

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.

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

A BILL

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

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

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

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

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

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

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

Sec. 1. Short title, etc.

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

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

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

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

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

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

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

12 (2) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

3 (2) CONFORMING AMENDMENTS.—

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

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

9 (C) Section 246(b)(1) is amended—

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

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

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

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

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

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

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

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

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

16 (3) by striking subclause (VI).

17 (e) 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

chapter for interest paid or accrued during the taxable year shall not exceed the sum of—

“(A) the allowable percentage of 110 percent of the excess (if any) of—

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

“(ii) the amount described in subparagraph (B), plus

“(B) the amount of interest includible in gross income of such corporation for such taxable year.

“(2) INTERNATIONAL FINANCIAL REPORTING 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

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

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

“(ii) NON-POSITIVE ENTITY EBITDA.—In the case of any group member the EBITDA of which is zero or less, paragraph (1) shall be applied without regard to subparagraph (A) thereof.

“(4) CONSOLIDATED FINANCIAL STATEMENT.—

For purposes of this subsection, the term ‘consolidated financial statement’ means any consolidated financial statement described in paragraph (2)(A)(ii) if such statement is—

“(A) a financial statement which is certified as being prepared in accordance with generally accepted accounting principles, international financial reporting standards, or any other comparable method of accounting identified by the Secretary, and which is—

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

“(ii) an audited financial statement 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 (c) 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-

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

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

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

“(ii) such corporation—

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

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

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

“(3) MANAGEMENT AND CONTROL.—

“(A) IN GENERAL.—The Secretary shall
prescribe regulations for purposes of deter-
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.

○