

117TH CONGRESS  
1ST SESSION

# H. R. 2254

To amend the Internal Revenue Code of 1986 to modify the treatment of foreign corporations, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2021

Ms. SCHAKOWSKY 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 modify the treatment of foreign corporations, 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.**

4 This Act may be cited as the “Corporate Tax Dodg-  
5 ing Prevention Act”.

6 **SEC. 2. RESTORATION OF PROGRESSIVE CORPORATE TAX**  
7 **RATE.**

8 (a) IN GENERAL.—Section 11(b) of the Internal Rev-  
9 enue Code of 1986 is amended to read as follows:

10 “(b) AMOUNT OF TAX.—

1           “(1) IN GENERAL.—The amount of the tax im-  
2       posed by subsection (a) shall be the sum of—

3           “(A) 15 percent of so much of the taxable  
4       income as does not exceed \$50,000,

5           “(B) 25 percent of so much of the taxable  
6       income as exceeds \$50,000 but does not exceed  
7       \$75,000,

8           “(C) 34 percent of so much of the taxable  
9       income as exceeds \$75,000 but does not exceed  
10      \$10,000,000, and

11          “(D) 35 percent of so much of the taxable  
12      income as exceeds \$10,000,000.

13      In the case of a corporation which has taxable in-  
14      come in excess of \$100,000 for any taxable year, the  
15      amount of tax determined under the preceding sen-  
16      tence for such taxable year shall be increased by the  
17      lesser of (i) 5 percent of such excess, or (ii) \$11,750.

18      In the case of a corporation which has taxable in-  
19      come in excess of \$15,000,000, the amount of the  
20      tax determined under the foregoing provisions of  
21      this paragraph shall be increased by an additional  
22      amount equal to the lesser of (i) 3 percent of such  
23      excess, or (ii) \$100,000.

24          “(2) CERTAIN PERSONAL SERVICE CORPORA-  
25      TIONS NOT ELIGIBLE FOR GRADUATED RATES.—

1       Notwithstanding paragraph (1), the amount of the  
 2       tax imposed by subsection (a) on the taxable income  
 3       of a qualified personal service corporation (as de-  
 4       fined in section 448(d)(2)) shall be equal to 35 per-  
 5       cent of the taxable income.”.

6       (b) EFFECTIVE DATE.—The amendment made by  
 7       this section shall apply to taxable years beginning after  
 8       December 31, 2021.

9       **SEC. 3. EQUALIZATION OF TAX RATES ON DOMESTIC AND**  
 10       **FOREIGN INCOME.**

11       (a) IN GENERAL.—Section 952 of the Internal Rev-  
 12       enue Code of 1986 is amended by adding at the end the  
 13       following new subsection:

14       “(e) SPECIAL APPLICATION OF SUBPART.—

15               “(1) IN GENERAL.—For taxable years begin-  
 16       ning after December 31, 2021, notwithstanding any  
 17       other provision of this subpart, the term ‘subpart F  
 18       income’ means, in the case of any controlled foreign  
 19       corporation, the income of such corporation derived  
 20       from any foreign country.

21               “(2) APPLICABLE RULES.—Rules similar to the  
 22       rules under the last sentence of subsection (a) and  
 23       subsection (d) shall apply to this subsection.”.

24       (b) TREATMENT OF PREVIOUSLY DEFERRED FOR-  
 25       EIGN INCOME.—

1           (1) TREATMENT OF INTEREST.—Section 965(h)  
2           of the Internal Revenue Code of 1986 is amended by  
3           adding at the end the following new paragraph:

4           “(7) RULES RELATING TO INTEREST.—In the  
5           case of any amount of the net tax liability prorated  
6           to an installment under this subsection which has  
7           not been paid before the date of the enactment of  
8           this paragraph, the last date prescribed for payment  
9           of any such installment for purposes of section 6601  
10          shall be the earlier of such last date (determined  
11          without regard to this paragraph) or such date of  
12          enactment.”.

13          (2) RULES FOR S CORPORATIONS.—Section  
14          965(i)(2)(A) of such Code is amended by adding at  
15          the end the following new clause:

16                       “(iv) The date of the enactment of the  
17                       Corporate Tax Dodging Prevention Act.”.

