

1           **TITLE \_\_\_\_\_—FOREIGN TAX**  
2                           **PROVISIONS**  
3                           **[OPTION Z]**

TITLE \_\_\_\_\_—FOREIGN TAX PROVISIONS

**[OPTION Z]**

Subtitle A—Reform of Taxation of Income Earned by Controlled Foreign Corporations

PART I—GENERAL PROVISIONS

Sec. \_\_01. Modifications to subpart F income.

PART II—FOREIGN TAX CREDIT LIMITATIONS

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4   **Subtitle A—Reform of Taxation of**  
5   **Income Earned by Controlled**  
6   **Foreign Corporations**

7                           **PART I—GENERAL PROVISIONS**

8   **SEC. \_\_01. MODIFICATIONS TO SUBPART F INCOME.**

9           (a) IN GENERAL.—Subpart F of part III of sub-  
10 chapter N of chapter 1 of the Internal Revenue Code of  
11 1986 is amended by striking sections 952 through 956  
12 and inserting the following:

1 **“SEC. 952. SUBPART F INCOME DEFINED.**

2 “(a) IN GENERAL.—For purposes of this subpart, the  
3 term ‘subpart F income’ means, with respect to any con-  
4 trolled foreign corporation, the sum of—

5 “(1) **【60 percent】** of the corporation’s modified  
6 active income, plus

7 “(2) 100 percent of the corporation’s modified  
8 nonactive income.

9 “(b) MODIFIED ACTIVE INCOME.—

10 “(1) IN GENERAL.—The term ‘modified active  
11 income’ means, with respect to any controlled for-  
12 eign corporation, the excess (if any) of—

13 “(A) the corporation’s active foreign mar-  
14 ket income, over

15 “(B) the amount of the reduction under  
16 subsection (e) for deductions properly allocable  
17 to such income.

18 “(2) REDUCTION FOR CERTAIN LOSSES.—

19 “(A) IN GENERAL.—The modified active  
20 income determined under paragraph (1) for any  
21 taxable year shall be reduced (but not below  
22 zero)—

23 “(i) first by any active foreign market  
24 loss for any prior taxable year, and

25 “(ii) then by any qualified loss for  
26 such taxable year (or for any prior taxable

1           year to the extent provided in subsection  
2           (c)(3)(B)).

3           “(B) LIMITATION.—An active foreign mar-  
4           ket loss or qualified loss for any prior taxable  
5           year shall only be taken into account under sub-  
6           paragraph (A)—

7                   “(i) if the prior taxable year is a tax-  
8                   able year which begins after December 31,  
9                   2014, and for which the controlled foreign  
10                  corporation was a controlled foreign cor-  
11                  poration, and

12                   “(ii) to the extent such loss has not  
13                   been previously taken into account under  
14                   this subsection.

15           “(3) ACTIVE FOREIGN MARKET LOSS.—The  
16           term ‘active foreign market loss’ means, with respect  
17           to any taxable year, the amount by which the  
18           amount determined under paragraph (1)(B) exceeds  
19           the amount determined under paragraph (1)(A).

20           “(c) MODIFIED NONACTIVE INCOME.—

21                   “(1) IN GENERAL.—The term ‘modified non-  
22                   active income’ means, with respect to any controlled  
23                   foreign corporation, the excess (if any) of—

1           “(A) the corporation’s gross income deter-  
2           mined without regard to active foreign market  
3           income, over

4           “(B) the amount of the reduction under  
5           subsection (e) for deductions properly allocable  
6           to such gross income.

7           “(2) REDUCTION FOR QUALIFIED LOSSES.—  
8           The amount determined under paragraph (1) for  
9           any taxable year shall be reduced (but not below  
10          zero) by any qualified loss for any prior taxable year  
11          beginning after December 31, 2014, for which the  
12          controlled foreign corporation was a controlled for-  
13          eign corporation, but only to the extent such loss has  
14          not been previously taken into account under sub-  
15          section (b)(2) or this subsection.

16          “(3) QUALIFIED LOSS.—For purposes of this  
17          section—

18                 “(A) IN GENERAL.—The term ‘qualified  
19                 loss’ means, with respect to any taxable year,  
20                 the amount by which the amount determined  
21                 under paragraph (1)(B) exceeds the amount de-  
22                 termined under paragraph (1)(A).

23                 “(B) ORDERING RULE FOR LOSSES CAR-  
24                 RIED FROM PRIOR TAXABLE YEARS.—In the  
25                 case of any qualified losses carried to a taxable

1           year from 1 or more prior taxable years, such  
2           losses shall be taken into account—

3                   “(i) first under paragraph (2), and

4                   “(ii) then under subsection (b)(2)(B)  
5                   to the extent such losses exceed the  
6                   amount determined under paragraph (1).

