

116TH CONGRESS  
1ST SESSION

# S. 780

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

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IN THE SENATE OF THE UNITED STATES

MARCH 13, 2019

Mr. WHITEHOUSE (for himself and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to 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(e))”.

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) INCREASE IN DEEMED PAID CREDIT FOR TAXES  
18 PROPERLY ATTRIBUTABLE TO TESTED INCOME.—

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

21                   (2) CONFORMING AMENDMENT.—Section 78 is  
22                   amended by striking “(determined without regard to  
23                   the phrase “80 percent of” in subsection (d)(1)  
24                   thereof”.

25           (f) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as otherwise pro-  
2           vided in this subsection, the amendments made by  
3           this section shall apply to taxable years of foreign  
4           corporations beginning after December 31, 2018,  
5           and to taxable years of United States shareholders  
6           in which or with which such taxable years of foreign  
7           corporations end.

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

12 **SEC. 3. LIMITATION ON DEDUCTION OF INTEREST BY DO-**  
13 **MESTIC CORPORATIONS WHICH ARE MEM-**  
14 **BERS OF AN INTERNATIONAL FINANCIAL RE-**  
15 **PORTING GROUP.**

16          (a) IN GENERAL.—Section 163 is amended by redес-  
17          ignating subsection (n) as subsection (p) and by inserting  
18          after subsection (m) the following new subsection:

19          “(n) LIMITATION ON DEDUCTION OF INTEREST BY  
20          DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-  
21          CIAL REPORTING GROUPS.—

22          “(1) IN GENERAL.—In the case of any domestic  
23          corporation which is a member of any international  
24          financial reporting group, the deduction under this

1 chapter for interest paid or accrued during the tax-  
2 able year shall not exceed the sum of—

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

5 “(i) the amount of such interest so  
6 paid or accrued, over

7 “(ii) the amount described in subpara-  
8 graph (B), plus

9 “(B) the amount of interest includible in  
10 gross income of such corporation for such tax-  
11 able year.

12 “(2) INTERNATIONAL FINANCIAL REPORTING  
13 GROUP.—

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

18 “(i) includes—

19 “(I) at least one foreign corpora-  
20 tion engaged in a trade or business  
21 within the United States, or

22 “(II) at least one domestic cor-  
23 poration and one foreign corporation,

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

1           “(iii) reports in such statements aver-  
2           age annual gross receipts (determined in  
3           the aggregate with respect to all entities  
4           which are part of such group) for the 3-re-  
5           porting-year period ending with such re-  
6           porting year in excess of \$100,000,000.

7           “(B) RULES RELATING TO DETERMINA-  
8           TION OF AVERAGE GROSS RECEIPTS.—For pur-  
9           poses of subparagraph (A)(iii), rules similar to  
10          the rules of section 448(c)(3) shall apply.

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

13               “(A) IN GENERAL.—The term ‘allowable  
14               percentage’ means, with respect to any domestic  
15               corporation for any taxable year, the ratio (ex-  
16               pressed as a percentage and not greater than  
17               100 percent) of—

18                       “(i) such corporation’s allocable share  
19                       of the international financial reporting  
20                       group’s reported net interest expense for  
21                       the reporting year of such group which  
22                       ends in or with such taxable year of such  
23                       corporation, over



1           “(ii) such corporation’s reported net  
2           interest expense for such reporting year of  
3           such group.

4           “(B) REPORTED NET INTEREST EX-  
5           PENSE.—The term ‘reported net interest ex-  
6           pense’ means—

7           “(i) with respect to any international  
8           financial reporting group for any reporting  
9           year, the excess of—

10           “(I) the aggregate amount of in-  
11           terest expense reported in such  
12           group’s consolidated financial state-  
13           ments for such taxable year, over

14           “(II) the aggregate amount of in-  
15           terest income reported in such group’s  
16           consolidated financial statements for  
17           such taxable year, and

18           “(ii) with respect to any domestic cor-  
19           poration for any reporting year, the excess  
20           of—

21           “(I) the amount of interest ex-  
22           pense of such corporation reported in  
23           the books and records of the inter-  
24           national financial reporting group  
25           which are used in preparing such

1 group's consolidated financial state-  
2 ments for such taxable year, over

3 “(II) the amount of interest in-  
4 come of such corporation reported in  
5 such books and records.

