

115TH CONGRESS
2D SESSION

S. 2459

To amend the Internal Revenue Code of 1986 to provide for current year inclusion of net CFC tested income, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2018

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

A BILL

To amend the Internal Revenue Code of 1986 to provide for current year inclusion of net CFC tested income, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “No Tax Breaks for Outsourcing Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

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

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

Sec. 1. Short title, etc.

Sec. 2. Current year inclusion of net CFC tested income.

Sec. 3. Limitation on deduction of interest by domestic corporations which are
 members of an international financial reporting group.

Sec. 4. Modifications to rules relating to inverted corporations.

Sec. 5. Treatment of foreign corporations managed and controlled in the United
 States as domestic corporations.

5 **SEC. 2. CURRENT YEAR INCLUSION OF NET CFC TESTED IN-**
 6 **COME.**

7 (a) REPEAL OF TAX-FREE DEEMED RETURN ON IN-
 8 VESTMENTS.—

9 (1) IN GENERAL.—Section 951A(a) is amended
 10 by striking “global intangible low-taxed income” and
 11 inserting “net CFC tested income”.

12 (2) CONFORMING AMENDMENTS.—

13 (A) Section 951A is amended by striking
 14 subsections (b) and (d).

15 (B) Section 951A(e)(1) is amended by
 16 striking “subsections (b), (c)(1)(A), and” and
 17 inserting “subsections (c)(1)(A) and”.

18 (C) Section 951A(f) is amended to read as
 19 follows:

20 “(f) TREATMENT AS SUBPART F INCOME FOR CER-
 21 TAIN PURPOSES.—

1 “(1) IN GENERAL.—Except as provided in para-
 2 graph (2), any net CFC tested income included in
 3 gross income under subsection (a) shall be treated in
 4 the same manner as an amount included under sec-
 5 tion 951(a)(1)(A) for purposes of applying sections
 6 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959,
 7 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1),
 8 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and
 9 6655(e)(4).

10 “(2) EXCEPTION.—The Secretary shall provide
 11 rules for the application of paragraph (1) to other
 12 provisions of this title in any case in which the de-
 13 termination of subpart F income is required to be
 14 made at the level of the controlled foreign corpora-
 15 tion.”.

16 (D) Section 960(d)(2)(A) is amended by
 17 striking “global intangible low-taxed income (as
 18 defined in section 951A(b))” and inserting “net
 19 CFC tested income (as defined in section
 20 951A(c))”.

21 (b) REPEAL OF REDUCED RATE OF TAX ON NET
 22 CFC TESTED INCOME.—

23 (1) IN GENERAL.—Part VIII of subchapter B
 24 of chapter 1 is amended by striking section 250 (and

1 by striking the item relating to such section in the
2 table of sections of such part).

3 (2) CONFORMING AMENDMENTS.—

4 (A) Section 59A(c)(4)(B)(i) is amended by
5 striking “section 172, 245A, or 250” and in-
6 serting “section 172 or 245A”.

7 (B) Section 172(d) is amended by striking
8 paragraph (9).

9 (C) Section 246(b)(1) is amended—

10 (i) by striking “subsection (a) and (b)
11 of section 245, and section 250” and in-
12 serting “and subsection (a) and (b) of sec-
13 tion 245”; and

14 (ii) by striking “subsection (a) and
15 (b) of section 245, and 250” and inserting
16 “and subsection (a) and (b) of section
17 245”.

18 (D) Section 469(i)(3)(F)(iii) is amended
19 by striking “222, and 250” and inserting “and
20 222”.

21 (c) NET CFC TESTED INCOME DETERMINED WITH-
22 OUT REGARD TO HIGH TAX FOREIGN INCOME.—Section
23 951A(c)(2)(A)(i) is amended by redesignating subclauses
24 (IV) and (V) as subclauses (V) and (VI), respectively, and

1 by inserting after subclause (III) the following new sub-
 2 clause:

3 “(IV) any item of income subject
 4 to an effective rate of income tax im-
 5 posed by a foreign country greater
 6 than the maximum rate of tax speci-
 7 fied in section 11,”.

