

116TH CONGRESS
1ST SESSION

H. R. 1711

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 HOUSE OF REPRESENTATIVES

MARCH 13, 2019

Mr. DOGGETT (for himself, Ms. BARRAGÁN, Ms. BASS, Mr. BLUMENAUER, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. CARTWRIGHT, Ms. JUDY CHU of California, Mr. CICILLINE, Ms. CLARKE of New York, Mr. CLEAVER, Mr. COHEN, Mr. COURTNEY, Mr. CUMMINGS, Mr. DANNY K. DAVIS of Illinois, Mr. DEFazio, Ms. DELAURO, Mr. DESAULNIER, Mrs. DINGELL, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Ms. FUDGE, Mr. GARAMENDI, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. GRIJALVA, Mr. HASTINGS, Mr. HIGGINS of New York, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Ms. JOHNSON of Texas, Mr. JOHNSON of Georgia, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. KHANNA, Mr. LANGEVIN, Mr. LAMB, Mrs. LAWRENCE, Ms. LEE of California, Mr. LEVIN of Michigan, Mr. LOWENTHAL, Mr. LYNCH, Mrs. CAROLYN B. MALONEY of New York, Ms. MCCOLLUM, Mr. MCGOVERN, Ms. MOORE, Mr. NADLER, Mrs. NAPOLITANO, Mr. NORCROSS, Ms. NORTON, Ms. OCASIO-CORTEZ, Mr. PALLONE, Mr. PASCRELL, Mr. PETERSON, Mr. POCAN, Ms. PORTER, Mr. RASKIN, Ms. ROYBAL-ALLARD, Mr. RUSH, Mr. RYAN, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. SIRES, Mr. SOTO, Mr. SUOZZI, Mr. TAKANO, Ms. TITUS, Ms. TLAIB, Mr. TONKO, Ms. VELÁZQUEZ, Ms. WATERS, Mrs. WATSON COLEMAN, Mr. WELCH, Mr. YARMUTH, and Mr. LEWIS) introduced the following bill; which was referred to the Committee on Ways and Means

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

12 (c) TABLE OF CONTENTS.—The table of contents of
 13 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.

14 **SEC. 2. CURRENT YEAR INCLUSION OF NET CFC TESTED IN-**
 15 **COME.**

16 (a) REPEAL OF TAX-FREE DEEMED RETURN ON IN-
 17 VESTMENTS.—

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

21 (2) CONFORMING AMENDMENTS.—

1 (A) Section 951A is amended by striking
2 subsections (b) and (d).

3 (B) Section 951A(e)(1) is amended by
4 striking “subsections (b), (c)(1)(A), and” and
5 inserting “subsections (c)(1)(A) and”.

6 (C) Section 951A(f) is amended to read as
7 follows:

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

10 “(1) IN GENERAL.—Except as provided in para-
11 graph (2), any net CFC tested income included in
12 gross income under subsection (a) shall be treated in
13 the same manner as an amount included under sec-
14 tion 951(a)(1)(A) for purposes of applying sections
15 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959,
16 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1),
17 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and
18 6655(e)(4).

19 “(2) EXCEPTION.—The Secretary shall provide
20 rules for the application of paragraph (1) to other
21 provisions of this title in any case in which the de-
22 termination of subpart F income is required to be
23 made at the level of the controlled foreign corpora-
24 tion.”.

1 (D) Section 960(d)(2)(A) is amended by
 2 striking “global intangible low-taxed income (as
 3 defined in section 951A(b))” and inserting “net
 4 CFC tested income (as defined in section
 5 951A(c))”.

6 (b) REPEAL OF REDUCED RATE OF TAX ON NET
 7 CFC TESTED INCOME.—

8 (1) IN GENERAL.—Part VIII of subchapter B
 9 of chapter 1 is amended by striking section 250 (and
 10 by striking the item relating to such section in the
 11 table of sections of such part).