18          (c) EFFECTIVE DATE.—The amendments made by  
19          this section shall apply to taxable years of foreign corpora-  
20          tions beginning after December 31, 2021, and to taxable  
21          years of United States shareholders in which or with which  
22          such taxable years of foreign corporations end.

1 **SEC. 4. COUNTRY-BY-COUNTRY APPLICATION OF LIMITA-**  
2 **TION ON FOREIGN TAX CREDIT BASED ON**  
3 **TAXABLE UNITS.**

4 (a) IN GENERAL.—Section 904 is amended by insert-  
5 ing after subsection (d) the following new subsection:

6 “(e) COUNTRY-BY-COUNTRY APPLICATION OF SEC-  
7 TION BASED ON TAXABLE UNITS.—

8 “(1) IN GENERAL.—The provisions of sub-  
9 sections (a), (b), (c), and (d) and sections 907 and  
10 960 shall be applied separately with respect to each  
11 country and possession by taking into account the  
12 aggregate items properly attributable or otherwise  
13 allocable to a taxable unit of the taxpayer which is  
14 a tax resident of such country or possession.

15 “(2) TAXABLE UNITS.—

16 “(A) IN GENERAL.—Unless otherwise pro-  
17 vided by the Secretary, to the extent an item  
18 may be properly attributable or otherwise allo-  
19 cable to more than one taxable unit under para-  
20 graph (1), such item shall be treated as prop-  
21 erly attributable or otherwise allocable to the  
22 lowest-tier taxable unit of the taxpayer to which  
23 such item may be properly attributable or oth-  
24 erwise allocable. No item shall be attributable  
25 or otherwise allocable to more than one taxable  
26 unit of the taxpayer.

1           “(B) DETERMINATION OF TAXABLE  
2           UNITS.—Except as otherwise provided by the  
3           Secretary, the taxable units of a taxpayer are  
4           as follows:

5                   “(i) IN GENERAL.—The general tax-  
6                   able unit of the taxpayer which is not oth-  
7                   erwise described in a separate clause of  
8                   this subparagraph.

9                   “(ii) FOREIGN BRANCHES.—Each for-  
10                  eign branch the activities of which are car-  
11                  ried on directly or indirectly (through one  
12                  or more pass-through entities) by the tax-  
13                  payer.

14                  “(iii) CONTROLLED FOREIGN COR-  
15                  PORATIONS.—Each controlled foreign cor-  
16                  poration with respect to which the tax-  
17                  payer is a United States shareholder.

18                  “(iv) BRANCHES OF CONTROLLED  
19                  FOREIGN CORPORATIONS.—Each branch  
20                  the activities of which are carried on di-  
21                  rectly or indirectly (through one or more  
22                  pass-through entities) by a controlled for-  
23                  eign corporation referred to in clause (iii).

24                  “(v) INTERESTS IN PASS-THROUGH  
25                  ENTITIES.—

1                   “(I) IN GENERAL.—Each interest  
2                   in a pass-through entity held directly  
3                   or indirectly by the taxpayer or a con-  
4                   trolled foreign corporation referred to  
5                   in clause (iii) if such entity is a tax  
6                   resident of a foreign country.

7                   “(II) CERTAIN INTERESTS HELD  
8                   BY CONTROLLED FOREIGN CORPORA-  
9                   TIONS.—Each interest in a pass-  
10                  through entity held directly or indi-  
11                  rectly by a controlled foreign corpora-  
12                  tion referred to in clause (iii) if such  
13                  entity is a tax resident of a foreign  
14                  country or such entity is treated as a  
15                  corporation (or other entity that is  
16                  not fiscally transparent) for purposes  
17                  of the tax law of a foreign country in  
18                  which such controlled foreign corpora-  
19                  tion is a tax resident.

20                  “(3) TAX RESIDENT.—For purposes of this  
21                  subsection, a taxable unit shall be treated as a tax  
22                  resident of a country or possession if such taxable  
23                  unit is liable to tax under the tax law of such coun-  
24                  try or possession as a resident.

