directly
6 or indirectly wholly owned by a do-
7 mestic corporation that is a bank (as
8 defined in section 581) or a depository
9 institution holding company (as de-
10 fined in section 3(w)(1) of the Federal
11 Deposit Insurance Act (12 U.S.C.
12 1813(w)(1))).

13 “(II) The corporation is subject
14 to bank regulatory supervision in a ju-
15 risdiction the central bank of which
16 (or equivalent thereof) is a member of
17 the Basel Committee on Banking Su-
18 pervision.

19 “(III) The corporation is licensed
20 and regulated in such jurisdiction as a
21 bank.

22 “(6) SEPARATE APPLICATION TO QUALIFIED
23 BUSINESS UNITS.—

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

4 “(i) this subsection shall be applied
5 separately to each such unit in the same
6 manner as if it were a controlled foreign
7 corporation, and

8 “(ii) if any such unit is treated as an
9 eligible controlled foreign corporation after
10 application of clause (i), the qualified
11 banking or financing income of such unit
12 shall be treated as qualified banking or fi-
13 nancing income of the controlled foreign
14 corporation of which such unit is a part.

15 “(B) DETERMINATIONS MADE SEPA-
16 RATELY.—For purposes of the separate applica-
17 tion of this subsection to a controlled foreign
18 corporation and its qualified business units—

19 “(i) in the case of the controlled for-
20 eign corporation, only activities and items
21 of income, deduction, gain, or loss and ac-
22 tivities of such corporation not properly al-
23 locable or attributable to any qualified
24 business unit of such corporation shall be
25 taken into account, and

1 “(ii) in the case of a qualified busi-
2 ness unit, only activities and items of in-
3 come, deduction, gain, or loss and activities
4 properly allocable or attributable to such
5 unit shall be taken into account.

6 “(C) HOME COUNTRY.—For purposes of
7 this subsection, except as provided in regula-
8 tions, notwithstanding paragraph (5)(B), the
9 home country with respect to any qualified
10 business unit treated as a controlled foreign
11 corporation under subparagraph (A) shall be
12 the country in which such unit maintains its
13 principal office.

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

16 “(A) there shall be disregarded any item of
17 income, gain, loss, or deduction with respect to
18 any transaction or series of transactions one of
19 the principal purposes of which is qualifying in-
20 come or gain for the exclusion under this sec-
21 tion, including any transaction or series of
22 transactions a principal purpose of which is the
23 acceleration or deferral of any item in order to
24 claim the benefits of such exclusion through the
25 application of this subsection,

1 “(B) there shall be disregarded any item of
2 income, gain, loss, or deduction of an entity
3 which is not engaged in regular and continuous
4 transactions with customers which are not re-
5 lated persons,

6 “(C) there shall be disregarded any item of
7 income, gain, loss, or deduction with respect to
8 any transaction or series of transactions uti-
9 lizing, or doing business with—

10 “(i) one or more entities in order to
11 satisfy any home country requirement
12 under this subsection, or

13 “(ii) a special purpose entity or ar-
14 rangement, including a securitization, fi-
15 nancing, or similar entity or arrangement,
16 if one of the principal purposes of such trans-
17 action or series of transactions is qualifying in-
18 come or gain for the exclusion under this sub-
19 section, and

20 “(D) a related person, an officer, a direc-
21 tor, or an employee with respect to any con-
22 trolled foreign corporation which would other-
23 wise be treated as a customer of such corpora-
24 tion with respect to any transaction shall not be
25 so treated if a principal purpose of such trans-

1 action is to satisfy any requirement of this sub-
2 section.

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

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

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

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

16 “(A) received from a person other than a
17 related person and derived from the invest-
18 ments made by a qualifying insurance company
19 or a qualifying insurance company branch of its
20 reserves allocable to exempt contracts or of 80
21 percent of its unearned premiums from exempt
22 contracts (as both are determined in the man-
23 ner prescribed under paragraph (4)), or

24 “(B) received from a person other than a
25 related person and derived from investments

made by a qualifying insurance company or a
qualifying insurance company branch of an
amount of its assets allocable to exempt con-
tracts equal to—

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

“(ii) in the case of life insurance or
annuity contracts, 10 percent of the re-
serves described in subparagraph (A) for
such contracts.

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

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

1 “(B) income not allocable under subpara-
2 graph (A) shall be allocated ratably among con-
3 tracts not described in subparagraph (A).

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

7 “(A) PROPERTY AND CASUALTY CON-
8 TRACTS.—The unearned premiums and reserves
9 of a qualifying insurance company or a quali-
10 fying insurance company branch with respect to
11 property, casualty, or health insurance con-
12 tracts shall be determined using the same meth-
13 ods and interest rates which would be used if
14 such company or branch were subject to tax
15 under subchapter L, except that—

16 “(i) the interest rate determined for
17 the functional currency of the company or
18 branch, and which, except as provided by
19 the Secretary, is calculated in the same
20 manner as the Federal mid-term rate
21 under section 1274(d), shall be substituted
22 for the applicable Federal interest rate,
23 and

1 “(ii) such company or branch shall
2 use the appropriate foreign loss payment
3 pattern.

4 “(B) LIFE INSURANCE AND ANNUITY CON-
5 TRACTS.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), the amount of the re-
8 serve of a qualifying insurance company or
9 qualifying insurance company branch for
10 any life insurance or annuity contract shall
11 be equal to the greater of—

12 “(I) the net surrender value of
13 such contract (as defined in section
14 807(e)(1)(A)), or

15 “(II) the reserve determined
16 under paragraph (5).

17 “(ii) RULING REQUEST, ETC.—The
18 amount of the reserve under clause (i)
19 shall be the foreign statement reserve for
20 the contract (less any catastrophe, defi-
21 ciency, equalization, or similar reserves), if,
22 pursuant to a ruling request submitted by
23 the taxpayer or as provided in published
24 guidance, the Secretary determines that
25 the factors taken into account in deter-

1 mining the foreign statement reserve pro-
2 vide an appropriate means of measuring
3 income.

4 “(C) LIMITATION ON RESERVES.—In no
5 event shall the reserve determined under this
6 paragraph for any contract as of any time ex-
7 ceed the amount which would be taken into ac-
8 count with respect to such contract as of such
9 time in determining foreign statement reserves
10 (less any catastrophe, deficiency, equalization,
11 or similar reserves).

12 “(5) AMOUNT OF RESERVE.—The amount of
13 the reserve determined under this paragraph with
14 respect to any contract shall be determined in the
15 same manner as it would be determined if the quali-
16 fying insurance company or qualifying insurance
17 company branch were subject to tax under sub-
18 chapter L, except that in applying such sub-
19 chapter—

20 “(A) the interest rate determined for the
21 functional currency of the company or branch,
22 and which, except as provided by the Secretary,
23 is calculated in the same manner as the Federal
24 mid-term rate under section 1274(d), shall be

1 substituted for the applicable Federal interest
2 rate,

3 “(B) the highest assumed interest rate
4 permitted to be used in determining foreign
5 statement reserves shall be substituted for the
6 prevailing State assumed interest rate, and

7 “(C) tables for mortality and morbidity
8 which reasonably reflect the current mortality
9 and morbidity risks in the company’s or
10 branch’s home country shall be substituted for
11 the mortality and morbidity tables otherwise
12 used for such subchapter.

13 The Secretary may provide that the interest rate
14 and mortality and morbidity tables of a qualifying
15 insurance company may be used for 1 or more of its
16 qualifying insurance company branches when appro-
17 priate.

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

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

23 “(a) INSURANCE INCOME.—

1 “(1) IN GENERAL.—For purposes of section
2 953(c), the term ‘insurance income’ means the gross
3 income which—

4 “(A) is attributable to the issuing (or rein-
5 suring) of an insurance or annuity contract,
6 and

7 “(B) is of a kind that would be subject to
8 tax under subchapter L of this chapter if such
9 income were the income of a domestic insurance
10 company.

11 “(2) EXCEPTION.—Such term shall not include
12 any exempt insurance income (as defined in sub-
13 section (c)).

14 “(b) SPECIAL RULES FOR DETERMINATION OF
15 GROSS INCOME AND ALLOCABLE DEDUCTIONS.—For
16 purposes of determining gross income under subsection (a)
17 and deductions allocable to insurance income under sec-
18 tion 952(e), the following rules shall apply:

19 “(1) CERTAIN DEDUCTIONS NOT ALLOWED.—
20 The following provisions of subchapter L shall not
21 apply:

22 “(A) The small life insurance company de-
23 duction.

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

1 “(C) Section 832(c)(5) (relating to certain
2 capital losses).

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

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

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

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

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

13 shall be taken into account only to the extent they
14 are in respect of any reinsurance or the issuing of
15 any insurance or annuity contract described in sub-
16 section (a)(1).

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

20 “(c) EXEMPT INSURANCE INCOME.—For purposes of
21 this section—

22 “(1) EXEMPT INSURANCE INCOME DEFINED.—

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

1 “(i) is attributable to the issuing (or
2 reinsuring) of an exempt contract by such
3 company or a qualifying insurance com-
4 pany branch of such company, and

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

8 “(B) EXCEPTION FOR CERTAIN ARRANGE-
9 MENTS.—Such term shall not include income
10 attributable to the issuing (or reinsuring) of an
11 exempt contract as the result of any arrange-
12 ment whereby another corporation receives a
13 substantially equal amount of premiums or
14 other consideration in respect of issuing (or re-
15 insuring) a contract which is not an exempt
16 contract.