6 “(C) ALLOCABLE SHARE OF REPORTED  
7 NET INTEREST EXPENSE.—With respect to any  
8 domestic corporation which is a member of any  
9 international financial reporting group, such  
10 corporation's allocable share of such group's re-  
11 ported net interest expense for any reporting  
12 year is the portion of such expense which bears  
13 the same ratio to such expense as—

14 “(i) the EBITDA of such corporation  
15 for such reporting year, bears to

16 “(ii) the EBITDA of such group for  
17 such reporting year.

18 “(D) EBITDA.—

19 “(i) IN GENERAL.—The term  
20 ‘EBITDA’ means, with respect to any re-  
21 porting year, earnings before interest,  
22 taxes, depreciation, and amortization—

23 “(I) as determined in the inter-  
24 national financial reporting group's

1 consolidated financial statements for  
2 such year, or

3 “(II) for purposes of subpara-  
4 graph (A)(i), as determined in the  
5 books and records of the international  
6 financial reporting group which are  
7 used in preparing such statements if  
8 not determined in such statements.

9 “(ii) TREATMENT OF DISREGARDED  
10 ENTITIES.—The EBITDA of any domestic  
11 corporation shall not fail to include the  
12 EBITDA of any entity which is dis-  
13 regarded for purposes of this chapter.

14 “(iii) TREATMENT OF INTRA-GROUP  
15 DISTRIBUTIONS.—The EBITDA of any do-  
16 mestic corporation shall be determined  
17 without regard to any distribution received  
18 by such corporation from any other mem-  
19 ber of the international financial reporting  
20 group.

21 “(E) SPECIAL RULES FOR NON-POSITIVE  
22 EBITDA.—

23 “(i) NON-POSITIVE GROUP EBITDA.—  
24 In the case of any international financial  
25 reporting group the EBITDA of which is

1 zero or less, paragraph (1) shall not apply  
2 to any member of such group the EBITDA  
3 of which is above zero.

4 “(ii) NON-POSITIVE ENTITY  
5 EBITDA.—In the case of any group mem-  
6 ber the EBITDA of which is zero or less,  
7 paragraph (1) shall be applied without re-  
8 gard to subparagraph (A) thereof.

9 “(4) CONSOLIDATED FINANCIAL STATEMENT.—  
10 For purposes of this subsection, the term ‘consoli-  
11 dated financial statement’ means any consolidated  
12 financial statement described in paragraph (2)(A)(ii)  
13 if such statement is—

14 “(A) a financial statement which is cer-  
15 tified as being prepared in accordance with gen-  
16 erally accepted accounting principles, inter-  
17 national financial reporting standards, or any  
18 other comparable method of accounting identi-  
19 fied by the Secretary, and which is—

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

24 “(ii) an audited financial statement  
25 which is used for—

1                   “(I) credit purposes,  
2                   “(II) reporting to shareholders,  
3                   partners, or other proprietors, or to  
4                   beneficiaries, or  
5                   “(III) any other substantial  
6                   nontax purpose,  
7                   but only if there is no statement described  
8                   in clause (i), or  
9                   “(iii) filed with any other Federal or  
10                  State agency for nontax purposes, but only  
11                  if there is no statement described in clause  
12                  (i) or (ii), or  
13                  “(B) a financial statement which—  
14                  “(i) is used for a purpose described in  
15                  subclause (I), (II), or (III) of subpara-  
16                  graph (A)(ii), or  
17                  “(ii) filed with any regulatory or gov-  
18                  ernmental body (whether domestic or for-  
19                  eign) specified by the Secretary,  
20                  but only if there is no statement described in  
21                  subparagraph (A).  
22                  “(5) REPORTING YEAR.—For purposes of this  
23                  subsection, the term ‘reporting year’ means, with re-  
24                  spect to any international financial reporting group,

1 the year with respect to which the consolidated fi-  
2 nancial statements are prepared.

3 “(6) APPLICATION TO CERTAIN ENTITIES.—

4 “(A) PARTNERSHIPS.—Except as other-  
5 wise provided by the Secretary in paragraph  
6 (7), this subsection and subsection (o) shall  
7 apply to any partnership which is a member of  
8 any international financial reporting group  
9 under rules similar to the rules of section  
10 163(j)(4).

11 “(B) FOREIGN CORPORATIONS ENGAGED  
12 IN TRADE OR BUSINESS WITHIN THE UNITED  
13 STATES.—Except as otherwise provided by the  
14 Secretary in paragraph (7), any deduction for  
15 interest paid or accrued by a foreign corpora-  
16 tion engaged in a trade or business within the  
17 United States shall be limited in a manner con-  
18 sistent with the principles of this subsection.