1           “(4) PASS-THROUGH ENTITY.—For purposes of  
2           this subsection, the term ‘pass-through entity’ means  
3           any partnership and any other type of entity (other  
4           than a corporation) identified by the Secretary as a  
5           pass-through entity for purposes of this subsection.

6           “(5) REGULATIONS.—The Secretary shall issue  
7           such regulations or other guidance as the Secretary  
8           determines necessary or appropriate to carry out the  
9           purposes of this subsection, including regulations or  
10          other guidance—

11               “(A) for determining the country or pos-  
12               session with respect to which any taxable unit  
13               is a tax resident, including—

14                       “(i) determining such country or pos-  
15                       session on the basis of location if such tax-  
16                       able unit would not otherwise be a tax resi-  
17                       dent of any country or possession, and

18                       “(ii) ensuring that such taxable unit  
19                       is a tax resident of not more than 1 coun-  
20                       try or possession,

21               “(B) applying this section to hybrid enti-  
22               ties, passive foreign investment companies,  
23               tiered structures, and branches, including  
24               branches that do not give rise to a taxable pres-



1           ence under the tax law of the country where the  
2           branch is located, and

3                   “(C) determining whether any entity is not  
4           fiscally transparent within the meaning of para-  
5           graph (2)(B)(v)(II).”.

6           (b) APPLICATION OF FOREIGN TAX CREDIT LIMITA-  
7   TION WITH RESPECT TO FOREIGN BRANCHES.—Section  
8   904(d)(2)(J)(i) is amended—

9                   (1) by striking “qualified business units (as de-  
10          fined in section 989(a)) in 1 or more foreign coun-  
11          tries” and inserting “foreign branches described in  
12          section 904(e)(2)(B)(ii)”, and

13                  (2) by striking “a qualified business unit” and  
14          inserting “a foreign branch”.

15          (c) EFFECTIVE DATE.—The amendments made by  
16   this section shall apply to taxable years beginning after  
17   December 31, 2021.

18   **SEC. 5. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN**  
19                   **FOREIGN ENTITIES AND CFC LOOK-THRU**  
20                   **RULES.**

21          (a) CHECK-THE-BOX RULES.—Paragraph (3) of sec-  
22   tion 7701(a) of the Internal Revenue Code of 1986 is  
23   amended—

24                  (1) by striking “and”, and

1           (2) by inserting after “insurance companies”  
 2           the following: “, and any foreign business entity that  
 3           has one or more owners all of which have limited li-  
 4           ability.”.

5           (b) LOOK-THRU RULE.—Subparagraph (C) of sec-  
 6           tion 954(c)(6) of such Code is amended to read as follows:

7                   “(C) TERMINATION.—Subparagraph (A)  
 8                   shall not apply to dividends, interest, rents, and  
 9                   royalties received or accrued after the date of  
 10                  the enactment of the Corporate Tax Dodging  
 11                  Prevention Act.”.

12          (c) EFFECTIVE DATE.—The amendments made by  
 13          this section shall take effect on the date of the enactment  
 14          of this Act.

15   **SEC. 6. LIMITATION ON DEDUCTION OF INTEREST BY DO-**  
 16                   **MESTIC CORPORATIONS WHICH ARE MEM-**  
 17                   **BERS OF AN INTERNATIONAL FINANCIAL RE-**  
 18                   **PORTING GROUP.**

19          (a) IN GENERAL.—Section 163 of the Internal Rev-  
 20          enue Code of 1986 is amended by redesignating subsection  
 21          (n) as subsection (o) and by inserting after subsection (m)  
 22          the following new subsection:

23           “(n) LIMITATION ON DEDUCTION OF INTEREST BY  
 24          DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-  
 25          CIAL REPORTING GROUPS.—

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

6                   “(A) the allowable percentage of 105 per-  
7                   cent of the excess (if any) of—

8                           “(i) the amount of such interest so  
9                           paid or accrued, over

10                           “(ii) the amount described in subpara-  
11                           graph (B), plus

12                   “(B) the amount of interest includible in  
13                   gross income of such corporation for such tax-  
14                   able year.