17 “(C) DETERMINATIONS MADE SEPA-
18 RATELY.—For purposes of this subsection and
19 section 954(d), the exempt insurance income
20 and exempt contracts of a qualifying insurance
21 company or any qualifying insurance company
22 branch of such company shall be determined
23 separately for such company and each such
24 branch by taking into account—

1 “(i) in the case of the qualifying in-
2 surance company, only items of income, de-
3 duction, gain, or loss, and activities of such
4 company not properly allocable or attrib-
5 utable to any qualifying insurance com-
6 pany branch of such company, and

7 “(ii) in the case of a qualifying insur-
8 ance company branch, only items of in-
9 come, deduction, gain, or loss and activities
10 properly allocable or attributable to such
11 branch.

12 “(2) EXEMPT CONTRACT.—

13 “(A) IN GENERAL.—The term ‘exempt
14 contract’ means an insurance or annuity con-
15 tract issued or reinsured by a qualifying insur-
16 ance company or qualifying insurance company
17 branch in connection with property in, liability
18 arising out of activity in, or the lives or health
19 of residents of, a country other than the United
20 States.

21 “(B) MINIMUM NON-RELATED INCOME RE-
22 QUIRED.—No contract of a qualifying insurance
23 company or of a qualifying insurance company
24 branch shall be treated as an exempt contract
25 unless such company or branch derives more

1 than 30 percent of its net written premiums
2 from exempt contracts (determined without re-
3 gard to this subparagraph) with respect to
4 which no policyholder, insured, annuitant, or
5 beneficiary is a related person (as defined in
6 section 954(b)).

7 “(C) SUBSTANTIAL ACTIVITY REQUIRE-
8 MENTS.—A contract issued by a qualifying in-
9 surance company or qualifying insurance com-
10 pany branch shall not be treated as an exempt
11 contract unless such company or branch, as the
12 case may be—

13 “(i) conducts substantial activity with
14 respect to an insurance business in its
15 home country, and

16 “(ii) performs in its home country
17 substantially all of the activities necessary
18 to give rise to the income generated by
19 such contract.

20 “(3) QUALIFYING INSURANCE COMPANY.—

21 “(A) IN GENERAL.—The term ‘qualifying
22 insurance company’ means any controlled for-
23 eign corporation—

24 “(i) which—

1 “(I) is subject to regulation as an
2 insurance (or reinsurance) company
3 by its home country, and is licensed,
4 authorized, or regulated by the appli-
5 cable insurance regulatory body for its
6 home country to sell insurance, rein-
7 surance, or annuity contracts to per-
8 sons other than related persons (with-
9 in the meaning of section 954(b)) in
10 such home country, and

11 “(II) is engaged in the insurance
12 business and would be subject to tax
13 under subchapter L if it were a do-
14 mestic corporation,

15 “(ii) which derives more than 50 per-
16 cent of its aggregate net written premiums
17 from the issuance or reinsurance by such
18 controlled foreign corporation and each of
19 its qualifying insurance company branches
20 of contracts with respect to which no pol-
21 icyholder, insured, annuitant, or bene-
22 ficiary is a related person (as defined in
23 section 954(b)), except that in the case of
24 a branch, such premiums shall only be
25 taken into account to the extent such pre-

1 miums are treated as earned by such
2 branch in its home country for purposes of
3 such country's tax laws,

4 “(iii) more than 50 percent of the
5 gross receipts of which for the taxable
6 year—

7 “(I) consist of premiums for in-
8 surance or reinsurance in connection
9 with property, liability, or the lives or
10 health of individuals, and

11 “(II) are treated as earned by
12 such controlled foreign corporation in
13 its home country for purposes of such
14 country's tax laws, and

15 “(iv) the applicable insurance liabil-
16 ities of which constitute more than 35 per-
17 cent of its total assets as reported on the
18 company's applicable financial statement
19 for the year with which or in which the
20 taxable year ends.

21 “(B) APPLICABLE INSURANCE LIABIL-
22 ITIES.—For purposes of subparagraph (A)(iv),
23 the term ‘applicable insurance liabilities’
24 means—

1 “(i) loss and loss adjustment ex-
2 penses,

3 “(ii) unearned premiums, and

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

13 “(C) APPLICABLE FINANCIAL STATE-
14 MENT.—For purposes of subparagraph (A)(iv),
15 the term ‘applicable financial statement’ means
16 a statement for financial reporting purposes
17 which—

18 “(i) is made on the basis of generally
19 accepted accounting principles,

20 “(ii) is made on the basis of inter-
21 national financial reporting standards, but
22 only if there is no statement that meets
23 the requirement of clause (i), or

24 “(iii) except as otherwise provided by
25 the Secretary in regulations, is the annual

1 statement which is required to be filed
2 with the home country insurance regu-
3 latory body, but only if there is no state-
4 ment which meets the requirements of
5 clause (i) or (ii).

6 “(D) REGULATIONS.—The Secretary shall
7 prescribe such regulations as necessary to carry
8 out the purposes of this paragraph.

9 “(4) QUALIFYING INSURANCE COMPANY
10 BRANCH.—The term ‘qualifying insurance company
11 branch’ means a qualified business unit (within the
12 meaning of section 989(a)) of a controlled foreign
13 corporation if—

14 “(A) such unit is licensed, authorized, or
15 regulated by the applicable insurance regulatory
16 body for its home country to sell insurance, re-
17 insurance, or annuity contracts to persons other
18 than related persons (within the meaning of
19 section 954(b)) in such home country, and

20 “(B) such controlled foreign corporation is
21 a qualifying insurance company, determined
22 under paragraph (3) as if such unit were a
23 qualifying insurance company branch.

24 “(5) LIFE INSURANCE OR ANNUITY CON-
25 TRACT.—For purposes of this section and section

1 954, the determination of whether a contract issued
 2 by a controlled foreign corporation or a qualifying
 3 insurance company branch is a life insurance con-
 4 tract or an annuity contract shall be made without
 5 regard to sections 72(s), 101(f), 817(h), and 7702
 6 if—

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

10 “(B) no policyholder, insured, annuitant,
 11 or beneficiary with respect to the contract is a
 12 United States person.

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

15 “(A) CONTROLLED FOREIGN CORPORA-
 16 TION.—The term ‘home country’ means, with
 17 respect to a controlled foreign corporation, the
 18 country in which such corporation is created or
 19 organized.

20 “(B) QUALIFYING INSURANCE COMPANY
 21 BRANCH.—The term ‘home country’ means,
 22 with respect to a qualifying insurance company
 23 branch, the country in which the principal office
 24 of such branch is located and in which such
 25 branch is licensed, authorized, or regulated by

1 the applicable insurance regulatory body to sell
2 insurance, reinsurance, or annuity contracts to
3 persons other than related persons (as defined
4 in section 954(b)) in such country.

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

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

9 “(B) there shall be disregarded any item of
10 income, gain, loss, or deduction of, or derived
11 from, an entity which is not engaged in regular
12 and continuous transactions with persons which
13 are not related persons,

14 “(C) there shall be disregarded any change
15 in the method of computing reserves a principal
16 purpose of which is the acceleration or deferral
17 of any item in order to claim the benefits of
18 this subsection or section 954(d),

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

24 “(i) any policyholder, insured, annu-
25 itant, or beneficiary is a resident of the

1 United States and such contract was mar-
2 keted to such resident and was written to
3 cover a risk outside the United States, or

4 “(ii) the contract covers risks located
5 within and without the United States and
6 the qualifying insurance company or quali-
7 fying insurance company branch does not
8 maintain such contemporaneous records,
9 and file such reports, with respect to such
10 contract as the Secretary may require,

11 “(E) the Secretary may prescribe rules for
12 the allocation of contracts (and income from
13 contracts) among 2 or more qualifying insur-
14 ance company branches of a qualifying insur-
15 ance company in order to clearly reflect the in-
16 come of such branches, and

17 “(F) premiums from a contract shall not
18 be taken into account for purposes of para-
19 graph (2)(B) or (3) if such contract reinsures
20 a contract issued or reinsured by a related per-
21 son (as defined in section 954(b)).

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

23 “(A) IN GENERAL.—In determining insur-
24 ance income for purposes of section 956(a), ex-
25 empt insurance income shall not include income

1 derived from exempt contracts which cover risks
 2 other than applicable home country risks.

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

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

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

20 **“SEC. 956. SPECIAL RULE FOR CERTAIN CAPTIVE INSUR-**
 21 **ANCE COMPANIES.**

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

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

1 “(A) the term ‘United States shareholder’
2 means, with respect to any foreign corporation,
3 a United States person (as defined in section
4 957(c)) who owns (within the meaning of sec-
5 tion 958(a)) any stock of the foreign corpora-
6 tion,

7 “(B) the term ‘controlled foreign corpora-
8 tion’ has the meaning given to such term by
9 section 957(a) determined by substituting ‘25
10 percent or more’ for ‘more than 50 percent’,
11 and

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

15 “(2) RELATED PERSON INSURANCE INCOME.—
16 For purposes of this subsection, the term ‘related
17 person insurance income’ means any insurance in-
18 come (within the meaning of section 955(a)) attrib-
19 utable to a policy of insurance or reinsurance with
20 respect to which the person (directly or indirectly)
21 insured is a United States shareholder in the foreign
22 corporation or a related person to such a share-
23 holder.

24 “(3) EXCEPTIONS.—

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

5 “(i) less than 20 percent of the total
6 combined voting power of all classes of
7 stock of such corporation entitled to vote,
8 and

9 “(ii) less than 20 percent of the total
10 value of such corporation,
11 is owned (directly or indirectly under the prin-
12 ciples of section 883(c)(4)) by persons who are
13 (directly or indirectly) insured under any policy
14 of insurance or reinsurance issued by such cor-
15 poration or who are related persons to any such
16 person.

17 “(B) DE MINIMIS EXCEPTION.—Paragraph
18 (1) shall not apply to any foreign corporation
19 for a taxable year of such corporation if the re-
20 lated person insurance income (determined on a
21 gross basis) of such corporation for such tax-
22 able year is less than 20 percent of its insur-
23 ance income (as so determined) for such taxable
24 year.

