117TH CONGRESS
1ST SESSION

S. 2621

To amend the Internal Revenue Code of 1986 to modernize the tax treatment of derivatives and their underlying investments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2021

Mr. WYDEN 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 modernize the tax treatment of derivatives and their underlying investments, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Modernization of Derivatives Tax Act of 2021".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. MODERNIZATION OF TAX TREATMENT OF CERTAIN DERIVATIVES.

(a) IN GENERAL.—Subchapter E of chapter 1 is amended by adding at the end the following new part:

"PART IV—TAX TREATMENT OF DERIVATIVES AND SIMILAR CONTRACTS

"Subpart A—Derivatives

"SEC. 491. RULES FOR TREATMENT OF DERIVATIVES.

"(a) IN GENERAL.—For purposes of this title, if there is a taxable event with respect to a derivative or an underlying investment—

"(1) notwithstanding any other provision of this title, except as provided in subsection (b)(3)(A) or section 1032, gain or loss shall be recognized and taken into account in the taxable year in which the taxable event occurs, and

"(2) proper adjustment shall be made in the amount of any subsequent gain or loss for gain or loss taken into account by reason of paragraph (1).

"(b) RULES RELATING TO GAIN OR LOSS.—Notwithstanding any other provision of this title—

"(1) CHARACTER AND SOURCE OF GAIN OR LOSS.—

"(A) CHARACTER.—Except as provided in paragraph (3)(A), any item of income, deduction, gain, or loss taken into account under subsection (a) with respect to a taxable event shall be treated as—

"(i) ordinary income or loss, and

"(ii) attributable to a trade or business of the taxpayer for purposes of sections 62(a) and 172(d)(4).

"(B) SOURCE OF GAIN OR LOSS FROM DERIVATIVES.—In the case of a taxable event with respect to a derivative, any item of income, deduction, gain, or loss taken into account under subsection (a) shall be treated as derived from sources within the country of residence, incorporation, or organization of the taxpayer.

"(2) DETERMINATION OF AMOUNT.—

"(A) IN GENERAL.—The amount of gain or loss taken into account under subsection (a) with respect to a taxable event shall be—

"(i) in the case of a taxable event involving the termination or transfer of a derivative or the sale or exchange of an underlying investment, the amount of gain or loss determined under this title with respect to the taxable event, or

"(ii) in the case of any other taxable event, the amount of gain or loss which would be determined under this title if, immediately before the taxable event—

"(I) in the case of a derivative, the derivative were terminated or transferred at its fair market value, or

"(II) in the case of an underlying investment, the investment were sold or exchanged at its fair market value.

"(B) RELIANCE ON VALUATION.—For purposes of subparagraph (A), the taxpayer may rely on a valuation which is—

"(i) provided to the taxpayer by a broker under section 6045(b), or

"(ii) determined under an applicable financial statement.

"(3) SPECIAL RULES FOR TAXABLE EVENTS WITH RESPECT TO INVESTMENT HEDGING UNITS.—

"(A) IN GENERAL.—In the case of a taxable event described in subsection (c)(2) with respect to a derivative or underlying investment (other than a termination or transfer of the derivative or the sale or exchange of the underlying investment)—

"(i) notwithstanding subsection (a), built-in loss (if any) with respect to the derivative or underlying investment shall not be recognized and shall not be taken into account by reason of such taxable event, and

"(ii) notwithstanding paragraph (1), built-in gain (if any) with respect to the underlying investment shall be treated as long-term or short-term capital gain if the built-in gain would have been so treated if the investment were sold or exchanged at its fair market value immediately before the time that the built-in gain is determined under subparagraph (D).

"(B) IDENTIFICATION.—For purposes of this paragraph, the determination of which portions of an underlying investment have been deemed sold or exchanged in a taxable event shall be made in the same manner as if there had been an actual sale or exchange.

"(C) BUILT-IN LOSS.—For purposes of this section, the term 'built-in loss' means, with respect to any derivative or underlying investment in an investment hedging unit, any loss which would have been recognized and taken into account under subsection (a) if the derivative were terminated or transferred, or the underlying investment were sold or exchanged, at its fair market value as of the later of the time that the investment hedging unit was established or the time that the derivative or the underlying investment became part of the investment hedging unit.

"(D) BUILT-IN GAIN.—For purposes of this section, the term 'built-in gain' means, with respect to any underlying investment in an investment hedging unit, any gain which would have been recognized and taken into account under subsection (a) if the underlying investment were sold or exchanged at its fair market value as of the later of the time that the investment hedging unit was established or the time that the underlying investment became part of the investment hedging unit.

"(c) TAXABLE EVENT.—For purposes of this part, the term 'taxable event' means—

"(1) with respect to any derivative which is not part of an investment hedging unit—

"(A) the termination or transfer of such derivative, and

"(B) the close of any taxable year if the taxpayer has rights or obligations with respect to such derivative at such time, and

"(2) with respect to all derivatives and underlying investments which are part of the same investment hedging unit—

"(A) the establishment of the investment hedging unit,

"(B) the termination or transfer of any such derivative,

"(C) the sale or exchange of all or any portion of any such underlying investment,

"(D) the entering into of another derivative, or the acquisition of an additional amount of such underlying investment, after the establishment of the investment hedging unit if such derivative or additional amount is treated as part of the investment hedging unit under section 492, and

"(E) in the case of—

"(i) an investment hedging unit with respect to which an election is in effect under section 492(b), the close of each business day, and

"(ii) any other investment hedging unit, the close of any taxable year if the applicable hedging period with respect to such unit includes such close.

"(3) TERMINATION OR TRANSFER.—For purposes of this part, the term 'termination or transfer' includes, with respect to any derivative, any termination or transfer by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, by sale or other disposition, by assumption, or otherwise.