8 (d) REPEAL OF EXCLUSION OF FOREIGN OIL AND
 9 GAS EXTRACTION INCOME FROM THE DETERMINATION
 10 OF TESTED INCOME.—Section 951A(c)(2)(A)(i), as
 11 amended by subsection (c) is amended—

12 (1) by adding “and” at the end of subclause
 13 (IV);

14 (2) by striking “and” at the end of subclause
 15 (V) and inserting “over”; and

16 (3) by striking subclause (VI).

17 (e) EFFECTIVE DATE.—

18 (1) IN GENERAL.—Except as otherwise pro-
 19 vided in this subsection, the amendments made by
 20 this section shall apply to taxable years of foreign
 21 corporations beginning after December 31, 2017,
 22 and to taxable years of United States shareholders
 23 in which or with which such taxable years of foreign
 24 corporations end.

1 (2) REPEAL OF REDUCED RATE OF TAX.—The
 2 amendments made by subsection (b) shall apply to
 3 taxable years beginning after December 31, 2017.

4 **SEC. 3. LIMITATION ON DEDUCTION OF INTEREST BY DO-**
 5 **MESTIC CORPORATIONS WHICH ARE MEM-**
 6 **BERS OF AN INTERNATIONAL FINANCIAL RE-**
 7 **PORTING GROUP.**

8 (a) IN GENERAL.—Section 163 is amended by redes-
 9 ignating subsection (n) as subsection (p) and by inserting
 10 after subsection (m) the following new subsection:

11 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
 12 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
 13 CIAL REPORTING GROUPS.—

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

19 “(A) the allowable percentage of 110 per-
 20 cent of the excess (if any) of—

21 “(i) the amount of such interest so
 22 paid or accrued, over

23 “(ii) the amount described in subpara-
 24 graph (B), plus

1 “(B) the amount of interest includible in
 2 gross income of such corporation for such tax-
 3 able year.

4 “(2) INTERNATIONAL FINANCIAL REPORTING
 5 GROUP.—

6 “(A) For purposes of this subsection, the
 7 term ‘international financial reporting group’
 8 means, with respect to any reporting year, any
 9 group of entities which—

10 “(i) includes—

11 “(I) at least one foreign corpora-
 12 tion engaged in a trade or business
 13 within the United States, or

14 “(II) at least one domestic cor-
 15 poration and one foreign corporation,

16 “(ii) prepares consolidated financial
 17 statements with respect to such year, and

18 “(iii) reports in such statements aver-
 19 age annual gross receipts (determined in
 20 the aggregate with respect to all entities
 21 which are part of such group) for the 3-re-
 22 porting-year period ending with such re-
 23 porting year in excess of \$100,000,000.

24 “(B) RULES RELATING TO DETERMINA-
 25 TION OF AVERAGE GROSS RECEIPTS.—For pur-

1 poses of subparagraph (A)(iii), rules similar to
2 the rules of section 448(c)(3) shall apply.

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

5 “(A) IN GENERAL.—The term ‘allowable
6 percentage’ means, with respect to any domestic
7 corporation for any taxable year, the ratio (ex-
8 pressed as a percentage and not greater than
9 100 percent) of—

10 “(i) such corporation’s allocable share
11 of the international financial reporting
12 group’s reported net interest expense for
13 the reporting year of such group which
14 ends in or with such taxable year of such
15 corporation, over

16 “(ii) such corporation’s reported net
17 interest expense for such reporting year of
18 such group.