“(C) ELECTION TO TREAT INCOME AS EFFECTIVELY CONNECTED.—Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

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

“(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

“(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

“(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a

1 disqualified corporation for the taxable year for
2 which the election was made or for any prior
3 taxable year beginning after 1986.

4 “(D) SPECIAL RULES FOR SUBPARAGRAPH
5 (C).—

6 “(i) PERIOD DURING WHICH ELEC-
7 TION IN EFFECT.—

8 “(I) IN GENERAL.—Except as
9 provided in subclause (II), any elec-
10 tion under subparagraph (C) shall
11 apply to the taxable year for which
12 made and all subsequent taxable years
13 unless revoked with the consent of the
14 Secretary.

15 “(II) TERMINATION.—If a for-
16 eign corporation which made an elec-
17 tion under subparagraph (C) for any
18 taxable year is a disqualified corpora-
19 tion for any subsequent taxable year,
20 such election shall not apply to any
21 taxable year beginning after such sub-
22 sequent taxable year.

23 “(ii) EXEMPTION FROM TAX IMPOSED
24 BY SECTION 4371.—The tax imposed by
25 section 4371 shall not apply with respect

1 to any related person insurance income
2 treated as effectively connected with the
3 conduct of a trade or business within the
4 United States under subparagraph (C).

5 “(E) DISQUALIFIED CORPORATION.—For
6 purposes of this paragraph the term ‘disquali-
7 fied corporation’ means, with respect to any
8 taxable year, any foreign corporation which is a
9 controlled foreign corporation at any time dur-
10 ing such taxable year (determined without re-
11 gard to this subsection) but only if a United
12 States shareholder (determined without regard
13 to this subsection) owns (within the meaning of
14 section 958(a)) stock in such corporation at
15 some time during such taxable year.

16 “(4) TREATMENT OF MUTUAL INSURANCE COM-
17 PANIES.—In the case of a mutual insurance com-
18 pany—

19 “(A) this subsection shall apply,

20 “(B) policyholders of such company shall
21 be treated as shareholders, and

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

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

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

4 “(i) the amount which would be deter-
5 mined under paragraph (2) of section
6 951(a) if—

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

9 “(II) stock owned (within the
10 meaning of section 958(a)) by United
11 States shareholders on the last day of
12 the taxable year were the only stock
13 in the foreign corporation, and

14 “(III) only distributions received
15 by United States shareholders were
16 taken into account under subpara-
17 graph (B) of such paragraph (2), or

18 “(ii) the amount which would be de-
19 termined under paragraph (2) of section
20 951(a) if the entire earnings and profits of
21 the foreign corporation for the taxable year
22 were subpart F income.

23 “(B) COORDINATION WITH OTHER PROVI-
24 SIONS.—The Secretary shall prescribe regula-
25 tions providing for such modifications to the

1 provisions of this subpart as may be necessary
2 or appropriate by reason of subparagraph (A).

3 “(6) RELATED PERSON.—For purposes of this
4 subsection—

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

8 “(B) TREATMENT OF CERTAIN LIABILITY
9 INSURANCE POLICIES.—In the case of any pol-
10 icy of insurance covering liability arising from
11 services performed as a director, officer, or em-
12 ployee of a corporation or as a partner or em-
13 ployee of a partnership, the person performing
14 such services and the entity for which such
15 services are performed shall be treated as re-
16 lated persons.

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

20 “(A) regulations preventing the avoidance
21 of this subsection through cross insurance ar-
22 rangements or otherwise, and

23 “(B) regulations which may provide that a
24 person will not be treated as a United States
25 shareholder under paragraph (1) with respect

to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

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

“(1) IN GENERAL.—If—

“(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting ‘25 percent or more’ for ‘more than 50 percent’ and by using the definition of United States shareholder under subsection (a)(1)(B)),

“(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

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

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

1 for purposes of this title, such corporation shall be
2 treated as a domestic corporation.

3 “(2) PERIOD DURING WHICH ELECTION IS IN
4 EFFECT.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), an election under paragraph
7 (1) shall apply to the taxable year for which
8 made and all subsequent taxable years unless
9 revoked with the consent of the Secretary.

10 “(B) TERMINATION.—If a corporation
11 which made an election under paragraph (1) for
12 any taxable year fails to meet the requirements
13 of subparagraphs (A), (B), and (C) of para-
14 graph (1) for any subsequent taxable year, such
15 election shall not apply to any taxable year be-
16 ginning after such subsequent taxable year.

17 “(3) EFFECT OF ELECTION.—

18 “(A) IN GENERAL.—For purposes of sec-
19 tion 367, any foreign corporation making an
20 election under paragraph (1) shall be treated as
21 transferring (as of the 1st day of the 1st tax-
22 able year to which such election applies) all of
23 its assets to a domestic corporation in connec-
24 tion with an exchange to which section 354 ap-
25 plies.

1 “(B) EXCEPTION FOR PRE-1988 EARNINGS
2 AND PROFITS.—

3 “(i) IN GENERAL.—Earnings and
4 profits of the foreign corporation accumu-
5 lated in taxable years beginning before
6 January 1, 1988, shall not be included in
7 the gross income of the persons holding
8 stock in such corporation by reason of sub-
9 paragraph (A).

10 “(ii) TREATMENT OF DISTRIBUTIONS.—For purposes of this title, any dis-
11 tribution made by a corporation to which
12 an election under paragraph (1) applies
13 out of earnings and profits accumulated in
14 taxable years beginning before January 1,
15 1988, shall be treated as a distribution
16 made by a foreign corporation.

17 “(iii) CERTAIN RULES TO CONTINUE
18 TO APPLY TO PRE-1988 EARNINGS.—Sec-
19 tion 884 to the extent the foreign corpora-
20 tion reinvested 1987 earnings and profits
21 in United States assets shall be applied
22 without regard to paragraph (1), except
23 that, in the case of a corporation to which
24 an election under paragraph (1) applies,
25

1 only earnings and profits accumulated in
2 taxable years beginning before January 1,
3 1988, shall be taken into account.

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

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

8 “(B) such election ceases to apply for any
9 subsequent taxable year,

10 such corporation shall be treated as a domestic cor-
11 poration transferring (as of the 1st day of such sub-
12 sequent taxable year) all of its property to a foreign
13 corporation in connection with an exchange to which
14 section 354 applies.

15 “(5) ADDITIONAL TAX ON CORPORATION MAK-
16 ING ELECTION.—

17 “(A) IN GENERAL.—If a corporation
18 makes an election under paragraph (1), the
19 amount of tax imposed by this chapter for the
20 1st taxable year to which such election applies
21 shall be increased by the amount determined
22 under subparagraph (B).

23 “(B) AMOUNT OF TAX.—The amount of
24 tax determined under this paragraph shall be
25 equal to the lesser of—

1 “(i) $\frac{3}{4}$ of 1 percent of the aggregate
 2 amount of capital and accumulated surplus
 3 of the corporation as of December 31,
 4 1987, or
 5 “(ii) \$1,500,000.”.

6 (b) TREATMENT OF CERTAIN EXCLUDED SUBPART
 7 F INCOME AS PREVIOUSLY TAXED INCOME.—Section
 8 959(g), as added by section 331, is amended to read as
 9 follows:

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

12 “(1) IN GENERAL.—A United States share-
 13 holder’s pro rata share of the excludable portion of
 14 the controlled foreign corporation’s subpart F in-
 15 come shall be treated as an amount which has been
 16 included in gross income under section 951(a).

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

21 “(A) first to the deductible portion (as de-
 22 fined in section 966(c)(3)) of the increase in
 23 subpart F income described in section
 24 966(a)(1) included in the gross income of
 25 United States shareholders under section

1 951(a)(1) (after application of section
2 965(b)(2)(A)),

3 “(B) second to the excludable portion of
4 the controlled foreign corporation’s subpart F
5 income, and

6 “(C) then to the amounts described in
7 paragraph (1), (2), or (3) of subsection (c) in
8 accordance with the provisions of subsection (c).

9 “(3) DEFINITIONS.—For purposes of this sub-
10 section—

11 “(A) DEDUCTIBLE PORTION.—The term
12 ‘deductible portion’ has the meaning given such
13 term by section 966(c)(3).

14 “(B) EXCLUDABLE PORTION.—The term
15 ‘excludable portion’ means, with respect to the
16 subpart F income of a controlled foreign cor-
17 poration, so much of such controlled foreign
18 corporation’s modified active income as is not
19 taken into account in computing subpart F in-
20 come under section 952(a)(1).”.

21 (c) GAINS AND LOSSES FROM THE SALE OF CFC
22 STOCK.—

23 (1) GAINS.—

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

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

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

12 “(b) APPLICABLE PORTION.—For purposes of this
 13 section—

14 “(1) IN GENERAL.—The term ‘applicable por-
 15 tion’ means the amount which bears the same ratio
 16 to the gain recognized from such sale or exchange
 17 as—

18 “(A) the shareholder’s pro rata share (de-
 19 termined under section 951(a)(2)) of the ex-
 20 cludable portion of the aggregate subpart F in-
 21 come of the controlled foreign corporation for
 22 the applicable period, bears to

23 “(B) the sum of the amount determined
 24 under subparagraph (A) plus the shareholder’s
 25 pro rata share (determined under section

1 951(a)(2)) of the aggregate subpart F income
 2 of the controlled foreign corporation for the ap-
 3 plicable period.

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

7 “(3) APPLICABLE PERIOD.—The term ‘applica-
 8 ble period’ means, with respect to any stock, the
 9 shorter of the 3-taxable-year period immediately pre-
 10 ceding the taxable year of the sale or exchange or
 11 the shareholder’s holding period in the stock. In no
 12 event shall the applicable period include any portion
 13 of any taxable year beginning before the applicable
 14 date (as defined in section 300 of the Infrastructure
 15 2.0 Act).”.