"(d) TREATMENT OF PAYMENTS WITH RESPECT TO CERTAIN DERIVATIVES.—Notwithstanding any other provision of this title—

"(1) IN GENERAL.—Except as provided by the Secretary, in the case of a payment pursuant to a derivative (other than an option)—

"(A) any item of income, deduction, gain, or loss with respect to the payment shall be taken into account for purposes of this title at the time of the payment, and

"(B) proper adjustment shall be made in the amount of any subsequent gain or loss for items taken into account by reason of subparagraph (A).

This paragraph shall not apply to a payment in connection with a taxable event.

"(2) RULES RELATING TO CHARACTER AND SOURCE OF GAIN OR LOSS.—In the case of any item of income, deduction, gain, or loss with respect to payments described in paragraph (1)—

"(A) the rules of subsection (b)(1)(A) shall apply in determining the character of such item, and

"(B) except as provided in section 871(m), the rule of subsection (b)(1)(B) shall apply in determining the source of such item.

"(e) SUSPENSION OF HOLDING PERIOD WHILE UNDERLYING INVESTMENT PART OF INVESTMENT HEDGING UNIT.—For purposes of section 1222, in the case of any underlying investment which is part of an investment hedging unit, the holding period for such investment shall not include any period during which the underlying investment is part of such unit.

"(f) APPLICABLE FINANCIAL STATEMENT.—For purposes of this part, the term 'applicable financial statement' means—

"(1) a financial statement which is certified as being prepared in accordance with generally accepted accounting principles and which is—

"(A) a 10–K (or successor form), or annual statement to shareholders, required to be filed by the taxpayer with the United States Securities and Exchange Commission,

"(B) an audited financial statement of the taxpayer which is used for—

"(i) credit purposes,

"(ii) reporting to shareholders, partners, or other proprietors, or to beneficiaries, or

"(iii) any other substantial nontax purpose,

but only if there is no statement of the taxpayer described in subparagraph (A), or

"(C) filed by the taxpayer with any other Federal agency for purposes other than Federal tax purposes, but only if there is no statement of the taxpayer described in subparagraph (A) or (B),

"(2) a financial statement which is made on the basis of international financial reporting standards and is filed by the taxpayer with an agency of a foreign government which is equivalent to the United States Securities and Exchange Commission and which has reporting standards not less stringent than the standards required by such Commission, but only if there is no statement of the taxpayer described in paragraph (1), or

"(3) a financial statement filed by the taxpayer with any other regulatory or governmental body specified by the Secretary, but only if there is no statement of the taxpayer described in paragraph (1) or (2).

"SEC. 492. INVESTMENT HEDGING UNITS.

"(a) INVESTMENT HEDGING UNIT.—For purposes of this part—

"(1) IN GENERAL.—Except as provided in subsection (b)—

"(A) a taxpayer shall be treated as having an investment hedging unit with respect to an underlying investment during any applicable hedging period with respect to the underlying investment, and

"(B) subject to paragraph (3), such investment hedging unit shall at any time during the applicable hedging period consist of the following held by the taxpayer at such time:

"(i) Each derivative with respect to the underlying investment which has a delta with respect to any portion of the underlying investment which is within the range beginning with minus 0.7 and ending with minus 1.0.

"(ii) Each portion of the underlying investment described in clause (i) with respect to which any derivative has a delta within the range described in clause (i).

"(2) APPLICABLE HEDGING PERIOD.—The term 'applicable hedging period' means, with respect to any underlying investment of a taxpayer, a continuous period—

"(A) beginning with the first time (after a period which is not an applicable hedging period) the taxpayer holds 1 or more of the derivatives with respect to the underlying investment, and 1 or more portions of the underlying investment, which are described in paragraph (1)(B), and

"(B) ending with the time none of such derivatives and portions are so described.

"(3) SPECIAL RULES RELATING TO DELTA AND COMBINING DERIVATIVES.—

"(A) IN GENERAL.—For purposes of this subsection—

"(i) a derivative with respect to an underlying investment shall be treated as having a delta within the range described in paragraph (1)(B)(i) if the derivative by itself, or in combination with 1 or more other derivatives, has such delta with respect to any portion of such underlying investment, and

"(ii) the determination under paragraph (1)(B) of which derivatives have such delta, and each portion of the underlying investment with respect to which such derivatives have such delta, shall be made in the manner which results in the largest portion of such underlying investment being so described.

"(B) SECRETARIAL AUTHORITY FOR APPLICABLE TRADED DERIVATIVES.—The Secretary may prescribe regulations or other guidance to modify the rules under subparagraph (A) to simplify the application of such rules to applicable traded derivatives.

"(4) APPLICABLE TRADED DERIVATIVES.—For purposes of paragraph (3)—

"(A) IN GENERAL.—The term 'applicable traded derivative' means any listed option or regulated futures contract.

"(B) REGULATED FUTURES CONTRACT.—The term 'regulated futures contract' means a contract—

"(i) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

"(ii) which is traded on (or subject to the rules of) a qualified board or exchange.

"(C) LISTED OPTION.—The term 'listed option' means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

"(D) QUALIFIED BOARD OR EXCHANGE.—The term 'qualified board or exchange' means—

"(i) a national securities exchange which is registered with the Securities and Exchange Commission,

"(ii) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

"(iii) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this part.

"(b) ELECTION WITH RESPECT TO ITEMS INCLUDED IN INVESTMENT HEDGING UNIT.—

"(1) IN GENERAL.—For purposes of this part, a taxpayer may elect to treat all derivatives with respect to an underlying investment, and all of such underlying investment, as part of an investment hedging unit.

"(2) ELECTION.—Any election under this subsection with respect to an underlying investment—

"(A) shall apply to all derivatives with respect to such underlying investment, and all of such underlying investment, held at any time after the election is made (including during any period such derivatives or underlying investment are not held simultaneously), and

"(B) shall be irrevocable.