7           “(d) EXCLUSION OF UNITED STATES INCOME.—For  
8           purposes of this subpart, any item of income of the con-  
9           trolled foreign corporation which is effectively connected  
10          with the conduct by such corporation of a trade or busi-  
11          ness within the United States shall not be taken into ac-  
12          count in computing the subpart F income of such corpora-  
13          tion unless such item is exempt from taxation (or is sub-  
14          ject to a reduced rate of tax) pursuant to a treaty obliga-  
15          tion of the United States. For purposes of this subsection,  
16          any exemption (or reductions) with respect to the tax im-  
17          posed by section 884 shall not be taken into account.

18          “(e) DEDUCTIONS.—For purposes of subsections  
19          (b)(1)(B) and (c)(1)(B), the active foreign market income,  
20          and gross income other than active foreign market income,  
21          of a controlled foreign corporation shall each be reduced,  
22          under regulations prescribed by the Secretary, by any de-  
23          ductions (including taxes) of such corporation properly al-  
24          locable to items of income taken into account in computing  
25          such income.

1 **“SEC. 953. ACTIVE FOREIGN MARKET INCOME.**

2 “(a) ACTIVE FOREIGN MARKET INCOME DEFINED.—

3 For purposes of this subpart, the term ‘active foreign mar-  
4 ket income’ means, with respect to any controlled foreign  
5 corporation, the aggregate of all items of income which  
6 are—

7 “(1) attributable to economically significant ac-  
8 tivities with respect to a qualified trade or business,  
9 and

10 “(2) derived in connection with—

11 “(A) property which is sold, exchanged, or  
12 otherwise disposed of for use, consumption, or  
13 disposition outside of the United States, or

14 “(B) services which are provided outside of  
15 the United States with respect to persons or  
16 property located outside of the United States.

17 “(b) TREATMENT OF PASSIVE INCOME.—

18 “(1) IN GENERAL.—Except as otherwise pro-  
19 vided in this subsection, the term ‘active foreign  
20 market income’ shall not include the passive income  
21 (as defined in section 954) of a controlled foreign  
22 corporation.

23 “(2) ACTIVE FOREIGN MARKET INCOME IN-  
24 CLUDES CERTAIN INCOME.—The term ‘active foreign  
25 market income’ shall include—

1           “(A) if the controlled foreign corporation  
2 or a qualified business unit of the corporation  
3 is an eligible controlled foreign corporation (as  
4 defined in section 954(e)), any item of income  
5 of the corporation or unit which is qualified  
6 banking or financing income (as so defined),

7           “(B) if the controlled foreign corporation  
8 or a qualified business unit of the corporation  
9 is a qualifying insurance company (as defined  
10 in section 954(d)) or a qualifying insurance  
11 company branch (as so defined), any item of in-  
12 come of the corporation or unit which is quali-  
13 fied insurance income (as so defined),

14           “(C) any item of income which is rents or  
15 royalties derived from the ownership and oper-  
16 ation (including leasing) of real or personal  
17 property which is not treated as passive income  
18 under section 954(a)(2)(A), and

19           “(D) in the case of a regular dealer in  
20 property which is property described in section  
21 954(a)(1)(B), forward contracts, option con-  
22 tracts, or similar financial instruments (includ-  
23 ing notional principal contracts and all instru-  
24 ments referenced to commodities), any item of  
25 income from any transaction (including hedging

1 transactions and transactions involving physical  
2 settlement) entered into in the ordinary course  
3 of such dealer's trade or business as such a  
4 dealer.

5 “(3) GAIN OR LOSS FROM SALES OF STOCK IN  
6 OTHER CFCS.—If a controlled foreign corporation  
7 sells, exchanges, or otherwise disposes of stock in  
8 another controlled foreign corporation which is a re-  
9 lated person to the selling corporation—

10 “(A) gain from such sale, exchange, or dis-  
11 position shall be treated as active foreign mar-  
12 ket income to the extent that such gain would  
13 have been excluded from gross income under  
14 section 1203 if the selling corporation were a  
15 United States shareholder in the other con-  
16 trolled foreign corporation, and

17 “(B) loss from such sale, exchange, or dis-  
18 position shall not be allowed to the extent such  
19 loss would have been disallowed under section  
20 1213 if the selling corporation were a United  
21 States shareholder in the other controlled for-  
22 eign corporation.

23 “(4) GAIN OR LOSS FROM SALES OF INTERESTS  
24 IN 25-PERCENT OWNED PARTNERSHIPS.—

25 “(A) IN GENERAL.—

1                   “(i) PORTION TREATED AS ACTIVE  
2 FOREIGN MARKET INCOME.—In the case of  
3 any sale or exchange by a controlled for-  
4 eign corporation of an interest in a part-  
5 nership with respect to which such cor-  
6 poration is a 25-percent owner, gain or  
7 loss on such sale shall be taken into ac-  
8 count in determining active foreign market  
9 income in the amount which bears the  
10 same ratio to the amount of such gain or  
11 loss as the controlled foreign corporation’s  
12 distributable share of the active foreign  
13 market income from the partnership over  
14 the applicable period bears to the con-  
15 trolled foreign corporation’s distributable  
16 share of gross income from the partnership  
17 over such period. The Secretary shall pre-  
18 scribe such regulations as may be appro-  
19 priate to prevent abuse of the purposes of  
20 this paragraph, including regulations pro-  
21 viding for coordination of this paragraph  
22 with the provisions of subchapter K.