16 (B) CLERICAL AMENDMENT.—The table of
 17 sections for part I of subchapter P of chapter
 18 1 is amended by adding at the end the following
 19 new item:

“Sec. 1203. Gains from sales or exchanges of stock in controlled foreign cor-
 porations.”.

20 (2) LOSSES.—

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

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

3 “(a) IN GENERAL.—In the case of a United States
 4 shareholder (as defined in section 951), any loss from the
 5 sale or exchange of stock in a controlled foreign corpora-
 6 tion shall be reduced (but not below zero) by an amount
 7 equal to the shareholder’s aggregate pro rata share (deter-
 8 mined under section 951(a)(2)) of the excludable portion
 9 of the subpart F income of the controlled foreign corpora-
 10 tion during the shareholder’s holding period in the stock.

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

14 (B) CLERICAL AMENDMENT.—The table of
 15 sections for part I of subchapter P of chapter
 16 1 is amended by adding at the end the following
 17 new item:

“Sec. 1213. Losses from sales or exchanges of stock in controlled foreign cor-
 porations.”.

18 (d) REPEAL OF ORDINARY INCOME TREATMENT FOR
 19 GAINS FROM THE SALE OF STOCK IN CERTAIN FOREIGN
 20 CORPORATIONS.—

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

23 (2) CONFORMING AMENDMENTS.—

1 (A) Section 245(a) is amended by striking
2 paragraph (11).

3 (B) Section 338(h) is amended—
4 (i) in paragraph (6)(B)(ii), by striking
5 “or described in section 1248(e)”, and
6 (ii) in paragraph (16), by striking the
7 second sentence.

8 (C) Section 751 is amended—
9 (i) in subsection (c), by striking
10 “stock in certain foreign corporations (as
11 described in section 1248)”, and
12 (ii) by striking subsection (e) and re-
13 designating subsection (f) as subsection
14 (e).

15 (D) Section 865(k) is amended to read as
16 follows:

17 “(k) CROSS REFERENCE.—For sourcing of income
18 from certain foreign currency transactions, see section
19 988.”.

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

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

24 (G) Section 964 is amended by striking
25 subsection (e).

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

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

7 (1) IN GENERAL.—Paragraph (1) of section
 8 951(a) is amended by striking “such taxable year of
 9 the corporation ends—” and all that follows through
 10 the end period and inserting: “such taxable year of
 11 the corporation ends, the shareholder’s pro rata
 12 share (determined under paragraph (2)) of the cor-
 13 poration’s subpart F income for such taxable year.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 951(a) is amended—

16 (i) by striking “paragraph (1)(A)(i)”
 17 in paragraph (2) and inserting “paragraph
 18 (1)”, and

19 (ii) by striking paragraph (3).

20 (B) Subparagraph (A) of section
 21 512(b)(17) is amended by striking
 22 “951(a)(1)(A)” and inserting “951(a)(1)”.

23 (C) Section 851(b) is amended by striking
 24 “951(a)(1)(A)(i)” in the first sentence following
 25 paragraph (3) and inserting “951(a)(1)”.

1 (D) Section 959(a) is amended—

2 (i) by striking “shall not, when” and
 3 all that follows through “such shareholder”
 4 and inserting “shall not, when actually dis-
 5 tributed to such shareholder”, and

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

9 (E) Section 959(c) is amended by adding
 10 at the end the following: “References in this
 11 subsection and subsection (f) to section
 12 951(a)(1)(B) shall be treated as references to
 13 such provisions as in effect on the day before
 14 the enactment of the Infrastructure 2.0 Act.”.

15 (F) Section 959(e) is amended by striking
 16 “951(a)(1)(A)” and inserting “951(a)(1)”.

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

19 (H) Section 1298(b) is amended by strik-
 20 ing paragraph (8).

21 (f) APPLICATION OF ANTI-LOSS IMPORTATION
 22 RULES.—Section 362(e)(1)(B) is amended by adding at
 23 the end the following new sentence: “For purposes of
 24 clause (i), except as provided under regulations, a con-

1 trolled foreign corporation shall be considered to be sub-
 2 ject to tax under this subtitle.”.

3 (g) OTHER CONFORMING AMENDMENTS.—

4 (1) Sections 163(e)(3)(B)(i) and
 5 267(a)(3)(B)(i) are each amended by striking “and
 6 qualified deficits under section 952(c)(1)(B)” and
 7 inserting “and loss carryforwards under sections
 8 952(d) and 953(b)”.

9 (2) Section 304(b)(5)(B)(ii) is amended by
 10 striking “953(c)” and inserting “956(a)”.

11 (3) Section 355(g)(2)(B)(ii)(I) is amended by
 12 striking “section 954(h)(4)” and inserting “section
 13 954(c)(4)”.

14 (4) Section 512(b)(17) is amended by striking
 15 “953” and inserting “section 955”.

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

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

19 (A) by striking clause (iii) and redesignig-
 20 nating clause (iv) as clause (iii), and

21 (B) by striking “954(c)(3)(A)” in clause
 22 (iii) (as redesignated by subparagraph (A)) and
 23 inserting “954(a)(3)(A)”.

24 (7) Section 864(d)(7)(B) is amended by strik-
 25 ing “foreign base company income (as defined in

1 section 954(a), determined without regard to section
2 954(b)(3)(A))” and inserting “passive income (as
3 defined in section 954(a))”.

4 (8) Section 881(c)(5)(A)(iii) is amended by
5 striking “954(c)(3)(A)” and inserting
6 “954(a)(3)(A)”.

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

9 (10) Section 898(b)(3) is amended—

10 (A) by striking “953(c)(2)” and inserting
11 “956(a)(2)”, and

12 (B) by striking “953(c)(1)” and inserting
13 “956(a)(1)”.

14 (11) Section 936(h)(5) is amended—

15 (A) by inserting “(as in effect on the day
16 before the enactment of the Infrastructure 2.0
17 Act)” after “section 954” in the last sentence
18 of subparagraph (B)(ii), and

19 (B) in subparagraph (F)(iv)(II)—

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

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

25 (12) Section 957(b) is amended—

1 (A) by striking “income described in sec-
2 tion 953(a)” and inserting “income described in
3 section 955(a)”, and

4 (B) by striking “contracts described in sec-
5 tion 953(a)(1)” and inserting “contracts de-
6 scribed in section 955(a)(1)”.

7 (13) Section 958(b) is amended—

8 (A) by striking “956(c)(2),” before “and
9 957”,

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

14 (C) by striking the last sentence.

15 (14) Section 964(b) is amended by striking
16 “sections 952, 955, and 956” and inserting “section
17 952”.

18 (15) Section 964(e)(2) is amended by striking
19 “954(c)(3)(A)” and inserting “954(a)(3)(A)”.

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

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

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

4 (17) Section 999(c) is amended—

5 (A) by striking “, 952(a)(3)” in paragraph
6 (1), and

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

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

11 (A) by striking “foreign personal holding
12 company income described in section
13 954(c)(1)(A)” in subparagraph (A) and insert-
14 ing “passive income (as defined in section
15 954(a))”, and

16 (B) by striking “foreign personal holding
17 company income so described” in subparagraph
18 (B) and inserting “such passive income”.

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

21 “(b) PASSIVE INCOME.—

22 “(1) IN GENERAL.—Except as provided in para-
23 graph (2), the term ‘passive income’ means any in-
24 come received or accrued by any foreign corporation
25 which is of a kind which would be passive income as

1 defined in section 954 if the foreign corporation
2 were a controlled foreign corporation.

3 “(2) EXCEPTION.—Except as provided in regu-
4 lations, the term ‘passive income’ does not include
5 any income which is interest, a dividend, or a rent
6 or royalty, which is received or accrued from a re-
7 lated person (within the meaning of section 954(b))
8 to the extent that such amount is properly allocable
9 (under regulations prescribed by the Secretary) to
10 income of such related person which is not passive
11 income.”.

12 (20) The following sections are amended by
13 striking “954(d)(3)” each place it appears and in-
14 serting “954(b)”:

15 (A) Section 958(b).

16 (B) Section 988(a)(3)(C).

17 (C) Subsections (d)(3)(A) and (e)(2)(B)(i)
18 of section 1298.

19 (D) Section 1471(e)(2).

20 (E) Section 3121(z)(2).

21 (21) The table of sections for subpart F of part
22 III of subchapter N of chapter 1 is amended by
23 striking the items relating to sections 952 through
24 956 and inserting 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.”.

1 (h) EFFECTIVE DATES.—

2 (1) IN GENERAL.—Except as provided in para-
 3 graph (2), the amendments made by this section
 4 shall apply to taxable years of foreign corporations
 5 beginning on or after the applicable date, and to tax-
 6 able years of United States shareholders with or
 7 within which such taxable years of foreign corpora-
 8 tions end.

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

13 **SEC. 302. DEEMED REPATRIATION UPON TRANSITION TO**
 14 **FALLBACK INTERNATIONAL TAX REFORM.**

15 (a) IN GENERAL.—Subpart F of part III of sub-
 16 chapter N of chapter 1 of the Internal Revenue Code of
 17 1986 is amended by adding at the end the following new
 18 section:

19 **“SEC. 966. DEEMED REPATRIATION UPON TRANSITION TO**
 20 **FALLBACK INTERNATIONAL TAX REFORM.**

21 “(a) TREATMENT OF DEFERRED FOREIGN INCOME
 22 AS SUBPART F INCOME.—In the case of the last taxable
 23 year of a deferred foreign income corporation which begins
 24 before the applicable date (as defined in section 300 of

1 the Infrastructure 2.0 Act), the subpart F income of such
 2 foreign corporation (as otherwise determined for such tax-
 3 able year under section 952) shall be increased by the in-
 4 clusion percentage (as defined in section 952(d) as in ef-
 5 fect for taxable years beginning on or after the applicable
 6 date (as so defined))) of the accumulated post-1986 de-
 7 ferred foreign income of such corporation determined as
 8 of the close of such last taxable year.