"(3) DEEMED ELECTION FOR TAXPAYERS FAILING TO IDENTIFY.—

"(A) IN GENERAL.—If a taxpayer—

"(i) does not have an election in effect under paragraph (1) with respect to an underlying investment, and

"(ii) fails to meet the requirements of subsection (c) for testing and identifying derivatives with respect to the underlying investment,

the taxpayer shall be treated as having made the election under paragraph (1).

"(B) TREATMENT OF ELECTION.—For purposes of paragraph (2), a deemed election under this paragraph—

"(i) shall be treated as made as of the first time the taxpayer fails to meet the requirements of subsection (c) with respect to the underlying investment, and "(ii) notwithstanding paragraph (2)(B), may be revoked with the consent of the Secretary.

"(c) DEFINITIONS AND RULES RELATING TO TAXPAYERS IDENTIFYING INVESTMENT HEDGING UNITS.—In the case of a taxpayer with respect to which an election is not in effect under subsection (b) with respect to an underlying investment—

"(1) IN GENERAL.—The taxpayer shall, at the times described in paragraph (3), test the derivatives with respect to the underlying investment and make the identifications described in paragraph (2).

"(2) IDENTIFICATION.—

"(A) IN GENERAL.—The taxpayer shall identify the following with respect to an underlying investment:

"(i) Each derivative described in subsection (a)(1)(B)(i).

"(ii) Each portion of the underlying investment described in subsection (a)(1)(B)(ii).

"(B) DERIVATIVES AND UNDERLYING INVESTMENT NOT PART OF INVESTMENT HEDGING UNIT.—A taxpayer shall identify the derivatives with respect to an underlying investment, and the portions of the underlying investment, which are not required to be identified under subparagraph (A).

"(C) PORTION MAY INCLUDE ALL OF UNDERLYING INVESTMENT.—For purposes of this part, the term 'portion' with respect to any underlying investment identified may include all of the underlying investment.

"(3) TIMES IDENTIFICATIONS REQUIRED TO BE MADE.—

"(A) IN GENERAL.—The taxpayer shall test and make the identifications required under this subsection at the following times during any continuous period the taxpayer simultaneously holds 1 or more derivatives with respect to an underlying investment and 1 or more portions of the underlying investment:

"(i) The beginning of the period.

"(ii) Immediately after the taxpayer (during such period)—

"(I) enters into another derivative with respect to the underlying investment or acquires an additional amount of such underlying investment, or

"(II) terminates or transfers 1 or more derivatives with respect to the underlying investment or sells or exchanges any portion of the underlying investment, except that no testing and identification shall be required under this subclause with respect to any such transaction if the taxpayer does not have an investment hedging unit with respect to the underlying investment immediately before such transaction.

"(iii) Such other times during such period as the Secretary may prescribe by regulations or other guidance.

"(B) NO OTHER TIMES FOR TESTING.—Except as provided by the Secretary, there shall not be taken into account for purposes of this part any testing and identification done by the taxpayer with respect to an underlying investment at a time other than the times required under subparagraph (A).

"(4) MANNER.—A taxpayer shall be treated as timely making the identifications required under this subsection if the derivatives with respect to, and each portion of, an underlying investment are clearly identified as part of (or as not part of) the investment hedging unit for purposes of this paragraph before the close of the day on which the identification is required (or such other time as the Secretary may prescribe).

"(5) TREATMENT OF INCORRECT IDENTIFICATION.—The Secretary shall prescribe regulations or other guidance to properly characterize any income, gain, expense, or loss arising from any derivative or underlying investment which is incorrectly identified under paragraph (2) as being part of, or not being part of, an investment hedging unit.

"(d) DELTA.—For purposes of this section—

"(1) IN GENERAL.—The term 'delta' means, with respect to any derivative and underlying investment, the ratio of the expected change in the fair market value of the derivative to a very small change in the fair market value of the underlying investment.

"(2) METHOD OF DETERMINATION.—The delta with respect to any derivative with respect to an underlying investment (or any combination of such derivatives) shall be determined—

"(A) in a commercially reasonable manner, and

"(B) except as provided by the Secretary, in a manner which is consistent with the manner used by the taxpayer or the taxpayer's broker for purposes of an applicable financial statement.

"(3) TIME FOR MAKING DETERMINATION.—The delta with respect to any derivative and underlying investment shall be determined as of any date the taxpayer is required to make the identifications described in subsection (c).

"(4) MULTIPLE UNDERLYING INVESTMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if the value of a derivative is determined by reference to more than 1 underlying investment, the delta shall be determined separately with respect to each underlying investment.

"(B) METHODS FOR COMBINATIONS OF UNDERLYING INVESTMENTS.—The Secretary may provide methods for determining the delta of any derivative with respect to combinations of 2 or more underlying investments.

"(e) OTHER DEFINITIONS AND RULES.—For purposes of this part—

"(1) UNDERLYING INVESTMENT.—

"(A) IN GENERAL.—The term 'underlying investment' means, with respect to any derivative, any item—

"(i) which is described in any of the paragraphs (1) through (8) of section 493(a) (or any item substantially the same as any such item), and

"(ii) by reference to which the value of the derivative, or any payment or other transfer with respect to the derivative, is determined either directly or indirectly.

"(B) COORDINATION WITH SECTION 475.—In the case of a dealer in securities to which section 475 applies (and a dealer in commodities with respect to which an election is in effect under section 475(e)), such term shall not include any item which, but for this subparagraph, would be treated as an underlying investment if such item is treated as a security under section 475 (including a commodity treated as a security under section 475(e)).

"(C) INDIRECT DETERMINATIONS.—For purposes of subparagraph (A)(ii), the value of, or any payment or other transfer with respect to, a derivative shall not be treated as indirectly determined by reference to one or more of the items described in paragraphs (1) through (8) of section 493(a) solely because the change in a variable affecting such value, payment, or other transfer also affects the value, level, amount, or calculation of such item or items.