12 (2) CONFORMING AMENDMENTS.—

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

16 (B) Section 172(d) is amended by striking
 17 paragraph (9).

18 (C) Section 246(b)(1) is amended—

19 (i) by striking “subsection (a) and (b)
 20 of section 245, and section 250” and in-
 21 serting “and subsection (a) and (b) of sec-
 22 tion 245”; and

23 (ii) by striking “subsection (a) and
 24 (b) of section 245, and 250” and inserting

1 “and subsection (a) and (b) of section
2 245”.

3 (D) Section 469(i)(3)(F)(iii) is amended
4 by striking “222, and 250” and inserting “and
5 222”.

6 (c) NET CFC TESTED INCOME DETERMINED WITH-
7 OUT REGARD TO HIGH TAX FOREIGN INCOME.—Section
8 951A(c)(2)(A)(i) is amended by redesignating subclauses
9 (IV) and (V) as subclauses (V) and (VI), respectively, and
10 by inserting after subclause (III) the following new sub-
11 clause:

12 “(IV) any item of income subject
13 to an effective rate of income tax im-
14 posed by a foreign country greater
15 than the maximum rate of tax speci-
16 fied in section 11,”.

17 (d) REPEAL OF EXCLUSION OF FOREIGN OIL AND
18 GAS EXTRACTION INCOME FROM THE DETERMINATION
19 OF TESTED INCOME.—Section 951A(c)(2)(A)(i), as
20 amended by subsection (c) is amended—

- 21 (1) by adding “and” at the end of subclause
22 (IV);
23 (2) by striking “and” at the end of subclause
24 (V) and inserting “over”; and
25 (3) by striking subclause (VI).

1 (e) INCREASE IN DEEMED PAID CREDIT FOR TAXES
2 PROPERLY ATTRIBUTABLE TO TESTED INCOME.—

3 (1) IN GENERAL.—Section 960(d) is amended
4 by striking “80 percent of”.

5 (2) CONFORMING AMENDMENT.—Section 78 is
6 amended by striking “(determined without regard to
7 the phrase “80 percent of” in subsection (d)(1)
8 thereof”.

9 (f) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as otherwise pro-
11 vided in this subsection, the amendments made by
12 this section shall apply to taxable years of foreign
13 corporations beginning after December 31, 2018,
14 and to taxable years of United States shareholders
15 in which or with which such taxable years of foreign
16 corporations end.

17 (2) REPEAL OF REDUCED RATE OF TAX; IN-
18 CREASE IN DEEMED PAID CREDIT.—The amend-
19 ments made by subsection (b) and (e) shall apply to
20 taxable years beginning after December 31, 2018.

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

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

8 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
 9 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
 10 CIAL REPORTING GROUPS.—

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

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

18 “(i) the amount of such interest so
 19 paid or accrued, over

20 “(ii) the amount described in subpara-
 21 graph (B), plus

22 “(B) the amount of interest includible in
 23 gross income of such corporation for such tax-
 24 able year.

25 “(2) INTERNATIONAL FINANCIAL REPORTING
 26 GROUP.—

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

“(i) includes—

“(I) at least one foreign corporation engaged in a trade or business within the United States, or

“(II) at least one domestic corporation and one foreign corporation,

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

“(iii) reports in such statements average annual gross receipts (determined in the aggregate with respect to all entities which are part of such group) for the 3-reporting-year period ending with such reporting year in excess of \$100,000,000.

“(B) RULES RELATING TO DETERMINATION OF AVERAGE GROSS RECEIPTS.—For purposes of subparagraph (A)(iii), rules similar to the rules of section 448(c)(3) shall apply.

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

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

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

12 “(ii) such corporation’s reported net
13 interest expense for such reporting year of
14 such group.