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

12 “(c) DEFINITIONS.—Terms used in this section
 13 which are also used in section 965 shall have the same
 14 meanings when used in this section as when such terms
 15 are used in section 965.”.

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

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

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

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

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

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

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

6 “(A) amounts included under section
7 951(a) which are attributable to active foreign
8 market income (as defined in section 953),

9 “(B) passive category income, and

10 “(C) income other than income described
11 in either of the preceding subparagraphs.

12 “(2) DEFINITIONS AND SPECIAL RULES.—

13 “(A) PASSIVE CATEGORY INCOME.—

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

16 “(I) United States taxpayer pas-
17 sive income described in subparagraph
18 (B), and

19 “(II) income which is included in
20 gross income of the taxpayer under
21 section 951(a)(1) to the extent such
22 income is attributable to passive in-
23 come (as defined in section 954(a)).

1 “(ii) EXCEPTION FOR HIGH-TAXED
2 INCOME.—Passive category income shall
3 not include any high-taxed income.

4 “(iii) CLARIFICATION OF APPLICATION
5 OF SECTION 864(d)(6).—In determining
6 whether any income is passive category in-
7 come, the rules of section 864(d)(6) shall
8 apply only in the case of income of a con-
9 trolled foreign corporation.

10 “(B) UNITED STATES TAXPAYER PASSIVE
11 INCOME.—United States taxpayer passive in-
12 come described in this subparagraph is income
13 received or accrued by the taxpayer which is of
14 a kind that would be passive income as defined
15 under section 954(a) if such taxpayer were a
16 controlled foreign corporation.

17 “(C) TREATMENT OF FINANCIAL SERVICES
18 INCOME AND COMPANIES.—

19 “(i) IN GENERAL.—Financial services
20 income which is not active foreign market
21 category income shall be treated as income
22 described in paragraph (1)(C) in the case
23 of—

24 “(I) a member of a financial
25 services group, and

1 “(II) any other person if such
2 person is predominantly engaged in
3 the active conduct of a banking, insur-
4 ance, financing, or similar business.

5 “(ii) FINANCIAL SERVICES GROUP.—
6 The term ‘financial services group’ means
7 any affiliated group (as defined in section
8 1504(a) without regard to paragraphs (2)
9 and (3) of section 1504(b)) which is pre-
10 dominantly engaged in the active conduct
11 of a banking, insurance, financing, or simi-
12 lar business. In determining whether such
13 a group is so engaged, there shall be taken
14 into account only the income of members
15 of the group that are—

16 “(I) United States corporations,
17 or

18 “(II) controlled foreign corpora-
19 tions in which such United States cor-
20 porations own, directly or indirectly,
21 at least 80 percent of the total voting
22 power and value of the stock.

23 “(iii) PASS-THRU ENTITIES.—The
24 Secretary shall by regulation specify for
25 purposes of this subparagraph the treat-

1 ment of financial services income received
2 or accrued by partnerships and by other
3 pass-thru entities which are not members
4 of a financial services group.

5 “(D) FINANCIAL SERVICES INCOME.—

6 “(i) IN GENERAL.—Except as other-
7 wise provided in this subparagraph, the
8 term ‘financial services income’ means any
9 income which is received or accrued by any
10 person predominantly engaged in the active
11 conduct of a banking, insurance, financing,
12 or similar business, and which is—

13 “(I) described in clause (ii), or

14 “(II) United States taxpayer pas-
15 sive income (determined without re-
16 gard to subparagraph (A)(ii)).

17 “(ii) GENERAL DESCRIPTION OF FI-
18 NANCIAL SERVICES INCOME.—Income is
19 described in this clause if such income is—

20 “(I) derived in the active conduct
21 of a banking, financing, or similar
22 business,

23 “(II) derived from the investment
24 by an insurance company of its un-
25 earned premiums or reserves ordinary

1 and necessary for the proper conduct
2 of its insurance business, or

3 “(III) of a kind which would be
4 insurance income as defined in section
5 955(a).

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

10 “(i) the foreign income taxes paid or
11 accrued by the taxpayer with respect to
12 such income, and

13 “(ii) the foreign income taxes deemed
14 paid by the taxpayer with respect to such
15 income under section 960,

16 exceeds the highest rate of tax specified in sec-
17 tion 1 or 11 (whichever applies) multiplied by
18 the amount of such income (determined with re-
19 gard to section 78). For purposes of the pre-
20 ceding sentence, the term ‘foreign income taxes’
21 means any income, war profits, or excess profits
22 tax imposed by any foreign country or posses-
23 sion of the United States.

24 “(F) TREATMENT OF INCOME TAX BASE
25 DIFFERENCES.—

1 “(i) IN GENERAL.—In the case of tax-
2 able years beginning after December 31,
3 2006, tax imposed under the law of a for-
4 eign country or possession of the United
5 States on an amount which does not con-
6 stitute income under United States tax
7 principles shall be treated as imposed on
8 income described in paragraph (1)(C).

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

23 “(iii) SPECIAL RULE FOR YEARS BE-
24 FORE 2007.—

1 “(I) IN GENERAL.—In the case
2 of taxes paid or accrued in taxable
3 years beginning after December 31,
4 2004, and before January 1, 2007, a
5 taxpayer may elect to treat tax im-
6 posed under the law of a foreign coun-
7 try or possession of the United States
8 on an amount which does not con-
9 stitute income under United States
10 tax principles as tax imposed on in-
11 come described in subparagraph (C)
12 or (I) of paragraph (1) (as in effect
13 for taxable years beginning in 2006).

14 “(II) REVOCATION.—Any such
15 election shall apply to the taxable year
16 for which made and all subsequent
17 taxable years described in subclause
18 (I) unless revoked with the consent of
19 the Secretary.

20 “(G) TRANSITION RULES FOR CERTAIN
21 CARRYFORWARDS AND CARRYBACKS.—For pur-
22 poses of paragraph (1)—

23 “(i) in the case of any taxes carried
24 from any taxable year beginning before the
25 applicable date (as defined in section 300

1 of the Infrastructure 2.0 Act), to any tax-
2 able year beginning on or after such
3 date—

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

11 “(II) if such taxes were treated
12 as attributable to income described in
13 paragraph (1)(B) (as in effect for tax-
14 able years beginning the day before
15 such applicable date), such taxes shall
16 be treated as attributable to income
17 described in paragraph (1)(C), and

18 “(ii) the Secretary may by regulations
19 provide for the allocation of any carryback
20 of taxes with respect to income from a tax-
21 able year beginning on or after such appli-
22 cable date, to a taxable year beginning be-
23 fore such date for purposes of allocating
24 such income among the separate categories

1 in effect for the taxable year to which car-
2 ried.

3 “(3) CONTROLLED FOREIGN CORPORATION;
4 UNITED STATES SHAREHOLDER.—For purposes of
5 this subsection—

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

10 “(B) UNITED STATES SHAREHOLDER.—
11 The term ‘United States shareholder’ has the
12 meaning given such term by section 951(b)
13 (taking into account section 956(a)).

14 “(4) SEPARATE APPLICATION TO ITEMS
15 RESOURCED UNDER TREATIES.—

16 “(A) IN GENERAL.—If—

17 “(i) without regard to any treaty obli-
18 gation of the United States, any item of
19 income would be treated as derived from
20 sources within the United States,

21 “(ii) under a treaty obligation of the
22 United States, such item would be treated
23 as arising from sources outside the United
24 States, and

1 “(iii) the taxpayer chooses the bene-
2 fits of such treaty obligation,
3 subsections (a), (b), and (c) of this section and
4 sections 907 and 960 shall be applied sepa-
5 rately with respect to each such item.

6 “(B) COORDINATION WITH OTHER PROVI-
7 SIONS.—This paragraph shall not apply to any
8 item of income to which subsection (h)(10) or
9 section 865(h) applies.

10 “(C) REGULATIONS.—The Secretary may
11 issue such regulations as may be necessary or
12 appropriate to carry out the purposes of this
13 paragraph, including regulations which provide
14 that related items of income may be aggregated
15 for purposes of this paragraph.

16 “(5) REGULATIONS.—The Secretary shall pre-
17 scribe such regulations as may be necessary or ap-
18 propriate for the purposes of this subsection, includ-
19 ing preventing the manipulation of the character of
20 income the effect of which is to avoid the purposes
21 of this subsection.”.

22 (b) APPLICATION OF PER COUNTRY LIMITATION.—
23 Section 904 is amended by inserting after subsection (d)
24 the following new subsection:

1 “(e) LIMITATIONS APPLIED ON A PER COUNTRY
 2 BASIS.—The provisions of subsections (a), (b), (c), and
 3 (d) and sections 907 and 960 shall be applied separately
 4 with respect to each foreign country or possession with
 5 respect to which taxes described in section 901(b) are paid
 6 or accrued.”.

7 (c) EFFECTIVE DATE.—The amendment made by
 8 this section shall apply to taxable years beginning on or
 9 after the applicable date.

10 **SEC. 312. DENIAL OF CREDIT AND DEDUCTION FOR FOR-**
 11 **EIGN TAXES WITH RESPECT TO EXCLUDED**
 12 **SUBPART F INCOME.**

13 (a) IN GENERAL.—Section 901 is amended by redes-
 14 ignating subsection (n) as subsection (o) and by inserting
 15 after subsection (m) the following:

16 “(n) DENIAL OF FOREIGN TAX CREDIT AND DEDUC-
 17 TION WITH RESPECT TO EXCLUDED SUBPART F IN-
 18 COME.—

19 “(1) IN GENERAL.—Notwithstanding section
 20 960(b), no credit shall be allowed under subsection
 21 (a) for any income, war profits, or excess profits
 22 taxes paid or accrued (or deemed paid or accrued
 23 under section 960) with respect to the excludable
 24 portion of subpart F income or any distribution re-
 25 ceived by a United States shareholder (as defined in

1 section 951(b)) which is properly attributable to
 2 such excludable portion. No deduction shall be al-
 3 lowed to a taxpayer under this chapter for any tax
 4 for which a credit is not allowable by reason of the
 5 preceding sentence.