"(2) ESTABLISHMENT OF INVESTMENT HEDGING UNIT.—A taxpayer shall be treated as having established an investment hedging unit with respect to an underlying investment—

"(A) in the case of a taxpayer with an election in effect under subsection (b) with respect to the underlying investment, as of the date the election takes effect, and

"(B) in the case of any other taxpayer, as of the beginning of each applicable hedging period with respect to the underlying investment.

"(3) RELATED PARTIES, ETC.—For purposes of this section—

"(A) ATTRIBUTION BETWEEN RELATED PERSONS.—Any derivative or underlying investment held by a related party (within the meaning of subsection (f)) with respect to the taxpayer shall be treated as held by the taxpayer.

"(B) CERTAIN PASS-THROUGH ENTITIES.—If part or all of the income, gain, loss, or expense with respect to a derivative or underlying investment held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by the taxpayer, then, except to the extent otherwise provided by the Secretary, such derivative or investment shall be treated as held by the taxpayer.

"(C) STOCK AND DEBT WHOSE VALUE PRIMARILY DETERMINED BY REFERENCE TO OTHER ITEMS.—Except as provided by the Secretary, if the taxpayer holds an item described in paragraph (1) or (3) of section 493(a) the value of which, or with respect to which any payment or other transfer, is primarily determined by reference to one or more other items described in paragraphs (1) through (8) of section 493(a), then, solely for purposes of this subpart, such item described in paragraph (1) or (3) of section 493(a) shall also be treated as if it were such other item.

"(f) RELATED PARTY.—For purposes of this section—

"(1) IN GENERAL.—A person is a related party to the taxpayer if, with respect to any period during which a derivative or underlying investment is held by such person, such person—

"(A) is the taxpayer's spouse,

"(B) is a dependent of the taxpayer or any other taxpayer with respect to whom the taxpayer is a dependent,

"(C) is an individual, corporation, partnership, trust, or estate which controls, or is controlled by (within the meaning of section 954(d)(3)), the taxpayer or any individual described in subparagraph (A) or (B) with respect to the taxpayer (or any combination thereof),

"(D) is an individual retirement plan, Archer MSA (as defined in section 220(d)), or health savings account (as defined in section 223(d)), of the taxpayer or of any individual described in subparagraph (A) or (B) with respect to the taxpayer, ''(E) is an account under a qualified tuition program described in section 529, an ABLE account (as defined in section 529A(e)(6)), or a Coverdell education savings account (as defined in section 530(b)) if the taxpayer, or any individual described in subparagraph (A) or (B) with respect to the taxpayer, is the designated beneficiary of such account or has the right to make any decision with respect to the investment of any amount in such account,

''(F) is an account under—

''(i) a plan described in section 401(a),

''(ii) an annuity plan described in section 403(a),

''(iii) an annuity contract described in section 403(b), or

''(iv) an eligible deferred compensation plan described in section 457(b) and maintained by an employer described in section 457(e)(1)(A),

if the taxpayer or any individual described in subparagraph (A) or (B) with respect to the taxpayer has the right to make any decision with respect to the investment of any amount in such account, or

"(G) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

"(2) DETERMINATION OF MARITAL STATUS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), marital status shall be determined under section 7703.

"(B) SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATELY AND LIVING APART.—A husband and wife who—

"(i) file separate returns for any taxable year, and

"(ii) live apart at all times during such taxable year,

shall not be treated as married individuals.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be appropriate to carry out this section, including regulations or guidance which require in appropriate cases a taxpayer to bifurcate derivatives described in subsection (d)(4) for purposes of applying this part or which may be necessary to prevent the avoidance of the purposes of subsection (f) (including treating persons as related parties if such persons are formed or availed of to avoid the purposes of such subsection).

"SEC. 493. DERIVATIVE DEFINED.

"(a) IN GENERAL.—For purposes of this part, except as otherwise provided in this section, the term 'derivative' means any contract (including any option, forward contract, futures contract, short position, swap, or similar contract) the value of which, or any payment or other transfer with respect to which, is (directly or indirectly) determined by reference to one or more of the following:

"(1) Any share of stock in a corporation.

"(2) Any partnership or beneficial ownership interest in a partnership or trust.

"(3) Any evidence of indebtedness.

"(4) Except as provided in subsection (b)(1), any real property.

"(5) Any commodity which is actively traded (within the meaning of section 1092(c)(4)).

"(6) Any currency.

"(7) Any rate, price, amount, index, formula, or algorithm.

"(8) Any other item which the Secretary may prescribe.

Except as provided by the Secretary to prevent the avoidance of the purposes of this part, such term shall not include any item described in paragraphs (1) through (8). For purposes of this subsection, the value of, or any payment or other transfer with respect to, a contract shall not be treated as indirectly determined by reference to one or more of the items described in paragraphs (1) through (8) solely because the change in a variable affecting such value, payment, or other transfer also affects the value, level, amount, or calculation of such item or items.

"(b) EXCEPTIONS.—

"(1) CERTAIN REAL PROPERTY.—

"(A) IN GENERAL.—For purposes of this part, the term 'derivative' shall not include any contract with respect to interests in real property (as defined in section 856(c)(5)(C)) if such contract requires physical delivery of such real property.

"(B) OPTIONS TO SETTLE IN CASH.—

"(i) IN GENERAL.—For purposes of subparagraph (A), a contract which provides for an option of cash settlement shall not be treated as requiring physical delivery of real property unless the option is exercisable only in unusual and exceptional circumstances.

"(ii) OPTION OF CASH SETTLEMENT.—For purposes of clause (i), a contract provides an option of cash settlement if the contract settles in (or could be settled in) cash or property other than the underlying real property.

"(2) HEDGING TRANSACTIONS.—

"(A) IN GENERAL.—For purposes of this part, the term 'derivative' shall not include any contract which is part of a hedging transaction (as defined in section 1221(b)).

"(B) SECTION 988 HEDGING TRANSACTIONS.—For exception for section 988 hedging transactions, see section 988(d)(1).