19 “(B) REPORTED NET INTEREST EX-
20 PENSE.—The term ‘reported net interest ex-
21 pense’ means—

22 “(i) with respect to any international
23 financial reporting group for any reporting
24 year, the excess of—

1 “(I) the aggregate amount of in-
2 terest expense reported in such
3 group’s consolidated financial state-
4 ments for such taxable year, over

5 “(II) the aggregate amount of in-
6 terest income reported in such group’s
7 consolidated financial statements for
8 such taxable year, and

9 “(ii) with respect to any domestic cor-
10 poration for any reporting year, the excess
11 of—

12 “(I) the amount of interest ex-
13 pense of such corporation reported in
14 the books and records of the inter-
15 national financial reporting group
16 which are used in preparing such
17 group’s consolidated financial state-
18 ments for such taxable year, over

19 “(II) the amount of interest in-
20 come of such corporation reported in
21 such books and records.

22 “(C) ALLOCABLE SHARE OF REPORTED
23 NET INTEREST EXPENSE.—With respect to any
24 domestic corporation which is a member of any
25 international financial reporting group, such

1 corporation's allocable share of such group's re-
 2 ported net interest expense for any reporting
 3 year is the portion of such expense which bears
 4 the same ratio to such expense as—

5 “(i) the EBITDA of such corporation
 6 for such reporting year, bears to

7 “(ii) the EBITDA of such group for
 8 such reporting year.

9 “(D) EBITDA.—

10 “(i) IN GENERAL.—The term
 11 ‘EBITDA’ means, with respect to any re-
 12 porting year, earnings before interest,
 13 taxes, depreciation, and amortization—

14 “(I) as determined in the inter-
 15 national financial reporting group's
 16 consolidated financial statements for
 17 such year, or

18 “(II) for purposes of subpara-
 19 graph (A)(i), as determined in the
 20 books and records of the international
 21 financial reporting group which are
 22 used in preparing such statements if
 23 not determined in such statements.

24 “(ii) TREATMENT OF DISREGARDED
 25 ENTITIES.—The EBITDA of any domestic

1 corporation shall not fail to include the
 2 EBITDA of any entity which is dis-
 3 regarded for purposes of this chapter.

4 “(iii) TREATMENT OF INTRA-GROUP
 5 DISTRIBUTIONS.—The EBITDA of any do-
 6 mestic corporation shall be determined
 7 without regard to any distribution received
 8 by such corporation from any other mem-
 9 ber of the international financial reporting
 10 group.

11 “(E) SPECIAL RULES FOR NON-POSITIVE
 12 EBITDA.—

13 “(i) NON-POSITIVE GROUP EBITDA.—
 14 In the case of any international financial
 15 reporting group the EBITDA of which is
 16 zero or less, paragraph (1) shall not apply
 17 to any member of such group the EBITDA
 18 of which is above zero.

19 “(ii) NON-POSITIVE ENTITY
 20 EBITDA.—In the case of any group mem-
 21 ber the EBITDA of which is zero or less,
 22 paragraph (1) shall be applied without re-
 23 gard to subparagraph (A) thereof.

24 “(4) CONSOLIDATED FINANCIAL STATEMENT.—

25 For purposes of this subsection, the term ‘consoli-

1 dated financial statement’ means any consolidated
2 financial statement described in paragraph (2)(A)(ii)
3 if such statement is—

4 “(A) a financial statement which is cer-
5 tified as being prepared in accordance with gen-
6 erally accepted accounting principles, inter-
7 national financial reporting standards, or any
8 other comparable method of accounting identi-
9 fied by the Secretary, and which is—

10 “(i) a 10-K (or successor form), or
11 annual statement to shareholders, required
12 to be filed with the United States Securi-
13 ties and Exchange Commission,

14 “(ii) an audited financial statement
15 which is used for—

16 “(I) credit purposes,

17 “(II) reporting to shareholders,
18 partners, or other proprietors, or to
19 beneficiaries, or

20 “(III) any other substantial
21 nontax purpose,

22 but only if there is no statement described
23 in clause (i), or

24 “(iii) filed with any other Federal or
25 State agency for nontax purposes, but only

1 if there is no statement described in clause
 2 (i) or (ii), or

3 “(B) a financial statement which—

4 “(i) is used for a purpose described in
 5 subclause (I), (II), or (III) of subpara-
 6 graph (A)(ii), or

7 “(ii) filed with any regulatory or gov-
 8 ernmental body (whether domestic or for-
 9 eign) specified by the Secretary,

10 but only if there is no statement described in
 11 subparagraph (A).