15 “(B) REPORTED NET INTEREST EX-
16 PENSE.—The term ‘reported net interest ex-
17 pense’ means—

18 “(i) with respect to any international
19 financial reporting group for any reporting
20 year, the excess of—

21 “(I) the aggregate amount of in-
22 terest expense reported in such
23 group’s consolidated financial state-
24 ments for such taxable year, over

1 “(II) the aggregate amount of in-
2 terest income reported in such group’s
3 consolidated financial statements for
4 such taxable year, and

5 “(ii) with respect to any domestic cor-
6 poration for any reporting year, the excess
7 of—

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

15 “(II) the amount of interest in-
16 come of such corporation reported in
17 such books and records.

18 “(C) ALLOCABLE SHARE OF REPORTED
19 NET INTEREST EXPENSE.—With respect to any
20 domestic corporation which is a member of any
21 international financial reporting group, such
22 corporation’s allocable share of such group’s re-
23 ported net interest expense for any reporting
24 year is the portion of such expense which bears
25 the same ratio to such expense as—

1 “(i) the EBITDA of such corporation
2 for such reporting year, bears to

3 “(ii) the EBITDA of such group for
4 such reporting year.

5 “(D) EBITDA.—

6 “(i) IN GENERAL.—The term
7 ‘EBITDA’ means, with respect to any re-
8 porting year, earnings before interest,
9 taxes, depreciation, and amortization—

10 “(I) as determined in the inter-
11 national financial reporting group’s
12 consolidated financial statements for
13 such year, or

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

20 “(ii) TREATMENT OF DISREGARDED
21 ENTITIES.—The EBITDA of any domestic
22 corporation shall not fail to include the
23 EBITDA of any entity which is dis-
24 regarded for purposes of this chapter.

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

8 “(E) SPECIAL RULES FOR NON-POSITIVE
 9 EBITDA.—

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

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

21 “(4) CONSOLIDATED FINANCIAL STATEMENT.—
 22 For purposes of this subsection, the term ‘consoli-
 23 dated financial statement’ means any consolidated
 24 financial statement described in paragraph (2)(A)(ii)
 25 if such statement is—

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

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

11 “(ii) an audited financial statement
12 which is used for—

13 “(I) credit purposes,

14 “(II) reporting to shareholders,
15 partners, or other proprietors, or to
16 beneficiaries, or

17 “(III) any other substantial
18 nontax purpose,

19 but only if there is no statement described
20 in clause (i), or

21 “(iii) filed with any other Federal or
22 State agency for nontax purposes, but only
23 if there is no statement described in clause
24 (i) or (ii), or

25 “(B) a financial statement which—

“(i) is used for a purpose described in subclause (I), (II), or (III) of subparagraph (A)(ii), or

“(ii) filed with any regulatory or governmental body (whether domestic or foreign) specified by the Secretary,

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

“(5) REPORTING YEAR.—For purposes of this subsection, the term ‘reporting year’ means, with respect to any international financial reporting group, the year with respect to which the consolidated financial statements are prepared.

“(6) APPLICATION TO CERTAIN ENTITIES.—

“(A) PARTNERSHIPS.—Except as otherwise provided by the Secretary in paragraph (7), this subsection and subsection (o) shall apply to any partnership which is a member of any international financial reporting group under rules similar to the rules of section 163(j)(4).

“(B) FOREIGN CORPORATIONS ENGAGED IN TRADE OR BUSINESS WITHIN THE UNITED STATES.—Except as otherwise provided by the Secretary in paragraph (7), any deduction for

1 interest paid or accrued by a foreign corpora-
 2 tion engaged in a trade or business within the
 3 United States shall be limited in a manner con-
 4 sistent with the principles of this subsection.

5 “(C) CONSOLIDATED GROUPS.—For pur-
 6 poses of this subsection, the members of any
 7 group that file (or are required to file) a con-
 8 solidated return with respect to the tax imposed
 9 by chapter 1 for a taxable year shall be treated
 10 as a single corporation.

11 “(7) REGULATIONS.—The Secretary may issue
 12 such regulations or other guidance as are necessary
 13 or appropriate to carry out the purposes of this sub-
 14 section.”.