"(3) SECURITIES LENDING, SALE-REPURCHASE, AND SIMILAR FINANCING TRANSACTIONS.—To the extent provided by the Secretary, for purposes of this part, the term 'derivative' shall not include the right to the return of the same or substantially identical securities transferred in a securities lending transaction, sale-repurchase transaction, or similar financing transaction.

"(4) OPTIONS RECEIVED IN CONNECTION WITH THE PERFORMANCE OF SERVICES.—For purposes of this part, the term 'derivative' shall not include any option described in section 83(e)(3) received in connection with the performance of services.

"(5) INSURANCE, ANNUITY, AND ENDOWMENT CONTRACTS.—For purposes of this part, the term 'derivative' shall not include any insurance, annuity, or endowment contract issued by an insurance company to which subchapter L applies (or issued by any foreign corporation to which such subchapter would apply if such foreign corporation were a domestic corporation).

"(6) DERIVATIVES WITH RESPECT TO STOCK OF MEMBERS OF SAME WORLDWIDE AFFILIATED GROUP.—

"(A) IN GENERAL.—For purposes of this part, the term 'derivative' shall not include any derivative (determined without regard to this paragraph) with respect to stock issued by any member of the same worldwide affiliated group in which the taxpayer is a member.

"(B) WORLDWIDE AFFILIATED GROUP.— For purposes of this paragraph, the term 'worldwide affiliated group' means a group consisting of—

"(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraph (2) of section 1504(b)), and

"(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

"(7) COMMODITIES USED IN NORMAL COURSE OF TRADE OR BUSINESS.—For purposes of this part, the term 'derivative' shall not include any contract with respect to any commodity if—

"(A) such contract requires physical delivery with the option of cash settlement only in unusual and exceptional circumstances, and

"(B) such commodity is used (and is used in quantities with respect to which such derivative relates) in the normal course of the taxpayer's trade or business (or, in the case of an individual, for personal consumption).

"(c) CONTRACTS WITH EMBEDDED DERIVATIVE COMPONENTS.—

"(1) IN GENERAL.—If a contract has derivative and nonderivative components, then each derivative component shall be treated as a derivative for purposes of this part. If the derivative component cannot be separately valued, then the entire contract shall be treated as a derivative for purposes of this part.

"(2) EXCEPTION FOR CERTAIN EMBEDDED DERIVATIVE COMPONENTS OF DEBT INSTRUMENTS.—A debt instrument shall not be treated as having a derivative component merely because—

"(A) such debt instrument is denominated in a nonfunctional currency (as defined in section 988(c)(1)(C)(ii)), or

"(B) payments with respect to such debt instrument are determined by reference to the value of a nonfunctional currency (as so defined).

"(d) TREATMENT OF AMERICAN DEPOSITORY RECEIPTS AND SIMILAR INSTRUMENTS.—Except as otherwise provided by the Secretary, for purposes of this part, American depository receipts (and similar instruments) with respect to shares of stock in foreign corporations shall be treated as shares of stock in such foreign corporations.

"Subpart B—Similar Contracts

"SEC. 494. TAX TREATMENT OF CONTRACTS SIMILAR TO DERIVATIVES.

"(a) IN GENERAL.—For purposes of this title, if there is a taxable transaction with respect to any applicable property interest, then, notwithstanding any other provision of this title other than section 1032, gain or loss attributable to the taxable transaction shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the applicable property interest relates has (or would have) in the hands of the taxpayer.

"(b) DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE PROPERTY INTEREST.—The term 'applicable property interest' means any right or obligation with respect to property other than—

"(A) a derivative (as defined in section 493), or

"(B) any position in applicable property to which section 1092 applies.

"(2) TAXABLE TRANSACTION.—The term 'taxable transaction' means, with respect to any applicable property interest—

"(A) any termination or transfer (as defined in section 491(c)(3)) of such interest, or

"(B) any payment in fulfillment or partial fulfillment of such interest.".

SEC. 3. COORDINATION OF NEW RULES WITH EXISTING RULES.

(a) COORDINATION WITH RULES FOR DEALERS AND TRADERS.—

(1) DERIVATIVES NOT TREATED AS SECURITIES.—Section 475(c)(2) is amended—

(A) by adding "and" at the end of subparagraph (C),

(B) by striking subparagraphs (D) and (E) and by redesignating subparagraph (F) as subparagraph (D),

(C) by striking "subparagraph (A), (B), (C), (D), or (E)" in subparagraph (D)(i), as so redesignated, and inserting "subparagraph (A), (B), or (C)", and

(D) by amending the last sentence to read as follows: "Such term shall not include any derivative to which section 491(a) applies.".

(2) DERIVATIVES NOT TREATED AS COMMODITIES.—Section 475(e)(2) is amended—

(A) by adding "and" at the end of subparagraph (A),

(B) by striking subparagraphs (B) and (C) and by redesignating subparagraph (D) as subparagraph (B), and

(C) by striking "subparagraph (A), (B) or (C)" in subparagraph (B)(i), as so redesignated, and inserting "subparagraph (A)".

(3) CONFORMING AMENDMENTS.—

(A) Section 475(b) is amended by striking paragraph (4).

(B) Section 475(d)(2)(B) is amended—

(i) by striking "subsection (c)(2)(F)(iii)" and inserting "subsection (c)(2)(D)(iii)", and

(ii) by striking "subsection (c)(2)(F)" and inserting "subsection (c)(2)(D)".

(C) Section 475(f)(1)(D) is amended by striking "subsections (b)(4) and (d)" and inserting "subsection (d)".

(b) COORDINATION WITH STRADDLE RULES.—

(1) IN GENERAL.—Section 1092 is amended to read as follows:

“SEC. 1092. STRADDLES.

“(a) RECOGNITION OF LOSS IN CASE OF STRADDLES, ETC.—

“(1) LIMITATION ON RECOGNITION OF LOSS.—

“(A) IN GENERAL.—Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the unrecognized gain (if any) with respect to 1 or more positions which were offsetting positions with respect to 1 or more positions from which the loss arose.