15           “(2) INTERNATIONAL FINANCIAL REPORTING  
16           GROUP.—

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

21                           “(i) includes—

22                                   “(I) at least one foreign corpora-  
23                                   tion engaged in a trade or business  
24                                   within the United States, or

1 “(II) at least one domestic cor-  
2 poration and one foreign corporation,

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

5 “(iii) reports in such statements aver-  
6 age annual gross receipts (determined in  
7 the aggregate with respect to all entities  
8 which are part of such group) for the 3-re-  
9 porting-year period ending with such re-  
10 porting year in excess of \$25,000,000.

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

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

17 “(A) IN GENERAL.—The term ‘allowable  
18 percentage’ means, with respect to any domestic  
19 corporation for any taxable year, the ratio (ex-  
20 pressed as a percentage and not greater than  
21 100 percent) of—

22 “(i) such corporation’s allocable share  
23 of the international financial reporting  
24 group’s reported net interest expense for  
25 the reporting year of such group which

1 ends in or with such taxable year of such  
2 corporation, over

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

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

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

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

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

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

23 “(I) the amount of interest ex-  
24 pense of such corporation reported in  
25 the books and records of the inter-

1           national financial reporting group  
2           which are used in preparing such  
3           group's consolidated financial state-  
4           ments for such taxable year, over

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

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

16                    “(i) the EBITDA of such corporation  
17                    for such reporting year, bears to

18                    “(ii) the EBITDA of such group for  
19                    such reporting year.

20                    “(D) EBITDA.—

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

1 “(I) as determined in the inter-  
2 national financial reporting group’s  
3 consolidated financial statements for  
4 such year, or

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

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

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

23 “(E) SPECIAL RULES FOR NON-POSITIVE  
24 EBITDA.—

1 “(i) NON-POSITIVE GROUP EBITDA.—

2 In the case of any international financial  
3 reporting group the EBITDA of which is  
4 zero or less, paragraph (1) shall not apply  
5 to any member of such group the EBITDA  
6 of which is above zero.

7 “(ii) NON-POSITIVE ENTITY

8 EBITDA.—In the case of any group mem-  
9 ber the EBITDA of which is zero or less,  
10 paragraph (1) shall be applied without re-  
11 gard to subparagraph (A) thereof.

12 “(4) CONSOLIDATED FINANCIAL STATEMENT.—

13 For purposes of this subsection, the term ‘consoli-  
14 dated financial statement’ means any consolidated  
15 financial statement described in paragraph (2)(A)(ii)  
16 if such statement is—

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

23 “(i) a 10-K (or successor form) or  
24 annual statement to shareholders required



1 to be filed with the United States Securi-  
2 ties and Exchange Commission,

3 “(ii) an audited financial statement  
4 which is used for—

5 “(I) credit purposes,

6 “(II) reporting to shareholders,  
7 partners, or other proprietors, or to  
8 beneficiaries, or

9 “(III) any other substantial  
10 nontax purpose,

11 but only if there is no statement described  
12 in clause (i), or

13 “(iii) filed with any other Federal or  
14 State agency for nontax purposes, but only  
15 if there is no statement described in clause  
16 (i) or (ii), or

17 “(B) a financial statement which—

18 “(i) is used for a purpose described in  
19 subclause (I), (II), or (III) of subpara-  
20 graph (A)(ii), or

21 “(ii) filed with any regulatory or gov-  
22 ernmental body (whether domestic or for-  
23 eign) specified by the Secretary,

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

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

6           “(6) APPLICATION TO CERTAIN ENTITIES.—

7                   “(A) PARTNERSHIPS.—The secretary shall  
8           prescribe rules for application of this subsection  
9           to any partnership which is a member of any  
10          international financial reporting group. Such  
11          rules shall treat any such partnership in a man-  
12          ner similar to the way such partnership would  
13          be treated under this subsection if it were a do-  
14          mestic corporation which is a member of any  
15          international financial reporting group.

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

24                  “(C) CONSOLIDATED GROUPS.—For pur-  
25          poses of this subsection, the members of any

1 group that file (or are required to file) a con-  
 2 solidated return with respect to the tax imposed  
 3 by chapter 1 for a taxable year shall be treated  
 4 as a single corporation.