15 (b) CARRYFORWARD OF DISALLOWED INTEREST.—

16 (1) IN GENERAL.—Section 163 is amended by
 17 inserting after subsection (n), as added by sub-
 18 section (a), the following new subsection:

19 “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-
 20 TEREST.—The amount of any interest not allowed as a
 21 deduction for any taxable year by reason of subsection
 22 (j)(1) or (n)(1) (whichever imposes the lower limitation
 23 with respect to such taxable year) shall be treated as inter-
 24 est (and as business interest for purposes of subsection
 25 (j)(1)) paid or accrued in the succeeding taxable year. In-

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

6 (2) CONFORMING AMENDMENTS.—

7 (A) Section 163(j)(2) is amended to read
 8 as follows:

9 “(2) CARRYFORWARD CROSS-REFERENCE.—For
 10 carryforward treatment, see subsection (o).”.

11 (B) Section 163(j)(4)(B)(i)(I) is amended
 12 by striking “paragraph (2)” and inserting “sub-
 13 section (o)”.

14 (C) Section 381(c)(20) is amended to read
 15 as follows:

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

20 (D) Section 382(d)(3) is amended to read
 21 as follows:

22 “(3) APPLICATION TO CARRYFORWARD OF DIS-
 23 ALLOWED INTEREST.—The term ‘pre-change loss’
 24 shall include any carryover of disallowed interest de-

1 scribed in section 163(o) under rules similar to the
 2 rules of paragraph (1).”.

3 (c) EFFECTIVE DATE.—The amendments made by
 4 this section shall apply to taxable years beginning after
 5 December 31, 2018.

6 **SEC. 4. MODIFICATIONS TO RULES RELATING TO IN-**
 7 **VERTED CORPORATIONS.**

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

10 “(b) INVERTED CORPORATIONS TREATED AS DO-
 11 MESTIC CORPORATIONS.—

12 “(1) IN GENERAL.—Notwithstanding section
 13 7701(a)(4), a foreign corporation shall be treated for
 14 purposes of this title as a domestic corporation if—

15 “(A) such corporation would be a surro-
 16 gate foreign corporation if subsection (a)(2)
 17 were applied by substituting ‘80 percent’ for
 18 ‘60 percent’, or

19 “(B) such corporation is an inverted do-
 20 mestic corporation.

21 “(2) INVERTED DOMESTIC CORPORATION.—For
 22 purposes of this subsection, a foreign corporation
 23 shall be treated as an inverted domestic corporation
 24 if, pursuant to a plan (or a series of related trans-
 25 actions)—

1 “(A) the entity completes after December
2 22, 2017, the direct or indirect acquisition of—

3 “(i) substantially all of the properties
4 held directly or indirectly by a domestic
5 corporation, or

6 “(ii) substantially all of the assets of,
7 or substantially all of the properties consti-
8 tuting a trade or business of, a domestic
9 partnership, and

10 “(B) after the acquisition, either—

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

13 “(I) in the case of an acquisition
14 with respect to a domestic corpora-
15 tion, by former shareholders of the
16 domestic corporation by reason of
17 holding stock in the domestic corpora-
18 tion, or

19 “(II) in the case of an acquisition
20 with respect to a domestic partner-
21 ship, by former partners of the do-
22 mestic partnership by reason of hold-
23 ing a capital or profits interest in the
24 domestic partnership, or

1 “(ii) the management and control of
2 the expanded affiliated group which in-
3 cludes the entity occurs, directly or indi-
4 rectly, primarily within the United States,
5 and such expanded affiliated group has
6 significant domestic business activities.