“(B) CARRYOVER OF LOSS.—Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

“(2) UNRECOGNIZED GAIN.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘unrecognized gain’ means—

“(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

"(ii) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

"(B) REPORTING OF GAIN.—Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe—

"(i) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

"(ii) the amount of such unrecognized gain.

The Secretary may waive the requirement to report under this subparagraph with respect to any position if such reporting is not required to carry out the purposes of this section.

"(3) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of this subsection, if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

"(A) terminated the position for its fair market value immediately before the settlement, and

"(B) sold the property so delivered by the taxpayer at its fair market value.

"(b) REGULATIONS.—The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233 (as in effect before their repeal).

"(c) DEFINITIONS AND RULES RELATING TO STRADDLES.—For purposes of this section—

"(1) STRADDLE DEFINED.—The term 'straddle' means offsetting positions with respect to applicable property.

"(2) OFFSETTING POSITIONS.—A taxpayer holds offsetting positions with respect to applicable property if the taxpayer holds any position which by itself, or in combination with 1 or more other positions held by the taxpayer, has a delta (within the meaning of section 492(d)(1)) with respect to any other position held by the taxpayer which is within the range beginning with minus 0.7 and ending with minus 1.0. For purposes of this paragraph, positions shall be taken into account whether or not they are in the same applicable property.

"(3) DETERMINATION OF DELTA.—For purposes of this section—

"(A) METHOD OF DETERMINATION.—The delta with respect to any position in applicable property with respect to another position in applicable property (or any combination of such positions) shall be determined in the same manner as under section 492(d)(2).

"(B) TIMING OF DELTA DETERMINATION AND OTHER SPECIAL RULES.—Rules similar to the rules of paragraphs (3) and (4) of section 492(d) shall apply for purposes of this paragraph.

"(4) APPLICABLE PROPERTY AND POSITION DEFINED.—

"(A) APPLICABLE PROPERTY.—The term 'applicable property' means any item which is—

"(i) described in paragraph (1), (2), (3), (5), (6), (7), or (8) of section 493(a) (or any item substantially the same as any such item), and

"(ii) of a type which is actively traded.

"(B) POSITION.—

"(i) IN GENERAL.—The term 'position' means an interest in applicable property.

"(ii) DERIVATIVES EXCLUDED.—Such term shall not include a derivative (as defined in section 493).

"(C) STOCK AND DEBT WHOSE VALUE PRIMARILY DETERMINED BY REFERENCE TO OTHER ITEMS.—Except as provided in regulations, if the taxpayer holds an item described in paragraph (1) or (3) of section 493(a) the value of which, or with respect to which any payment or other transfer, is primarily determined by reference to one or more other items described in paragraphs (1) through (8) of section 493(a), then, solely for purposes of this section, such item described in paragraph (1) or (3) of section 493(a) shall also be treated as if it were such other item.

"(5) POSITIONS HELD BY RELATED PERSONS, ETC.—

"(A) IN GENERAL.—In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related party (within the meaning of section 492(f)).

"(B) CERTAIN PASS-THROUGH ENTITIES.—If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided by the Secretary, such position shall be treated as held by the taxpayer.

"(6) SPECIAL RULES FOR FOREIGN CURRENCY.—

"(A) POSITION TO INCLUDE INTEREST IN CERTAIN DEBT.—For purposes of paragraph (4)(B)(i), an obligor's interest in a nonfunctional currency denominated debt obligation is treated as a position in the nonfunctional currency.

"(B) ACTIVELY TRADED REQUIREMENT.—For purposes of paragraph (4)(A)(ii), foreign currency for which there is an active interbank market is presumed to be actively traded.

"(d) EXCEPTION FOR HEDGING TRANSACTIONS AND INVESTMENT HEDGING UNITS.—This section shall not apply in the case of—

"(1) any hedging transaction (as defined in section 1221(b)), and

"(2) any investment hedging unit (as defined in section 492).

"(e) CROSS REFERENCE.—For provisions requiring capitalization of certain interest and carrying charges where there is a straddle, see section 263(g).".

(2) CONFORMING AMENDMENTS.—The last sentence of section 246(c)(4) is amended—

(A) by inserting "(as in effect before its repeal)" after "section 1092(c)(4)", and

(B) by inserting "(as so in effect)" after "section 1092(f)".

(c) DEBT INSTRUMENTS HELD BY INSURANCE COMPANIES.—

(1) IN GENERAL.—Subsection (a) of section 1221 is amended by striking "or" at the end of paragraph (7), by striking the period at the end of

paragraph (8) and inserting "; or", and by adding at the end the following:

"(9) any bond, debenture, note, or certificate or other evidence of indebtedness held by an applicable insurance company (as defined in subsection (b)(5)).".

(2) APPLICABLE INSURANCE COMPANY.—Section 1221(b), as amended by this Act, is amended by adding at the end the following:

"(5) APPLICABLE INSURANCE COMPANY.—For purposes of subsection (a)(9)—

"(A) IN GENERAL.—The term 'applicable insurance company' means, with respect to any taxable year, an insurance company (as defined in the last sentence of section 816(a))—

"(i) which is subject to tax under section 801(a) or section 831(a),

"(ii) with respect to which sections 831(b), 835, and 842 do not apply, and

"(iii) which is not treated as a stock insurance company solely by reason of section 833(a)(1).

"(B) PERMANENT TREATMENT BY COMPANY AS ORDINARY ASSET.—If an asset is treated as an asset described in subsection (a)(9) with respect to any applicable insurance company for any taxable year, such asset shall be treated as so described during any subsequent taxable year such asset is held by such company.''.

(3) REGULATIONS.—Paragraph (4) of section 1221(b) is amended—

(A) by striking ''The Secretary'' and inserting:

''(A) RELATED PARTIES.—The Secretary'', and

(B) by adding at the end the following:

''(B) ASSETS OF INSURANCE COMPANIES.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(9), including such regulations as may be necessary to prevent the avoidance of Federal income tax through the sale or exchange of assets described in such subsection.''.