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

17 “(6) APPLICATION TO CERTAIN ENTITIES.—

18 “(A) PARTNERSHIPS.—Except as other-
 19 wise provided by the Secretary in paragraph
 20 (7), this subsection shall apply to any partner-
 21 ship which is a member of any international fi-
 22 nancial reporting group under rules similar to
 23 the rules of section 163(j)(4).

24 “(B) FOREIGN CORPORATIONS ENGAGED
 25 IN TRADE OR BUSINESS WITHIN THE UNITED

STATES.—Except as otherwise provided by the Secretary in paragraph (7), any deduction for interest paid or accrued by a foreign corporation engaged in a trade or business within the United States shall be limited in a manner consistent with the principles of this subsection.

“(C) CONSOLIDATED GROUPS.—For purposes of this subsection, the members of any group that file (or are required to file) a consolidated return with respect to the tax imposed by chapter 1 for a taxable year shall be treated as a single corporation.

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

(b) CARRYFORWARD OF DISALLOWED INTEREST.—

(1) IN GENERAL.—Section 163(o) is amended to read as follows:

“(o) CARRYFORWARD OF CERTAIN DISALLOWED INTEREST.—The amount of any interest not allowed as a deduction for any taxable year by reason of subsection (j)(1) or (n)(1) (whichever imposes the lower limitation with respect to such taxable year) shall be treated as interest (and as business interest for purposes of subsection

1 (j)(1)) paid or accrued in the succeeding taxable year. In-
 2 terest paid or accrued in any taxable year (determined
 3 without regard to the preceding sentence) shall not be car-
 4 ried past the fifth taxable year following such taxable year,
 5 determined by treating interest as allowed as a deduction
 6 on a first-in, first-out basis.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Section 381(c)(19) is amended to read
 9 as follows:

10 “(20) CARRYFORWARD OF DISALLOWED INTER-
 11 EST.—The carryover of disallowed interest described
 12 in section 163(o) to taxable years ending after the
 13 date of distribution or transfer.”.

14 (B) Section 382(d)(3) is amended to read
 15 as follows:

16 “(3) APPLICATION TO CARRYFORWARD OF DIS-
 17 ALLOWED INTEREST.—The term ‘pre-change loss’
 18 shall include any carryover of disallowed interest de-
 19 scribed in section 163(o) under rules similar to the
 20 rules of paragraph (1).”.

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

1 **SEC. 4. MODIFICATIONS TO RULES RELATING TO IN-**
 2 **VERTED CORPORATIONS.**

3 (a) IN GENERAL.—Subsection (b) of section 7874 is
 4 amended to read as follows:

5 “(b) INVERTED CORPORATIONS TREATED AS DO-
 6 MESTIC CORPORATIONS.—

7 “(1) IN GENERAL.—Notwithstanding section
 8 7701(a)(4), a foreign corporation shall be treated for
 9 purposes of this title as a domestic corporation if—

10 “(A) such corporation would be a surro-
 11 gate foreign corporation if subsection (a)(2)
 12 were applied by substituting ‘80 percent’ for
 13 ‘60 percent’, or

14 “(B) such corporation is an inverted do-
 15 mestic corporation.