19 “(C) CONSOLIDATED GROUPS.—For pur-  
20 poses of this subsection, the members of any  
21 group that file (or are required to file) a con-  
22 solidated return with respect to the tax imposed  
23 by chapter 1 for a taxable year shall be treated  
24 as a single corporation.

1           “(7) REGULATIONS.—The Secretary may issue  
2           such regulations or other guidance as are necessary  
3           or appropriate to carry out the purposes of this sub-  
4           section.”.

5           (b) CARRYFORWARD OF DISALLOWED INTEREST.—

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

9           “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-  
10          TEREST.—The amount of any interest not allowed as a  
11          deduction for any taxable year by reason of subsection  
12          (j)(1) or (n)(1) (whichever imposes the lower limitation  
13          with respect to such taxable year) shall be treated as inter-  
14          est (and as business interest for purposes of subsection  
15          (j)(1)) paid or accrued in the succeeding taxable year. In-  
16          terest paid or accrued in any taxable year (determined  
17          without regard to the preceding sentence) shall not be car-  
18          ried past the fifth taxable year following such taxable year,  
19          determined by treating interest as allowed as a deduction  
20          on a first-in, first-out basis.”.

21          (2) CONFORMING AMENDMENTS.—

22                  (A) Section 163(j)(2) is amended to read  
23                  as follows:

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

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

4 (C) Section 381(c)(20) is amended to read  
5 as follows:

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

10 (D) Section 382(d)(3) is amended to read  
11 as follows:

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

17 (e) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2018.

20 **SEC. 4. MODIFICATIONS TO RULES RELATING TO IN-**  
21 **VERTED CORPORATIONS.**

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

24 “(b) INVERTED CORPORATIONS TREATED AS DO-  
25 MESTIC CORPORATIONS.—



1           “(1) IN GENERAL.—Notwithstanding section  
2           7701(a)(4), a foreign corporation shall be treated for  
3           purposes of this title as a domestic corporation if—

4                   “(A) such corporation would be a surro-  
5                   gate foreign corporation if subsection (a)(2)  
6                   were applied by substituting ‘80 percent’ for  
7                   ‘60 percent’, or

8                   “(B) such corporation is an inverted do-  
9                   mestic corporation.

10           “(2) INVERTED DOMESTIC CORPORATION.—For  
11           purposes of this subsection, a foreign corporation  
12           shall be treated as an inverted domestic corporation  
13           if, pursuant to a plan (or a series of related trans-  
14           actions)—

15                   “(A) the entity completes after December  
16                   22, 2017, the direct or indirect acquisition of—

17                           “(i) substantially all of the properties  
18                           held directly or indirectly by a domestic  
19                           corporation, or

20                           “(ii) substantially all of the assets of,  
21                           or substantially all of the properties consti-  
22                           tuting a trade or business of, a domestic  
23                           partnership, and

24                   “(B) after the acquisition, either—

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

3                   “(I) in the case of an acquisition  
4                   with respect to a domestic corpora-  
5                   tion, by former shareholders of the  
6                   domestic corporation by reason of  
7                   holding stock in the domestic corpora-  
8                   tion, or

9                   “(II) in the case of an acquisition  
10                  with respect to a domestic partner-  
11                  ship, by former partners of the do-  
12                  mestic partnership by reason of hold-  
13                  ing a capital or profits interest in the  
14                  domestic partnership, or

15                  “(ii) the management and control of  
16                  the expanded affiliated group which in-  
17                  cludes the entity occurs, directly or indi-  
18                  rectly, primarily within the United States,  
19                  and such expanded affiliated group has  
20                  significant domestic business activities.

21                  “(3) EXCEPTION FOR CORPORATIONS WITH  
22                  SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN  
23                  COUNTRY OF ORGANIZATION.—A foreign corporation  
24                  described in paragraph (2) shall not be treated as an  
25                  inverted domestic corporation if after the acquisition

1 the expanded affiliated group which includes the en-  
2 tity has substantial business activities in the foreign  
3 country in which or under the law of which the enti-  
4 ty is created or organized when compared to the  
5 total business activities of such expanded affiliated  
6 group. For purposes of subsection (a)(2)(B)(iii) and  
7 the preceding sentence, the term ‘substantial busi-  
8 ness activities’ shall have the meaning given such  
9 term under regulations in effect on December 22,  
10 2017, except that the Secretary may issue regula-  
11 tions increasing the threshold percent in any of the  
12 tests under such regulations for determining if busi-  
13 ness activities constitute substantial business activi-  
14 ties for purposes of this paragraph.