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendments made by this subsection shall apply to any bond, debenture, note, or certificate or other evidence of indebtedness held or acquired after the 90-day period beginning with the date of the enactment of this Act.

(B) TRANSITION RULE.—If a taxpayer has a capital loss carryover to any taxable year of the taxpayer beginning after the close of the 90-day period described in subparagraph (A), the taxpayer shall, in addition to other short-term capital gain of the taxpayer (if any), treat as short-term capital gain (rather than as ordinary income) an amount equal to the lesser of—

(i) the net gain (if any) from sales or exchanges during such taxable year of assets to which section 1221(a)(9) of such Code (as added by paragraph (1)) applies, or

(ii) the capital loss carryovers to such taxable year from taxable years beginning before the close of such period.

(d) RICS ALLOWED NET OPERATING LOSS DEDUCTION.—

(1) IN GENERAL.—Paragraph (2) of section 852(b) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) through (G) as subparagraphs (B) through (F), respectively.

(2) OTHER MODIFICATIONS.—Paragraph (6) of section 172(d) is amended to read follows:

"(6) MODIFICATIONS RELATED TO RICS AND REITS.—In the case of any taxable year for which part I or II of subchapter M applies to the taxpayer—

"(A) the net operating loss for such taxable year shall be computed by taking into account—

"(i) in the case of a regulated investment company, the adjustments described in section 852(b)(2) (other than the deduction for dividends paid described in subparagraph (C) thereof)), and

"(ii) in the case of a real estate investment trust, the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in subparagraph (B) thereof),

"(B) where such taxable year is a 'prior taxable year' referred to in paragraph (2) of subsection (b), references in such paragraph to 'taxable income' shall be treated as references to—

"(i) in the case of a regulated investment company, regulated investment company taxable income (as defined in section 852(b)(2)), and

"(ii) in the case of a real estate investment trust, real estate investment taxable income (as defined in section 857(b)(2)), and

"(C) subsection (a)(2) shall be applied by treating references to taxable income as references to—

"(i) in the case of a regulated investment company, regulated investment company taxable income (as defined in section 852(b)(2)) but without regard to the deduction for dividends paid (as defined in section 561), and

"(ii) in the case of a real estate investment trust, real estate investment taxable income (as defined in section 857(b)(2)) but without regard to the deduction for dividends paid (as defined in section 561).".

(3) CONFORMING AMENDMENTS.—

(A) Section 443(e)(3) is amended by striking "section 852(b)(2)(D)" and inserting "section 852(b)(2)(C)".

(B) Section 852(a)(1)(A) is amended by striking "subsection (b)(2)(D)" and inserting "subsection (b)(2)(C)".

(C) Section 4982(e)(1)(A) is amended by striking "and (D)" and inserting "and (C)".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to net operating losses for taxable years ending after the 90th day after the date of the enactment of this Act.

(e) NONRECOGNITION OF GAIN OR LOSS FROM TRANSACTIONS BY A CORPORATION WITH RESPECT TO ITS STOCK.—

(1) IN GENERAL.—Section 1032 is amended to read as follows:

"SEC. 1032. TRANSACTIONS BY A CORPORATION WITH RESPECT TO ITS STOCK.

"(a) NONRECOGNITION ON EXCHANGE OF STOCK FOR PROPERTY.—No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock of such corporation.

"(b) DERIVATIVE TRANSACTIONS BY A CORPORATION WITH RESPECT TO ITS STOCK.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, section 1032 derivative items of a corporation shall not be taken into account in determining such corporation's liability for tax under this subtitle.

"(2) INCOME RECOGNITION ON CERTAIN FORWARD CONTRACTS.—

"(A) IN GENERAL.—If—

"(i) a corporation acquires its stock, and

"(ii) such acquisition is part of a plan (or series of related transactions) pursuant to which the corporation enters into a forward contract with respect to its stock,

such corporation shall include amounts in income as if the excess of the amount to be received under the forward contract over the fair market value of the stock as of the date the corporation entered into the forward contract were original issue discount on a debt instrument acquired on such date. The preceding sentence shall apply only to the extent that the amount of stock involved in the forward contract does not exceed the amount acquired as described in clause (i).

"(B) PLAN PRESUMED TO EXIST.—If a corporation enters into a forward contract with respect to its stock within the 60-day period beginning on the date which is 30 days before the date that the corporation acquires its stock, such acquisition shall be treated as pursuant to a plan described in subparagraph (A)(ii) unless it is established that entering into such contract and such acquisition are not pursuant to a plan or series of related transactions.

"(c) SECTION 1032 DERIVATIVE ITEMS.—For purposes of this section, the term 'section 1032 derivative item' means, with respect to any corporation, any item of income, gain, loss, or deduction if—

"(1) such item arises out of the rights or obligations under any derivative (as defined in section 493) to the extent such derivative relates to the corporation's stock (or is attributable to any transfer or extinguishment of any such right or obligation), or

"(2) such item arises under any other contract or position but only to the extent that such item reflects (or is determined by reference to) changes in the value of such stock or distributions thereon.

Such term shall not include any deduction with respect to which section 83(h) applies and shall not include any deduction for any item which is in the nature of compensation for services rendered. For purposes of this subparagraph, de minimis relationships, as determined by the Secretary, shall be disregarded.

"(d) COORDINATION WITH DERIVATIVE AND STRADDLE RULES.—In the case of a derivative or other contract or position described in subsection (c) which is held by a corporation with respect to its stock—

"(1) this section (rather than part IV of subchapter E or section 1092) shall apply in determining the treatment of section 1032 derivative items under this subtitle, and

"(2) such derivative or other contract or position shall not be taken into account in determining whether the corporation has an investment hedging unit, applicable property interest, or straddle with respect to its stock for purposes of such part or section.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be appropriate to carry out the purposes of this section, including regulations or other guidance which treat the portion of an instrument which is described in subsection (c)(1) separately from the portion of such instrument which is not so described.