7 “(3) EXCEPTION FOR CORPORATIONS WITH
8 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
9 COUNTRY OF ORGANIZATION.—A foreign corporation
10 described in paragraph (2) shall not be treated as an
11 inverted domestic corporation if after the acquisition
12 the expanded affiliated group which includes the en-
13 tity has substantial business activities in the foreign
14 country in which or under the law of which the enti-
15 ty is created or organized when compared to the
16 total business activities of such expanded affiliated
17 group. For purposes of subsection (a)(2)(B)(iii) and
18 the preceding sentence, the term ‘substantial busi-
19 ness activities’ shall have the meaning given such
20 term under regulations in effect on December 22,
21 2017, except that the Secretary may issue regula-
22 tions increasing the threshold percent in any of the
23 tests under such regulations for determining if busi-
24 ness activities constitute substantial business activi-
25 ties for purposes of this paragraph.

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

3 “(A) IN GENERAL.—The Secretary shall
4 prescribe regulations for purposes of deter-
5 mining cases in which the management and
6 control of an expanded affiliated group is to be
7 treated as occurring, directly or indirectly, pri-
8 marily within the United States. The regula-
9 tions prescribed under the preceding sentence
10 shall apply to periods after December 22, 2017.

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

1 cers and senior management regardless of their
2 title.

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

7 “(A) the employees of the group are based
8 in the United States,

9 “(B) the employee compensation incurred
10 by the group is incurred with respect to employ-
11 ees based in the United States,

12 “(C) the assets of the group are located in
13 the United States, or

14 “(D) the income of the group is derived in
15 the United States,

16 determined in the same manner as such determina-
17 tions are made for purposes of determining substan-
18 tial business activities under regulations referred to
19 in paragraph (3) as in effect on December 22, 2017,
20 but applied by treating all references in such regula-
21 tions to ‘foreign country’ and ‘relevant foreign coun-
22 try’ as references to ‘the United States’. The Sec-
23 retary may issue regulations decreasing the thresh-
24 old percent in any of the tests under such regula-
25 tions for determining if business activities constitute

1 significant domestic business activities for purposes
2 of this paragraph.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Clause (i) of section 7874(a)(2)(B) is
5 amended by striking “after March 4, 2003,” and in-
6 serting “after March 4, 2003, and before December
7 23, 2017,”.

8 (2) Subsection (c) of section 7874 is amend-
9 ed—

10 (A) in paragraph (2)—

11 (i) by striking “subsection
12 (a)(2)(B)(ii)” and inserting “subsections
13 (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

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

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

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

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

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years ending after De-
 3 cember 22, 2017.

4 **SEC. 5. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 5 **AGED AND CONTROLLED IN THE UNITED**
 6 **STATES AS DOMESTIC CORPORATIONS.**

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

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

13 “(1) IN GENERAL.—Notwithstanding subsection
 14 (a)(4), in the case of a corporation described in
 15 paragraph (2) if—

16 “(A) the corporation would not otherwise
 17 be treated as a domestic corporation for pur-
 18 poses of this title, but

19 “(B) the management and control of the
 20 corporation occurs, directly or indirectly, pri-
 21 marily within the United States,

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

25 “(2) CORPORATION DESCRIBED.—

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

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

6 “(ii) the aggregate gross assets of
7 such corporation (or any predecessor there-
8 of), including assets under management
9 for investors, whether held directly or indi-
10 rectly, at any time during the taxable year
11 or any preceding taxable year is
12 \$50,000,000 or more.

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

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

19 “(ii) such corporation—

20 “(I) is not regularly traded on an
21 established securities market, and

22 “(II) has, and is reasonably ex-
23 pected to continue to have, aggregate
24 gross assets (including assets under
25 management for investors, whether

1 held directly or indirectly) of less than
2 \$50,000,000, and

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

5 “(3) MANAGEMENT AND CONTROL.—

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

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

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

24 “(ii) individuals who are not executive
25 officers and senior management of the cor-

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

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

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

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

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning on or
22 after the date which is 2 years after the date of the enact-
23 ment of this Act, whether or not regulations are issued

1 under section 7701(p)(3) of the Internal Revenue Code
2 of 1986, as added by this section.