6 “(2) EXCLUDABLE PORTION.—The term ‘ex-
 7 cludable portion’ has the meaning given such term
 8 by section 959(g)(3)(B).

9 “(3) COORDINATION WITH SECTION 78.—Sec-
 10 tion 78 shall not apply to any tax which is not allow-
 11 able as a credit under this section by reason of this
 12 subsection.”.

13 (b) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to taxable years of foreign corpora-
 15 tions beginning on or after the applicable date, and to tax-
 16 able years of United States shareholders with or within
 17 which such taxable years of foreign corporations end.

18 **PART III—EXPENSE DISALLOWANCE**

19 **SEC. 321. DISALLOWANCE OF DEDUCTION FOR EXPENSES** 20 **ALLOCABLE TO EXEMPT INCOME OF A CON-** 21 **TROLLED FOREIGN CORPORATION.**

22 (a) IN GENERAL.—Part IX of subchapter B of chap-
 23 ter 1 is amended by adding at the end the following:

1 **“SEC. 265A. EXPENSES ALLOCABLE TO EXEMPT INCOME OF**
2 **A CONTROLLED FOREIGN CORPORATION.**

3 “(a) IN GENERAL.—In the case of a United States
4 shareholder of a controlled foreign corporation for any tax-
5 able year, no deduction shall be allowed under this chapter
6 for—

7 “(1) the disallowed portion of any allocable
8 CFC interest, or

9 “(2) expenses directly allocable to the exclud-
10 able portion of subpart F income (as defined in sec-
11 tion 959(g)(3)(B)).

12 “(b) DISALLOWED PORTION.—For purposes of this
13 section—

14 “(1) IN GENERAL.—The term ‘disallowed por-
15 tion’ means, with respect to any allocable CFC inter-
16 est in connection with a controlled foreign corpora-
17 tion, the exclusion percentage of the amount which
18 bears the same ratio to the amount of such interest
19 as—

20 “(A) the corporation’s modified active in-
21 come (as defined in section 952) for the appli-
22 cable taxable year, bears to

23 “(B) the corporation’s current earnings
24 and profits.

25 “(2) CURRENT EARNINGS AND PROFITS.—For
26 purposes of this subsection—

1 “(A) IN GENERAL.—The term ‘current
2 earnings and profits’ means the earnings and
3 profits of the controlled foreign corporation for
4 the applicable taxable year, without diminution
5 by reason of distributions made during the tax-
6 able year.

7 “(B) SPECIAL RULE FOR DETERMINING
8 EARNINGS AND PROFITS.—Earnings and profits
9 of any controlled foreign corporation shall be
10 determined without regard to paragraphs (4),
11 (5), and (6) of section 312(n). Under regula-
12 tions, the preceding sentence shall not apply to
13 the extent it would increase earnings and prof-
14 its by an amount which was previously distrib-
15 uted by the controlled foreign corporation.

16 “(3) EXCLUSION PERCENTAGE.—The term ‘ex-
17 clusion percentage’ means, with respect to any con-
18 trolled foreign corporation for any taxable year, the
19 number of percentage points by which 100 percent
20 exceeds the inclusion percentage determined under
21 section 952(d) with respect to such controlled for-
22 eign corporation for such taxable year.

23 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
24 poses of this section—

1 “(1) **ALLOCABLE CFC INTEREST.**—The term
2 ‘allocable CFC interest’ means any interest expense
3 paid or accrued during the taxable year by a United
4 States shareholder of a controlled foreign corpora-
5 tion which under section 861, and subsection (e) or
6 (f) of section 864 (whichever is applicable), is appor-
7 tioned to income of the controlled foreign corpora-
8 tion.

9 “(2) **APPLICABLE TAXABLE YEAR.**—The term
10 ‘applicable taxable year’ means, with respect to any
11 controlled foreign corporation, the taxable year of
12 such corporation which ends with or within the tax-
13 able year of the United States shareholder described
14 in subsection (a).

15 “(3) **UNITED STATES SHAREHOLDER; CON-**
16 **TROLLED FOREIGN CORPORATION.**—The term
17 ‘United States shareholder’ has the meaning given
18 such term by section 951(b) and the term ‘controlled
19 foreign corporation’ shall have the meaning given
20 such term by section 957(a).

21 “(4) **SPECIAL RULE FOR MEMBERS OF AN AF-**
22 **FILIATED GROUP.**—If a United States shareholder
23 to which subsection (a) applies is a domestic cor-
24 poration which is a member of a group all members
25 of which are treated as a single corporation under

1 subsection (e) or (f) of section 864, whichever is ap-
2 plicable, all domestic corporations which are mem-
3 bers of such group shall be treated as a single cor-
4 poration for purposes of this section.

5 “(5) SPECIAL RULES.—

6 “(A) COORDINATION WITH OTHER PROVI-
7 SIONS.—Except as provided in regulations, this
8 section shall be applied before any other provi-
9 sion of this chapter limiting the deductibility of
10 any allocable CFC interest.

11 “(B) SEPARATE APPLICATION TO INCOME
12 IN SEPARATE BASKETS.—This section shall be
13 applied separately with respect to the categories
14 of income under section 904(d)(1).

15 “(d) REGULATIONS.—The Secretary shall prescribe
16 such regulations as may be necessary to carry out the pur-
17 poses of this section, including regulations providing—

18 “(1) for the sharing of information between
19 shareholders if necessary to carry out the provisions
20 of this section,

21 “(2) for directly associating interest or other
22 expenses disallowed under this section with income
23 of a controlled foreign corporation and for coordi-
24 nating this section with other provisions of this

1 chapter limiting the deductibility of interest or other
 2 expenses, and

3 “(3) for the proper application of this section
 4 with respect to the taxpayer’s share of net operating
 5 losses of a controlled foreign corporation.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-
 7 tions for part IX of subchapter B of chapter 1 is amended
 8 by inserting after the item relating to section 265 the fol-
 9 lowing:

“Sec. 265A. Expense allocable to exempt income of a controlled foreign cor-
 poration.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years of foreign corpora-
 12 tions beginning on or after the applicable date, and to tax-
 13 able years of United States shareholders with or within
 14 which such taxable years of foreign corporations end.

15 **PART IV—OTHER PROVISIONS RELATING TO**
 16 **SUBPART F**

17 **Subpart A—Previously Deferred Foreign Income**

18 **SEC. 331. TREATMENT OF PREVIOUSLY DEFERRED FOR-**
 19 **EIGN INCOME.**

20 (a) IN GENERAL.—Subpart F of part III of sub-
 21 chapter N of chapter 1 is amended by adding at the end
 22 the following new section:

1 **“SEC. 966. INCLUSION OF PREVIOUSLY DEFERRED FOR-**
2 **EIGN INCOME.**

3 “(a) INCLUSION AS SUBPART F INCOME.—

4 “(1) IN GENERAL.—Subject to the provisions of
5 paragraph (2), the subpart F income (determined
6 under section 952 without regard to this section) of
7 a controlled foreign corporation for its last taxable
8 year beginning before the applicable date (as defined
9 in section 300 of the Infrastructure 2.0 Act), shall
10 be increased by the accumulated deferred foreign in-
11 come of the corporation.

12 “(2) INCLUSION ONLY TO APPLY TO DOMESTIC
13 CORPORATIONS.—In the case of any increase in sub-
14 part F income of a controlled foreign corporation by
15 reason of paragraph (1)—

16 “(A) notwithstanding section 951(a)(1),
17 the inclusion in gross income under such section
18 of a United States shareholder’s pro rata por-
19 tion (as determined under section 951(a)(2)) of
20 such increased subpart F income shall only
21 apply if the United States shareholder is a do-
22 mestic corporation, and

23 “(B) there shall be allowed as a deduction
24 for the taxable year of such United States
25 shareholder in which such increased subpart F
26 income is included in such shareholder’s gross

1 income under section 951(a)(1) an amount
 2 equal to the applicable percentage of the
 3 amount of the income so included.

4 “(b) ACCUMULATED DEFERRED FOREIGN IN-
 5 COME.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘accumulated de-
 7 ferred foreign income’ means the excess of—

8 “(A) the undistributed earnings of the con-
 9 trolled foreign corporation, over

10 “(B) the undistributed U.S. earnings of
 11 such controlled foreign corporation.

12 “(2) UNDISTRIBUTED EARNINGS.—

13 “(A) IN GENERAL.—The term ‘undistrib-
 14 uted earnings’ means the earnings and profits
 15 of the controlled foreign corporation described
 16 in section 959(c)(3), determined—

17 “(i) as of the close of the taxable year
 18 described in subsection (a)(1),

19 “(ii) without diminution by reason of
 20 distributions made during such taxable
 21 year, and

22 “(iii) without regard to this section.

23 “(B) SPECIAL RULE FOR CURRENT YEAR
 24 DISTRIBUTIONS.—For purposes of this chapter,
 25 any determination with respect to the treatment

1 of distributions described in subparagraph
2 (A)(ii) shall be made after the application of
3 this section to the earnings and profits de-
4 scribed in subparagraph (A).

5 “(3) **UNDISTRIBUTED U.S. EARNINGS.**—The
6 term ‘undistributed U.S. earnings’ has the meaning
7 given the term ‘post-1986 undistributed U.S. earn-
8 ings’ in section 245(a)(5) (as in effect for taxable
9 years beginning the day before the applicable date
10 (as defined in section 300 of the Infrastructure 2.0
11 Act)), determined—

12 “(A) without regard to ‘post-1986’ each
13 place it appears in the matter before subpara-
14 graph (A), and

15 “(B) without regard to the last sentence
16 thereof.