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

17 “(A) IN GENERAL.—The Secretary shall  
18 prescribe regulations for purposes of deter-  
19 mining cases in which the management and  
20 control of an expanded affiliated group is to be  
21 treated as occurring, directly or indirectly, pri-  
22 marily within the United States. The regula-  
23 tions prescribed under the preceding sentence  
24 shall apply to periods after December 22, 2017.

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

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

21                 “(A) the employees of the group are based  
22                 in the United States,

23                 “(B) the employee compensation incurred  
24                 by the group is incurred with respect to employ-  
25                 ees based in the United States,

1           “(C) the assets of the group are located in  
2           the United States, or

3           “(D) the income of the group is derived in  
4           the United States,

5           determined in the same manner as such determina-  
6           tions are made for purposes of determining substan-  
7           tial business activities under regulations referred to  
8           in paragraph (3) as in effect on December 22, 2017,  
9           but applied by treating all references in such regula-  
10          tions to ‘foreign country’ and ‘relevant foreign coun-  
11          try’ as references to ‘the United States’. The Sec-  
12          retary may issue regulations decreasing the thresh-  
13          old percent in any of the tests under such regula-  
14          tions for determining if business activities constitute  
15          significant domestic business activities for purposes  
16          of this paragraph.”.

17          (b) CONFORMING AMENDMENTS.—

18                 (1) Clause (i) of section 7874(a)(2)(B) is  
19                 amended by striking “after March 4, 2003,” and in-  
20                 serting “after March 4, 2003, and before December  
21                 23, 2017,”.

22                 (2) Subsection (c) of section 7874 is amend-  
23                 ed—

24                         (A) in paragraph (2)—

1 (i) by striking “subsection  
2 (a)(2)(B)(ii)” and inserting “subsections  
3 (a)(2)(B)(ii) and (b)(2)(B)(i)”; and

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

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

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

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

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

18 **SEC. 5. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
19 **AGED AND CONTROLLED IN THE UNITED**  
20 **STATES AS DOMESTIC CORPORATIONS.**

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

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

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

7           “(A) the corporation would not otherwise  
8 be treated as a domestic corporation for pur-  
9 poses of this title, but

10           “(B) the management and control of the  
11 corporation occurs, directly or indirectly, pri-  
12 marily within the United States,  
13 then, solely for purposes of chapter 1 (and any other  
14 provision of this title relating to chapter 1), the cor-  
15 poration shall be treated as a domestic corporation.

16           “(2) CORPORATION DESCRIBED.—

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

19           “(i) the stock of such corporation is  
20 regularly traded on an established securi-  
21 ties market, or

22           “(ii) the aggregate gross assets of  
23 such corporation (or any predecessor there-  
24 of), including assets under management  
25 for investors, whether held directly or indi-

1           rectly, at any time during the taxable year  
2           or any preceding taxable year is  
3           \$50,000,000 or more.

4           “(B) GENERAL EXCEPTION.—A corpora-  
5           tion shall not be treated as described in this  
6           paragraph if—

7                   “(i) such corporation was treated as a  
8                   corporation described in this paragraph in  
9                   a preceding taxable year,

10                   “(ii) such corporation—

11                           “(I) is not regularly traded on an  
12                           established securities market, and

13                           “(II) has, and is reasonably ex-  
14                           pected to continue to have, aggregate  
15                           gross assets (including assets under  
16                           management for investors, whether  
17                           held directly or indirectly) of less than  
18                           \$50,000,000, and

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

21           “(3) MANAGEMENT AND CONTROL.—

22                   “(A) IN GENERAL.—The Secretary shall  
23                   prescribe regulations for purposes of deter-  
24                   mining cases in which the management and



1 control of a corporation is to be treated as oc-  
2 ccurring primarily within the United States.

3 “(B) EXECUTIVE OFFICERS AND SENIOR  
4 MANAGEMENT.—Such regulations shall provide  
5 that—

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

16 “(ii) individuals who are not executive  
17 officers and senior management of the cor-  
18 poration (including individuals who are of-  
19 ficers or employees of other corporations in  
20 the same chain of corporations as the cor-  
21 poration) shall be treated as executive offi-  
22 cers and senior management if such indi-  
23 viduals exercise the day-to-day responsibil-  
24 ities of the corporation described in clause  
25 (i).

1           “(C) CORPORATIONS PRIMARILY HOLDING  
2 INVESTMENT ASSETS.—Such regulations shall  
3 also provide that the management and control  
4 of a corporation shall be treated as occurring  
5 primarily within the United States if—

6                   “(i) the assets of such corporation (di-  
7 rectly or indirectly) consist primarily of as-  
8 sets being managed on behalf of investors,  
9 and

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

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

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