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

9 (b) EFFECTIVE DATE.—The amendments made by  
 10 this section shall apply to taxable years beginning after  
 11 the date of the enactment of this Act.

12 **SEC. 7. MODIFICATIONS TO RULES RELATING TO IN-**  
 13 **VERTED CORPORATIONS.**

14 (a) IN GENERAL.—Subsection (b) of section 7874 of  
 15 the Internal Revenue Code of 1986 is amended to read  
 16 as follows:

17 “(b) INVERTED CORPORATIONS TREATED AS DO-  
 18 MESTIC CORPORATIONS.—

19 “(1) IN GENERAL.—Notwithstanding section  
 20 7701(a)(4), a foreign corporation shall be treated for  
 21 purposes of this title as a domestic corporation if—

22 “(A) such corporation would be a surro-  
 23 gate foreign corporation if subsection (a)(2)  
 24 were applied by substituting ‘80 percent’ for  
 25 ‘60 percent’, or

1           “(B) such corporation is an inverted do-  
2           mestic corporation.

3           “(2) INVERTED DOMESTIC CORPORATION.—For  
4           purposes of this subsection, a foreign corporation  
5           shall be treated as an inverted domestic corporation  
6           if, pursuant to a plan (or a series of related trans-  
7           actions)—

8           “(A) the entity completes after May 8,  
9           2014, the direct or indirect acquisition of—

10           “(i) substantially all of the properties  
11           held directly or indirectly by a domestic  
12           corporation, or

13           “(ii) substantially all of the assets of,  
14           or substantially all of the properties consti-  
15           tuting a trade or business of, a domestic  
16           partnership, and

17           “(B) after the acquisition, more than 50  
18           percent of the stock (by vote or value) of the  
19           entity is held—

20           “(i) in the case of an acquisition with  
21           respect to a domestic corporation, by  
22           former shareholders of the domestic cor-  
23           poration by reason of holding stock in the  
24           domestic corporation, or

1                   “(ii) in the case of an acquisition with  
2                   respect to a domestic partnership, by  
3                   former partners of the domestic partner-  
4                   ship by reason of holding a capital or prof-  
5                   its interest in the domestic partnership.

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

25                  (b) CONFORMING AMENDMENTS.—

1           (1) Clause (i) of section 7874(a)(2)(B) of the  
 2           Internal Revenue Code of 1986 is amended by strik-  
 3           ing “after March 4, 2003,” and inserting “after  
 4           March 4, 2003, and before May 9, 2014,”.

5           (2) Subsection (c) of section 7874 of such Code  
 6           is amended—

7                   (A) in paragraph (2)—

8                           (i)     by     striking     “subsection  
 9                           (a)(2)(B)(ii)” and inserting “subsections  
 10                          (a)(2)(B)(ii) and (b)(2)(B)”, and

11                           (ii) by inserting “or (b)(2)(A)” after  
 12                          “(a)(2)(B)(i)” in subparagraph (B),

13                          (B) in paragraph (3), by inserting “or  
 14                          (b)(2)(B), as the case may be,” after  
 15                          “(a)(2)(B)(ii)”,

16                          (C) in paragraph (5), by striking “sub-  
 17                          section (a)(2)(B)(ii)” and inserting “sub-  
 18                          sections (a)(2)(B)(ii) and (b)(2)(B)”, and

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

22           (c) EFFECTIVE DATE.—The amendments made by  
 23           this section shall apply to taxable years ending after May  
 24           8, 2014.

1 **SEC. 8. TREATMENT OF FOREIGN CORPORATIONS MAN-**  
2 **AGED AND CONTROLLED IN THE UNITED**  
3 **STATES AS DOMESTIC CORPORATIONS.**

4 (a) IN GENERAL.—Section 7701 of the Internal Rev-  
5 enue Code of 1986 is amended by redesignating subsection  
6 (p) as subsection (q) and by inserting after subsection (o)  
7 the following new subsection:

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

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

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

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

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

23 “(2) CORPORATION DESCRIBED.—

24 “(A) IN GENERAL.—A corporation is de-  
25 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.