"(f) BASIS.—For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.".

(2) CLERICAL AMENDMENT.—The item relating to section 1032 in the table of sections for part III of subchapter O of chapter 1 is amended to read as follows:

"Sec. 1032. Transactions by a corporation with respect to its stock.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) REPEAL OF CERTAIN OTHER SUPERCEDED RULES FOR DETERMINING CAPITAL GAINS AND LOSSES.—

(1) IN GENERAL.—Part IV of subchapter P of chapter 1 is amended by striking sections 1233, 1234, 1234A, 1234B, 1236, 1256, 1258, 1259, and 1260 (and by striking the items relating to such sections in the table of sections for such part).

(2) CONFORMING AMENDMENTS RELATED TO REPEAL OF SECTION 1234.—Section 6045(h)(2) is amended—

(A) by striking "(as defined in section 1234(b)(2)(A))", and

(B) by adding at the end the following: ''For purposes of the preceding sentence, the term 'closing transaction' means any termination of the taxpayer's obligation under an option in property other than through the exercise or lapse of the option.''.

(3) CONFORMING AMENDMENTS RELATED TO REPEAL OF SECTION 1236.—

(A) Section 475(d)(3)(A) is amended by striking ''or section 1236(b)''.

(B) Section 512(b)(5) is amended by striking ''section 1236(c)'' and inserting ''section 1058(c)''.

(C) Section 1058 is amended—

(i) by striking ''(as defined in section 1236(c))'' in subsection (a), and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) SECURITIES.—For purposes of this section, the term 'security' means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.''.

(4) CONFORMING AMENDMENTS RELATED TO REPEAL OF SECTION 1256.—

(A) Section 461(i)(3)(B) is amended to read as follows:

"(B) any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (k)(4)), and".

(B) Section 475(d)(1) is amended by striking "sections 263(g), 263A, and 1256(a)" and inserting "sections 263(g) and 263A".

(C) Section 988(c)(1) is amended by striking subparagraphs (D) and (E).

(D) Section 1212 is amended by striking subsection (c).

(E) Section 1223 is amended by striking paragraphs (7) and (14).

(F) Section 1281(b)(1)(E) is amended to read as follows:

"(E) is part of a hedging transaction (as defined in section 1221(b)) or an investment hedging unit (as defined in section 492), or".

(G) Section 1402 is amended by striking subsection (i).

(H) Section 4982(e)(6)(B) is amended by striking "sections 1256 and 1296" and inserting "sections 491 and 1296".

(5) CONFORMING AMENDMENTS RELATED TO REPEAL OF SECTION 1259.—Section 475(f)(1) is amended by striking subparagraph (C) and by redesignating subparagraph (D) as subparagraph (C).

(b) OTHER CONFORMING AMENDMENTS.—

(1) Section 355(g)(2)(B)(i)(V) is amended to read as follows:

"(V) any derivative (as defined in section 493),".

(2) Section 856(n)(4) is amended by inserting "or derivatives (as defined in section 493)" after "securities (as defined in section 475(c)(2))".

(3) Section 857(e)(2)(C)(i) is amended by striking "section 860E or 1272" and inserting "section 491, 860E, or 1272".

(4) Section 988(d)(1) is amended—

(A) by striking "or 1256" and inserting "or 491", and

(B) by striking "1092, and 1256" and inserting "491, and 1092".

(5) Section 1091(e) is amended to read as follows:

"(e) COORDINATION WITH MARK TO MARKET OF DERIVATIVES AND UNDERLYING INVESTMENTS.—For purposes of this section, the term 'stock or securities' shall not include—

"(1) any derivative (as defined in section 493), or

"(2) any underlying investment (as defined in section 492(e)(1)) which, at the time of the sale or other disposition, is part of an investment hedging unit (as defined in section 492).".

(6)(A) Section 1221(a)(6) is amended to read as follows:

"(6) any—

"(A) derivative (as defined in section 493), or

"(B) any underlying investment (as defined in section 492(e)(1)) which is part of an investment hedging unit (as defined in section 492),".

(B) Section 1221(b) is amended by striking paragraph (1).

(7) Section 4975(f)(11)(D) is amended by striking clauses (i) and (ii) and inserting the following:

"(i) SECURITY.—The term 'security' means any security described in section 475(c)(2) (without regard to subparagraph (D)(iii) thereof) and any derivative with respect to such a security (within the meaning of section 493).

"(ii) COMMODITY.—The term 'commodity' means any commodity described in section 475(e)(2) (without regard to subparagraph (B)(iii) thereof) and any derivative with respect to such a commodity (within the meaning of section 493).".

(8) The table of parts for subchapter E of chapter 1 is amended by adding at the end the following new item:

"PART IV. TAX TREATMENT OF DERIVATIVES AND SIMILAR CONTRACTS".

SEC. 5. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in this Act—

(1) the amendments made by section 2 shall apply to taxable events occurring after the 90-day period beginning with the date of the enactment of this Act, in taxable years ending after the last day of such period, and

(2) the amendments made by sections 3 and 4 shall apply to derivatives and underlying investments held after the last day of such period.

(b) IDENTIFICATION REQUIREMENTS.—If, as of the close of the 90-day period described in subsection (a)(1), a taxpayer simultaneously holds 1 or more derivatives with respect to an underlying investment and the underlying investment—

(1) the taxpayer shall make the identifications required under section 492(c)(2) of Internal Revenue Code of 1986 (as added by section 2 of this Act) before the close of such period, and

(2) if such identifications result in an investment hedging unit, the first applicable hedging period with respect to such unit shall begin on the day after the close of such period.

(c) DEFINITIONS.—For purposes of this section, any term used in this section which is also used in part IV of subchapter E of chapter 1 of such Code (as so added) shall have the same meaning as when used in such part.

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