16 “(2) INVERTED DOMESTIC CORPORATION.—For
 17 purposes of this subsection, a foreign corporation
 18 shall be treated as an inverted domestic corporation
 19 if, pursuant to a plan (or a series of related trans-
 20 actions)—

21 “(A) the entity completes after May 8,
 22 2014, the direct or indirect acquisition of—

23 “(i) substantially all of the properties
 24 held directly or indirectly by a domestic
 25 corporation, or

1 “(ii) substantially all of the assets of,
2 or substantially all of the properties consti-
3 tuting a trade or business of, a domestic
4 partnership, and

5 “(B) after the acquisition, either—

6 “(i) more than 50 percent of the stock
7 (by vote or value) of the entity is held—

8 “(I) in the case of an acquisition
9 with respect to a domestic corpora-
10 tion, by former shareholders of the
11 domestic corporation by reason of
12 holding stock in the domestic corpora-
13 tion, or

14 “(II) in the case of an acquisition
15 with respect to a domestic partner-
16 ship, by former partners of the do-
17 mestic partnership by reason of hold-
18 ing a capital or profits interest in the
19 domestic partnership, or

20 “(ii) the management and control of
21 the expanded affiliated group which in-
22 cludes the entity occurs, directly or indi-
23 rectly, primarily within the United States,
24 and such expanded affiliated group has
25 significant domestic business activities.

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

20 “(4) MANAGEMENT AND CONTROL.—For pur-
 21 poses of paragraph (2)(B)(ii)—

22 “(A) IN GENERAL.—The Secretary shall
 23 prescribe regulations for purposes of deter-
 24 mining cases in which the management and
 25 control of an expanded affiliated group is to be

1 treated as occurring, directly or indirectly, pri-
2 marily within the United States. The regula-
3 tions prescribed under the preceding sentence
4 shall apply to periods after May 8, 2014.

5 “(B) EXECUTIVE OFFICERS AND SENIOR
6 MANAGEMENT.—Such regulations shall provide
7 that the management and control of an ex-
8 panded affiliated group shall be treated as oc-
9 ccurring, directly or indirectly, primarily within
10 the United States if substantially all of the ex-
11 ecutive officers and senior management of the
12 expanded affiliated group who exercise day-to-
13 day responsibility for making decisions involving
14 strategic, financial, and operational policies of
15 the expanded affiliated group are based or pri-
16 marily located within the United States. Indi-
17 viduals who in fact exercise such day-to-day re-
18 sponsibilities shall be treated as executive offi-
19 cers and senior management regardless of their
20 title.

21 “(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
22 TIES.—For purposes of paragraph (2)(B)(ii), an ex-
23 panded affiliated group has significant domestic
24 business activities if at least 25 percent of—

1 “(A) the employees of the group are based
2 in the United States,

3 “(B) the employee compensation incurred
4 by the group is incurred with respect to employ-
5 ees based in the United States,

6 “(C) the assets of the group are located in
7 the United States, or

8 “(D) the income of the group is derived in
9 the United States,

10 determined in the same manner as such determina-
11 tions are made for purposes of determining substan-
12 tial business activities under regulations referred to
13 in paragraph (3) as in effect on May 8, 2014, but
14 applied by treating all references in such regulations
15 to ‘foreign country’ and ‘relevant foreign country’ as
16 references to ‘the United States’. The Secretary may
17 issue regulations decreasing the threshold percent in
18 any of the tests under such regulations for deter-
19 mining if business activities constitute significant
20 domestic business activities for purposes of this
21 paragraph.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Clause (i) of section 7874(a)(2)(B) is
24 amended by striking “after March 4, 2003,” and in-

1 serting “after March 4, 2003, and before May 9,
2 2014,”.