1 **SEC. 9. MODIFICATIONS TO BASE EROSION AND ANTI-**  
2 **ABUSE TAX.**

3 (a) ACCELERATION OF MODIFICATIONS.—Section  
4 59A(b) of the Internal Revenue Code of 1986 is amend-  
5 ed—

6 (1) in paragraph (1)(A), by striking “10 per-  
7 cent (5 percent in the case of taxable years begin-  
8 ning in calendar year 2018)” and inserting “12.5  
9 percent”,

10 (2) in paragraph (1)(B), by striking “by the ex-  
11 cess of” and all that follows and inserting “by the  
12 aggregate amount of the credits allowed under this  
13 chapter against such regular tax liability.”,

14 (3) by striking paragraphs (2) and (4) and re-  
15 designating paragraph (3) as paragraph (2), and

16 (4) in paragraph (2)(A) (as so redesignated), by  
17 striking “paragraphs (1)(A) and (2)(A) shall each”  
18 and inserting “paragraph (1)(A) shall”.

19 (b) MODIFICATIONS TO DEFINITION OF APPLICABLE  
20 TAXPAYER.—Section 59A(e)(1) of the Internal Revenue  
21 Code of 1986 is amended—

22 (1) by striking “\$500,000,000” in subpara-  
23 graph (B) and inserting “\$25,000,000”, and

24 (2) by inserting “and” at the end of subpara-  
25 graph (A), by striking “, and” at the end of sub-

1 paragraph (B) and inserting a period, and by strik-  
 2 ing subparagraph (C).

3 (c) EXCEPTIONS TO DEFINITION OF BASE EROSION  
 4 PAYMENT.—Section 59A(d) of the Internal Revenue Code  
 5 of 1986 is amended by adding at the end the following  
 6 new paragraph:

7 “(6) EXCEPTION FOR CERTAIN PAYMENTS IN-  
 8 CLUDIBLE IN GROSS INCOME OF PAYEE.—

9 “(A) IN GENERAL.—Paragraph (1) shall  
 10 not apply to any portion of an amount—

11 “(i) which is paid or accrued by the  
 12 taxpayer to a foreign person who is a  
 13 member of the same controlled group of  
 14 corporations as the taxpayer, and

15 “(ii) which—

16 “(I) is treated by the foreign per-  
 17 son as an amount of income from  
 18 sources within the United States  
 19 which is effectively connected with the  
 20 conduct by such person of a trade or  
 21 business within the United States, or

22 “(II) if the foreign person is a  
 23 controlled foreign corporation, is in-  
 24 cluded in the income of a United  
 25 States shareholder of such controlled

1 foreign corporation under section  
2 951(a).

3 “(B) CONTROLLED GROUP OF CORPORA-  
4 TIONS.—For purposes of this paragraph, the  
5 term ‘controlled group of corporations’ has the  
6 same meaning given to such term by section  
7 1563(a), except that—

8 “(i) ‘more than 50 percent’ shall be  
9 substituted for ‘at least 80 percent’ each  
10 place it appears in section 1563(a)(1), and

11 “(ii) the determination shall be made  
12 without regard to subsections (a)(4),  
13 (b)(2)(C), and (e)(3)(C) of section 1563.”.

14 (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to taxable years beginning in cal-  
16 endar years beginning after the date of the enactment of  
17 this Act.

18 **SEC. 10. MODIFICATIONS OF FOREIGN TAX CREDIT RULES**  
19 **APPLICABLE TO OIL, GAS, MINING, GAM-**  
20 **BLING AND OTHER INDUSTRY TAXPAYERS**  
21 **RECEIVING SPECIFIC ECONOMIC BENEFITS.**

22 (a) IN GENERAL.—Section 901 of the Internal Rev-  
23 enue Code of 1986 is amended by redesignating subsection  
24 (n) as subsection (o) and by inserting after subsection (m)  
25 the following new subsection:

1       “(n) SPECIAL RULES RELATING TO DUAL CAPACITY  
2 TAXPAYERS.—

3           “(1) GENERAL RULE.—Notwithstanding any  
4 other provision of this chapter, any amount paid or  
5 accrued by a dual capacity taxpayer to a foreign  
6 country or possession of the United States for any  
7 period shall not be considered a tax—

8           “(A) if, for such period, the foreign coun-  
9 try or possession does not impose a generally  
10 applicable income tax, or

11           “(B) to the extent such amount exceeds  
12 the amount (determined in accordance with reg-  
13 ulations) which—

14           “(i) is paid by such dual capacity tax-  
15 payer pursuant to the generally applicable  
16 income tax imposed by the country or pos-  
17 session, or

18           “(ii) would be paid if the generally ap-  
19 plicable income tax imposed by the country  
20 or possession were applicable to such dual  
21 capacity taxpayer.