17 “(c) **DISALLOWANCE OF FOREIGN TAX CREDIT,**
18 **ETC.**—

19 “(1) **IN GENERAL.**—No credit shall be allowed
20 under section 901 to a United States shareholder of
21 a controlled foreign corporation for any taxes paid
22 or accrued (or treated as paid or accrued) with re-
23 spect to the deductible portion of—

1 “(A) the increased subpart F income of
2 the corporation included in the gross income of
3 the shareholder under subsection (a)(2)(A), or

4 “(B) any distribution received by the
5 shareholder which is properly attributable to
6 such increased subpart F income.

7 “(2) DENIAL OF DEDUCTION.—No deduction
8 shall be allowed under this chapter to a United
9 States shareholder of a controlled foreign corpora-
10 tion for any tax for which a credit is not allowable
11 under section 901 by reason of paragraph (1).

12 “(3) DEDUCTIBLE PORTION.—For purposes of
13 this subsection, the term ‘deductible portion’ means,
14 with respect to the increased subpart F income of
15 the corporation included in the gross income of the
16 shareholder under subsection (a)(2)(A), the applica-
17 ble percentage of such income with respect to which
18 a deduction is allowable under subsection (a)(2)(B).

19 “(4) COORDINATION WITH SECTION 78.—Sec-
20 tion 78 shall not apply to the portion of any tax for
21 which credit is not allowable under section 901 by
22 reason of paragraph (1).

23 “(d) APPLICABLE PERCENTAGE.—For purposes of
24 this section, the term ‘applicable percentage’ means the
25 percentage which is equal to the ratio of—

1 “(1) the excess of—

2 “(A) the highest rate of tax in effect under
3 section 11(b) for the taxable year of the United
4 States shareholder described in subsection
5 (a)(2)(B), over

6 “(B) 20 percent, to

7 “(2) the highest rate of tax in effect under sec-
8 tion 11(b) for the taxable year of the United States
9 shareholder described in subsection (a)(2)(B).

10 The percentage determined under the preceding sentence
11 shall be rounded to the nearest whole percentage point.

12 “(e) ELECTION TO PAY LIABILITY IN INSTALL-
13 MENTS.—

14 “(1) IN GENERAL.—In the case of a United
15 States shareholder with respect to one or more con-
16 trolled foreign corporations to which subsection (a)
17 applies, such United States shareholder may elect to
18 pay the net tax liability under this section in 2 or
19 more (but not exceeding 8) equal installments.

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

21 If an election is made under paragraph (1), the due
22 date for the first installment shall be the due date
23 (determined without regard to any extension of time
24 for filing the return) for the return of tax for the
25 taxable year described in subsection (a)(2)(B) and

1 the due date for each succeeding installment shall be
2 the due date (as so determined) for the return of tax
3 for the taxable year following the taxable year with
4 respect to which the preceding installment was
5 made.

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

8 “(A) an assessment of an addition to tax
9 for failure to pay timely with respect to any in-
10 stallment required under this subsection,

11 “(B) a liquidation or sale of substantially
12 all the assets of the taxpayer (including in a
13 title 11 or similar case),

14 “(C) a cessation of business by the tax-
15 payer, or

16 “(D) any similar circumstance,

17 then the unpaid portion of all remaining installments
18 shall be due on the date of such event (or in the case
19 of a title 11 or similar case, the day before the peti-
20 tion is filed).

21 “(4) PRORATION OF DEFICIENCY TO INSTALL-
22 MENTS.—If an election is made under paragraph (1)
23 to pay the net tax liability under this section in in-
24 stallments and a deficiency has been assessed, the
25 deficiency shall be prorated to the installments pay-

1 able under paragraph (1). The part of the deficiency
2 so prorated to any installment the date for payment
3 of which has not arrived shall be collected at the
4 same time as, and as a part of, such installment.
5 The part of the deficiency so prorated to any install-
6 ment the date for payment of which has arrived
7 shall be paid upon notice and demand from the Sec-
8 retary. This paragraph shall not apply if the defi-
9 ciency is due to negligence, to intentional disregard
10 of rules and regulations, or to fraud with intent to
11 evade tax.

12 “(5) RULES RELATING TO INTEREST.—

13 “(A) IN GENERAL.—In the case of any net
14 tax liability prorated to an installment under
15 this subsection, the last date prescribed for pay-
16 ment of the tax for purposes of section 6601(a)
17 shall be the last date for payment of the install-
18 ment rather than the last date for payment of
19 tax for the taxable year in which the net tax li-
20 ability arose.

21 “(B) SPECIAL RULES FOR DEFI-
22 CIENCIES.—

23 “(i) INTEREST PAYABLE FOR ENTIRE
24 PERIOD.—Subparagraph (A) shall not

1 apply to any deficiency prorated to an in-
2 installment under paragraph (4).

3 “(ii) PAYMENT OF INTEREST ATTRIB-
4 UTABLE TO PRIOR PERIODS.—In the case
5 of a deficiency to which paragraph (4) ap-
6 plies, interest with respect to such defi-
7 ciency which is assigned under paragraph
8 (4) to any installment the date for pay-
9 ment of which has arrived on or before the
10 date of the assessment of the deficiency,
11 shall be paid upon notice and demand from
12 the Secretary.

13 “(6) PERIOD OF ASSESSMENT.—Notwith-
14 standing section 6501, the period for assessing the
15 net tax liability under this section for which an elec-
16 tion is made under paragraph (1) shall not expire
17 before the due date for the last installment.

18 “(7) ELECTION.—Any election under paragraph
19 (1) shall be made not later than the due date for the
20 return of tax for the taxable year of the United
21 States shareholder described in subsection (a)(2)(B)
22 and shall be made in such manner as the Secretary
23 may provide.

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

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

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

6 “(ii) such taxpayer’s net income tax
7 for such taxable year determined without
8 regard to this section.

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

13 “(C) REGULATIONS.—The Secretary shall
14 prescribe such regulations as may be necessary
15 for the determination under this subsection of
16 the net tax liability under this section in the
17 case of any pass-thru entity.

18 “(f) REGULATIONS.—The Secretary shall promulgate
19 such regulations as necessary to carry out the purposes
20 of this section, including regulations for the application
21 of this section to pass-through entities all or part of which
22 are owned by 1 or more domestic corporations.”.

23 (b) ORDERING RULE FOR PURPOSES OF TREATMENT
24 OF PREVIOUSLY TAXED INCOME.—

1 (1) IN GENERAL.—Section 959 is amended by
2 adding at the end the following new subsection:

3 “(g) SPECIAL ORDERING RULE.—Notwithstanding
4 subsection (c), for purposes of subsections (a) and (b), sec-
5 tion 316(a) shall be applied by applying paragraph (2)
6 thereof and then paragraph (1) thereof—

7 “(1) first to the deductible portion (as defined
8 in section 966(c)(3)) of the increase in subpart F in-
9 come described in section 966(a)(1) included in the
10 gross income of United States shareholders under
11 section 951(a)(1) (after application of section
12 966(a)(2)(A)), and

13 “(2) then to amounts described in paragraph
14 (1), (2), or (3) of subsection (c).”.

15 (2) CONFORMING AMENDMENT.—Section
16 959(c) is amended by inserting “except as provided
17 in subsection (g),” after “subsections (a) and (b),”.
18 (c) CONFORMING AMENDMENTS.—

19 (1) Clause (vi) of section 56(g)(4)(C) is amend-
20 ed—

21 (A) by inserting “or section 966(a)” after
22 “section 965”, and

23 (B) by inserting “AND INCLUSIONS” after
24 “CERTAIN DISTRIBUTIONS” in the heading
25 thereof.

1 (2) Paragraph (3) of section 245(a) is amend-
2 ed—

3 (A) by striking “post-1986” in subpara-
4 graph (A), and

5 (B) by striking “total post-1986” in sub-
6 paragraph (B).

7 (3) Paragraph (4) of section 245(a) is amended
8 to read as follows:

9 “(4) **UNDISTRIBUTED EARNINGS.**—The term
10 ‘undistributed earnings’ means the amount of the
11 earnings and profits of the controlled foreign cor-
12 poration (computed in accordance with sections
13 964(a) and 986)—

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

17 “(B) without diminution by reason of divi-
18 dends distributed during such taxable year.”.

19 (4) Paragraph (5) of section 245(a) is amend-
20 ed—

21 (A) by striking “post-1986” both places it
22 appears in the matter preceding subparagraph
23 (A), and

1 (B) by striking “POST-1986 UNDISTRIB-
 2 UTED” in the heading thereof and inserting
 3 “UNDISTRIBUTED”.

4 (5) Paragraph (6) of section 245(a) is amend-
 5 ed—

6 (A) by striking “beginning after December
 7 31, 1986” and inserting “which is after the
 8 first taxable year of such corporation”, and

9 (B) by striking “post-1986” both places it
 10 appears.

11 (6) Paragraph (2) of section 6601(b) is amend-
 12 ed—

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

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

19 (7) The table of sections for subpart F of part
 20 III of subchapter N of chapter 1 is amended by
 21 striking the item relating to section 965 and insert-
 22 ing the following:

“Sec. 966. Inclusion of previously deferred foreign income.”.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Except as provided in para-
 25 graph (2), the amendments made by this section

1 shall apply to the last taxable year of foreign cor-
2 porations beginning before the applicable date, and
3 to taxable years of United States shareholders with
4 or within which such taxable years of foreign cor-
5 porations end.

6 (2) CONFORMING AMENDMENTS RELATED TO
7 SECTION 245.—The amendments made by para-
8 graphs (2), (3), (4), and (5) of subsection (c) shall
9 apply to taxable years of foreign corporations begin-
10 ning on or after the applicable date, and to taxable
11 years of United States shareholders with or within
12 which such taxable years of foreign corporations
13 end.