3 (2) Subsection (c) of section 7874 is amend-
4 ed—

5 (A) in paragraph (2)—

6 (i) by striking “subsection
7 (a)(2)(B)(ii)” and inserting “subsections
8 (a)(2)(B)(ii) and (b)(2)(B)(i)”;

9 (ii) by inserting “or (b)(2)(A)” after
10 “(a)(2)(B)(i)” in subparagraph (B);

11 (B) in paragraph (3), by inserting “or
12 (b)(2)(B)(i), as the case may be,” after
13 “(a)(2)(B)(ii)”;

14 (C) in paragraph (5), by striking “sub-
15 section (a)(2)(B)(ii)” and inserting “sub-
16 sections (a)(2)(B)(ii) and (b)(2)(B)(i)”;

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

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

1 **SEC. 5. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 2 **AGED AND CONTROLLED IN THE UNITED**
 3 **STATES AS DOMESTIC CORPORATIONS.**

4 (a) IN GENERAL.—Section 7701 is amended by re-
 5 designating subsection (p) as subsection (q) and by insert-
 6 ing after subsection (o) the following new subsection:

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

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

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

16 “(B) the management and control of the
 17 corporation occurs, directly or indirectly, pri-
 18 marily within the United States,

19 then, solely for purposes of chapter 1 (and any other
 20 provision of this title relating to chapter 1), the cor-
 21 poration shall be treated as a domestic corporation.

22 “(2) CORPORATION DESCRIBED.—

23 “(A) IN GENERAL.—A corporation is de-
 24 scribed in this paragraph if—

1 “(i) the stock of such corporation is
2 regularly traded on an established securi-
3 ties market, or

4 “(ii) the aggregate gross assets of
5 such corporation (or any predecessor there-
6 of), including assets under management
7 for investors, whether held directly or indi-
8 rectly, at any time during the taxable year
9 or any preceding taxable year is
10 \$50,000,000 or more.

11 “(B) GENERAL EXCEPTION.—A corpora-
12 tion shall not be treated as described in this
13 paragraph if—

14 “(i) such corporation was treated as a
15 corporation described in this paragraph in
16 a preceding taxable year,

17 “(ii) such corporation—

18 “(I) is not regularly traded on an
19 established securities market, and

20 “(II) has, and is reasonably ex-
21 pected to continue to have, aggregate
22 gross assets (including assets under
23 management for investors, whether
24 held directly or indirectly) of less than
25 \$50,000,000, and

1 “(iii) the Secretary grants a waiver to
2 such corporation under this subparagraph.

3 “(3) MANAGEMENT AND CONTROL.—

4 “(A) IN GENERAL.—The Secretary shall
5 prescribe regulations for purposes of deter-
6 mining cases in which the management and
7 control of a corporation is to be treated as oc-
8 ccurring primarily within the United States.

9 “(B) EXECUTIVE OFFICERS AND SENIOR
10 MANAGEMENT.—Such regulations shall provide
11 that—

12 “(i) the management and control of a
13 corporation shall be treated as occurring
14 primarily within the United States if sub-
15 stantially all of the executive officers and
16 senior management of the corporation who
17 exercise day-to-day responsibility for mak-
18 ing decisions involving strategic, financial,
19 and operational policies of the corporation
20 are located primarily within the United
21 States, and

22 “(ii) individuals who are not executive
23 officers and senior management of the cor-
24 poration (including individuals who are of-
25 ficers or employees of other corporations in

1 the same chain of corporations as the cor-
 2 poration) shall be treated as executive offi-
 3 cers and senior management if such indi-
 4 viduals exercise the day-to-day responsibil-
 5 ities of the corporation described in clause
 6 (i).

7 “(C) CORPORATIONS PRIMARILY HOLDING
 8 INVESTMENT ASSETS.—Such regulations shall
 9 also provide that the management and control
 10 of a corporation shall be treated as occurring
 11 primarily within the United States if—

12 “(i) the assets of such corporation (di-
 13 rectly or indirectly) consist primarily of as-
 14 sets being managed on behalf of investors,
 15 and

16 “(ii) decisions about how to invest the
 17 assets are made in the United States.”.

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning on or
 20 after the date which is 2 years after the date of the enact-
 21 ment of this Act, whether or not regulations are issued
 22 under section 7701(p)(3) of the Internal Revenue Code
 23 of 1986, as added by this section.

○