22       Nothing in this paragraph shall be construed to  
23 imply the proper treatment of any such amount  
24 not in excess of the amount determined under  
25 subparagraph (B).

1           “(2) DUAL CAPACITY TAXPAYER.—For pur-  
2           poses of this subsection, the term ‘dual capacity tax-  
3           payer’ means, with respect to any foreign country or  
4           possession of the United States, a person who—

5                   “(A) is subject to a levy of such country or  
6                   possession, and

7                   “(B) receives (or will receive) directly or  
8                   indirectly a specific economic benefit (as deter-  
9                   mined in accordance with regulations) from  
10                  such country or possession.

11           “(3) GENERALLY APPLICABLE INCOME TAX.—  
12           For purposes of this subsection—

13                   “(A) IN GENERAL.—The term ‘generally  
14                   applicable income tax’ means an income tax (or  
15                   a series of income taxes) which is generally im-  
16                   posed under the laws of a foreign country or  
17                   possession on income derived from the conduct  
18                   of a trade or business within such country or  
19                   possession.

20                   “(B) EXCEPTIONS.—Such term shall not  
21                   include a tax unless it has substantial applica-  
22                   tion, by its terms and in practice, to—

23                           “(i) persons who are not dual capacity  
24                           taxpayers, and

1 “(ii) persons who are citizens or resi-  
2 dents of the foreign country or posses-  
3 sion.”.

4 (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxes paid or accrued in taxable  
6 years beginning after the date of the enactment of this  
7 Act.

8 (c) SPECIAL RULE FOR TREATIES.—Notwith-  
9 standing sections 894 or 7852(d) of the Internal Revenue  
10 Code of 1986, the amendments made by this section shall  
11 apply without regard to any treaty obligation of the  
12 United States.

13 **SEC. 11. LIMITATIONS ON TREATY BENEFITS.**

14 (a) LIMITATION FOR CERTAIN DEDUCTIBLE PAY-  
15 MENTS.—Section 894 of the Internal Revenue Code of  
16 1986 is amended by adding at the end the following new  
17 subsection:

18 “(d) LIMITATION ON TREATY BENEFITS FOR CER-  
19 TAIN DEDUCTIBLE PAYMENTS.—

20 “(1) IN GENERAL.—In the case of any deduct-  
21 ible related-party payment, any withholding tax im-  
22 posed under chapter 3 (and any tax imposed under  
23 subpart A or B of this part) with respect to such  
24 payment may not be reduced under any treaty of the  
25 United States unless any such withholding tax would



1 be reduced under a treaty of the United States if  
 2 such payment were made directly to the foreign par-  
 3 ent corporation.

4 “(2) DEDUCTIBLE RELATED-PARTY PAY-  
 5 MENT.—For purposes of this subsection, the term  
 6 ‘deductible related-party payment’ means any pay-  
 7 ment made, directly or indirectly, by any person to  
 8 any other person if the payment is allowable as a de-  
 9 duction under this chapter and both persons are  
 10 members of the same foreign controlled group of en-  
 11 tities.

12 “(3) FOREIGN CONTROLLED GROUP OF ENTI-  
 13 TIES.—For purposes of this subsection—

14 “(A) IN GENERAL.—The term ‘foreign  
 15 controlled group of entities’ means a controlled  
 16 group of entities the common parent of which  
 17 is a foreign corporation.

18 “(B) CONTROLLED GROUP OF ENTITIES.—  
 19 The term ‘controlled group of entities’ means a  
 20 controlled group of corporations as defined in  
 21 section 1563(a)(1), except that—

22 “(i) ‘more than 50 percent’ shall be  
 23 substituted for ‘at least 80 percent’ each  
 24 place it appears therein, and

1 “(ii) the determination shall be made  
2 without regard to subsections (a)(4) and  
3 (b)(2) of section 1563.