14 **Subpart B—Other Provisions**

15 **SEC. 336. ELIMINATION OF 30-DAY REQUIREMENT.**

16 (a) IN GENERAL.—Section 951(a)(1) is amended by
17 striking “for an uninterrupted period of 30 days or more”
18 and inserting “at any time”.

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 **SEC. 337. MODIFICATION OF DEFINITION OF UNITED**
 2 **STATES SHAREHOLDER.**

3 (a) IN GENERAL.—Section 951(b) is amended by in-
 4 serting “, or 10 percent or more of the total value of
 5 shares of all classes of stock of such foreign corporation”
 6 after “such foreign corporation”.

7 (b) EFFECTIVE DATE.—The amendment made by
 8 this section shall apply to taxable years of foreign corpora-
 9 tions beginning on or after the applicable date, and to tax-
 10 able years of United States shareholders with or within
 11 which such taxable years of foreign corporations end.

12 **Subtitle B—Reform of Foreign Tax**
 13 **Credit Provisions**

14 **SEC. 341. REPEAL OF SECTION 902 INDIRECT FOREIGN TAX**
 15 **CREDITS; FOREIGN TAX CREDIT RELATED TO**
 16 **SUBPART F INCOME.**

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

20 (b) FOREIGN TAX CREDIT RELATED TO SUBPART F
 21 INCOME.—

22 (1) IN GENERAL.—Section 960 is amended by
 23 redesignating subsections (b) and (c) as subsections
 24 (c) and (d), respectively, and by striking subsection
 25 (a) and inserting the following:

1 “(a) DETERMINATION OF CREDIT ON CURRENT
2 YEAR BASIS.—For purposes of this subpart, if there is
3 included in the gross income of a domestic corporation any
4 amount under section 951(a) with respect to any con-
5 trolled foreign corporation with respect to which such do-
6 mestic corporation is a United States shareholder, such
7 domestic corporation shall be deemed to have paid so
8 much of such foreign corporation’s foreign income taxes
9 as are properly attributable to the amount so included.

10 “(b) TREATMENT OF FOREIGN TAXES NOT PRE-
11 VIOUSLY DEEMED PAID.—For purposes of this subpart—

12 “(1) IN GENERAL.—If any portion of a dis-
13 tribution from a controlled foreign corporation re-
14 ceived by a domestic corporation is excluded from
15 gross income under section 959(a), such domestic
16 corporation shall be deemed to have paid so much of
17 such foreign corporation’s foreign income taxes as
18 are properly attributable to the amount so excluded
19 to the extent such taxes were not deemed paid by
20 the domestic corporation under this section for any
21 prior taxable year.

22 “(2) TAXES OF LOWER-TIER CFCS.—If a con-
23 trolled foreign corporation receives a distribution
24 any portion of which is described in section 959(b)
25 from another controlled foreign corporation, such

1 foreign corporation shall be deemed to have paid so
 2 much of such other foreign corporation's foreign in-
 3 come taxes as are properly attributable to the
 4 amount so described to the extent such taxes were
 5 not deemed paid by a domestic corporation under
 6 this section for any prior taxable year.”.

7 (2) APPLICATION WITH RESPECT TO FOREIGN
 8 TAX CREDIT LIMITATION.—Section 960(c), as redes-
 9 ignated by paragraph (1), is amended by adding at
 10 the end the following new paragraph:

11 “(6) APPLICATION WITH RESPECT TO FOREIGN
 12 TAX CREDIT LIMITATION.—This subsection shall be
 13 applied separately with respect to each category of
 14 income described in section 904(d)(1).”.

15 (3) CONFORMING AMENDMENTS.—

16 (A) Section 960 is amended by striking
 17 subsection (d), as redesignated by paragraph
 18 (1), and inserting the following:

19 “(d) FOREIGN INCOME TAXES.—For purposes of this
 20 section, the term ‘foreign income taxes’ means any income,
 21 war profits, or excess profits taxes paid or accrued by a
 22 foreign corporation to any foreign country or possession
 23 of the United States.

24 “(e) REGULATIONS.—The Secretary shall provide
 25 such regulations as may be necessary or appropriate to

1 carry out the provisions of this section, including rules for
 2 the application of this section to domestic partnerships
 3 with partners that are domestic corporations.”.

4 (B) Section 960 is amended by striking the
 5 heading and inserting “**DEEMED PAID CRED-**
 6 **IT FOR SUBPART F INCLUSIONS**”.

7 (c) MODIFICATION TO SECTION 78 GROSS UP.—Sec-
 8 tion 78 is amended to read as follows:

9 “**SEC. 78. AMOUNTS RECEIVED FROM CERTAIN FOREIGN**
 10 **CORPORATIONS BY DOMESTIC CORPORA-**
 11 **TIONS CHOOSING FOREIGN TAX CREDIT.**

12 “If a domestic corporation which is a United States
 13 shareholder chooses to have the benefits of subpart A of
 14 part III of subchapter N (relating to foreign tax credits)
 15 for any taxable year, an amount equal to the taxes deemed
 16 to be paid by such corporation under section 960 for such
 17 taxable year—

18 “(1) shall be treated as an amount included in
 19 the gross income under section 951(a), and

20 “(2) for purposes of section 904, shall be
 21 deemed to be attributable to the same category of
 22 income described in section 904(d)(1) as the income
 23 which gave rise to the taxes deemed paid by such
 24 corporation.”.

25 (d) CONFORMING AMENDMENTS.—

1 (1) Subclause (III) of section 56(g)(4)(C)(iii) is
2 amended by inserting “as in effect before its repeal”
3 after “section 902”.

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

7 (3) Subparagraph (B) of section 814(f)(1) is
8 repealed.

9 (4) Subsection (a) of section 901 is amended by
10 striking “sections 902 and 960” and inserting “sec-
11 tion 960”.

12 (5) Paragraph (2) of section 901(e) is amended
13 by striking “but is not limited to—” and all that fol-
14 lows through “that portion” and inserting “but is
15 not limited to that portion”.

16 (6) Subsection (f) of section 901 is amended by
17 striking “sections 902 and 960” and inserting “sec-
18 tion 960”.

19 (7) Subparagraph (A) of section 901(j)(1) is
20 amended by striking “902 or”.

21 (8) Subparagraph (A) of section 904(h)(10) is
22 amended by striking “sections 902, 907, and 960”
23 and inserting “sections 907 and 960”.

24 (9) Subsection (k) of section 904 is amended to
25 read as follows:

1 “(k) CROSS REFERENCE.—For modification of limi-
2 tation under subsection (a) for purposes of determining
3 the amount of credit which can be taken against the alter-
4 native minimum tax, see section 59(a).”.

5 (10) Paragraph (1) of section 905(c) is amend-
6 ed by striking the last sentence.

7 (11) Subclause (I) of section 905(c)(2)(B) is
8 amended by striking “902 or”.

9 (12) Subsection (a) of section 906 is amended
10 by striking “(or deemed, under section 902, paid or
11 accrued during the taxable year)”.

12 (13) Subsection (b) of section 906 is amended
13 by striking paragraphs (4) and (5).

14 (14) Subparagraph (B) of section 907(b)(2) is
15 amended by striking “902 or”.

16 (15) Paragraph (3) of section 907(c) is amend-
17 ed—

18 (A) by striking subparagraph (A) and re-
19 designating subparagraphs (B) and (C) as sub-
20 paragraphs (A) and (B), respectively, and

21 (B) by striking “section 960(a)” in sub-
22 paragraph (A) (as so redesignated) and insert-
23 ing “section 960”.

24 (16) Paragraph (5) of section 907(c) is amend-
25 ed by striking “902 or”.

1 (17) Clause (i) of section 907(f)(2)(B) is
2 amended by striking “902 or”.

3 (18) Subsection (a) of section 908 is amended
4 by striking “902 or”.

5 (19) Paragraph (1) of section 958(a) is amend-
6 ed by striking “960(a)(1)” and inserting “960”.

7 (20) Subparagraph (B) of section 6038(c)(1) is
8 amended by striking “sections 902 (relating to for-
9 eign tax credit for corporate stockholder in foreign
10 corporation) and 960 (relating to special rules for
11 foreign tax credit)” and inserting “section 960”.

12 (21) Paragraph (4) of section 6038(c) is
13 amended by striking subparagraph (C).

14 (22) The table of sections for subpart A of part
15 III of subchapter N of chapter 1 is amended by
16 striking the item relating to section 902.

17 (23) The table of sections for part II of sub-
18 chapter B of chapter 1 is amended by striking
19 “Dividends” in the item relating to section 78 and
20 inserting “Amounts”.

21 (24) The table of sections for subpart F of part
22 III of subchapter N of chapter 1 is amended by
23 striking the item relating to section 960 and insert-
24 ing the following:

“Sec. 960. Deemed paid credit for subpart F inclusions.”.

1 (e) 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 **SEC. 342. REPEAL OF RULE SUSPENDING FOREIGN TAXES**
 7 **AND CREDITS UNTIL RELATED INCOME IS**
 8 **TAKEN INTO ACCOUNT.**

9 (a) IN GENERAL.—Subpart A of part III of sub-
 10 chapter N of chapter 1 is amended by striking section 909.

11 (b) CONFORMING AMENDMENTS.—

12 (1) Section 901(m)(1)(B) is amended by strik-
 13 ing “a section 902 corporation (as defined in section
 14 909(d)(5))” and inserting “a controlled foreign cor-
 15 poration (as defined in section 957(a))”.

16 (2) The table of sections of subpart A of part
 17 III of subchapter N of chapter 1 is amended by
 18 striking the item relating to section 909.

19 (c) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to foreign taxes paid or accrued
 21 in taxable years beginning on or after the applicable date.

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