4 A partnership or any other entity (other than a  
5 corporation) shall be treated as a member of a  
6 controlled group of entities if such entity is con-  
7 trolled (within the meaning of section  
8 954(d)(3)) by members of such group (includ-  
9 ing any entity treated as a member of such  
10 group by reason of this sentence).

11 “(4) FOREIGN PARENT CORPORATION.—For  
12 purposes of this subsection, the term ‘foreign parent  
13 corporation’ means, with respect to any deductible  
14 related-party payment, the common parent of the  
15 foreign controlled group of entities referred to in  
16 paragraph (3)(A).

17 “(5) REGULATIONS.—The Secretary may pre-  
18 scribe such regulations or other guidance as are nec-  
19 essary or appropriate to carry out the purposes of  
20 this subsection, including regulations or other guid-  
21 ance which provide for—

22 “(A) the treatment of two or more persons  
23 as members of a foreign controlled group of en-  
24 tities if such persons would be the common par-

1           ent of such group if treated as one corporation,  
2           and

3           “(B) the treatment of any member of a  
4           foreign controlled group of entities as the com-  
5           mon parent of such group if such treatment is  
6           appropriate taking into account the economic  
7           relationships among such entities.”.

8           (b) LIMITATION FOR CERTAIN INCOME ATTRIB-  
9           UTABLE TO PERMANENT ESTABLISHMENTS IN A THIRD  
10          COUNTRY.—Section 894 of such Code, as amended by  
11          subsection (a), is amended by adding at the end the fol-  
12          lowing new subsection:

13          “(e) DENIAL OF TREATY BENEFITS WITH RESPECT  
14          TO CERTAIN INCOME ATTRIBUTABLE TO A PERMANENT  
15          ESTABLISHMENT IN A THIRD COUNTRY.—A foreign per-  
16          son shall not be entitled under any income tax treaty of  
17          the United States with a foreign country to any exemption  
18          from, or reduction of, any tax with respect to income if—

19                 “(1) such income is income from sources within  
20                 the United States, and

21                 “(2) such income is attributable to a permanent  
22                 establishment which is outside of such foreign coun-  
23                 try and—

24                         “(A) the profits of which are subject to a  
25                         combined aggregate effective rate of tax in such

1 foreign country and the country of the perma-  
 2 nent establishment that is less than the lesser  
 3 of—

4 “(i) 15 percent, or

5 “(ii) 60 percent of the general statu-  
 6 tory rate of tax on income on corporations  
 7 in such foreign country, or

8 “(B) which is located in a foreign country  
 9 with which the United States does not have an  
 10 income tax treaty and is not taxed by the for-  
 11 eign country which is a party to the treaty.”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to payments made after the date  
 14 of the enactment of this Act.

15 (d) SPECIAL RULE FOR TREATIES.—Notwith-  
 16 standing sections 894 or 7852(d) of the Internal Revenue  
 17 Code of 1986, the amendments made by this section shall  
 18 apply without regard to any treaty obligation of the  
 19 United States.

20 **SEC. 12. REPEAL OF DEDUCTION FOR FOREIGN-DERIVED**  
 21 **INTANGIBLE INCOME.**

22 (a) IN GENERAL.—Part VIII of subchapter B of  
 23 chapter 1 of the Internal Revenue Code of 1986 is amend-  
 24 ed by striking section 250 (and the item related to such  
 25 section in the table of sections for such part).

1 (b) CONFORMING AMENDMENTS.—

2 (1) Section 172(d) of the Internal Revenue  
3 Code of 1986 is amended by striking paragraph (9).

4 (2) Section 246 of such Code is amended—

5 (A) by striking the comma after “section  
6 243(a)(1)” the first place it appears and insert-  
7 ing “and” and by striking “and section 250”,  
8 and

9 (B) by insert after “section 243(a)(1)” the  
10 second place it appears and by striking “, and  
11 250”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to taxable years beginning after  
14 December 31, 2021.

○