23                   “(ii) APPLICABLE PERIOD.—For pur-  
24 poses of this subparagraph, the term ‘ap-  
25 plicable period’ means, with respect to any

1 interest in a partnership, the shorter of the  
2 3-taxable year period immediately pre-  
3 ceding the taxable year of the sale or ex-  
4 change or the controlled foreign corpora-  
5 tion's holding period in the interest. In no  
6 event shall the applicable period include  
7 any portion of any taxable year beginning  
8 before January 1, 2015.

9 “(B) 25-PERCENT OWNER.—For purposes  
10 of this paragraph, the term ‘25-percent owner’  
11 means a controlled foreign corporation which  
12 owns directly 25 percent or more of the capital  
13 or profits interest in a partnership. For pur-  
14 poses of the preceding sentence, if a controlled  
15 foreign corporation is a shareholder or partner  
16 of a corporation or a partnership, the controlled  
17 foreign corporation shall be treated as owning  
18 directly its proportionate share of any capital or  
19 profits interest in any partnership held directly  
20 or indirectly by such corporation or partnership.  
21 If a controlled foreign corporation is treated as  
22 owning a capital or profits interest in a part-  
23 nership under constructive ownership rules  
24 similar to the rules of section 958(b), the con-  
25 trolled foreign corporation shall be treated as

1           owning such interest directly for purposes of  
2           this subparagraph.

3           “(c) TREATMENT OF INSURANCE INCOME.—

4           “(1) IN GENERAL.—Except as otherwise pro-  
5           vided in this subsection, the term ‘active foreign  
6           market income’ shall not include the insurance in-  
7           come (as defined in section 955(a)) of a controlled  
8           foreign corporation.

9           “(2) ACTIVE FOREIGN MARKET INCOME IN-  
10          CLUDES EXEMPT INSURANCE INCOME.—The term  
11          ‘active foreign market income’ shall include exempt  
12          insurance income (as defined in section 955(c)) shall  
13          be treated as active foreign market income.

14          “(d) TREATMENT OF INCOME FROM PROPERTY  
15          USED, CONSUMED, OR DISPOSED OF IN THE UNITED  
16          STATES.—For purposes of subsection (a)(2)(A)—

17          “(1) IN GENERAL.—The term ‘active foreign  
18          market income’ shall not include income derived in  
19          connection with property which is sold, exchanged,  
20          or otherwise disposed of to any person if it was rea-  
21          sonable for the controlled foreign corporation (or a  
22          related person) to expect that—

23                  “(A) such property would be used, con-  
24                  sumed, or disposed of in the United States, or

1           “(B) such property would be used in the  
2           manufacture or production of, or as a compo-  
3           nent part in, other property which would be  
4           used, consumed, or disposed of in the United  
5           States.

6           “(2) CHAIN OF RELATED PERSONS.—If—

7           “(A) property is ultimately used, con-  
8           sumed, or disposed of as described in subpara-  
9           graph (A) or (B) of paragraph (1), and

10           “(B) all sales, exchanges, or dispositions of  
11           such property (or of the other property de-  
12           scribed in paragraph (1)(B)) before the sale for  
13           use, consumption, or disposition in the United  
14           States are between related persons,

15           then, for purposes of paragraph (1), there shall be  
16           deemed to have been a reasonable expectation that  
17           the property (or the other property described in  
18           paragraph (1)(B)) would be used, consumed, or dis-  
19           posed of in the United States.

20           “(3) EXCEPTION FOR PROPERTY SUBSE-  
21           QUENTLY EXPORTED.—Paragraphs (1) and (2) shall  
22           not apply with respect to property which, after entry  
23           into the United States is—

24           “(A) sold, leased, rented, or licensed by the  
25           controlled foreign corporation or a related per-

1 son for direct use, consumption, or disposition  
2 outside the United States, or

3 “(B) used by the controlled foreign cor-  
4 poration or a related person as a component in  
5 other property which is so sold, leased, rented,  
6 or licensed.

7 “(4) RELATED PERSON DEFINED.—For pur-  
8 poses of this subsection, the term ‘related person’  
9 has the meaning given such term under section  
10 954(b).

11 “(e) ECONOMICALLY SIGNIFICANT ACTIVITIES.—For  
12 purposes of this section, the term ‘economically significant  
13 activities’ means, with respect to any item of income, ac-  
14 tivities—

15 “(1) performed outside the United States,

16 “(2) performed by officers or employees of the  
17 controlled foreign corporation which are part of the  
18 management and operational functions of the cor-  
19 poration, and

20 “(3) which make a substantial contribution to  
21 the production of such item of income.

22 “(f) QUALIFIED TRADE OR BUSINESS.—For pur-  
23 poses of this section—

1           “(1) IN GENERAL.—The term ‘qualified trade  
2 or business’ means any trade or business which con-  
3 sists of—

4                   “(A) manufacturing, producing, growing,  
5 or extracting property outside of the United  
6 States, or

7                   “(B) providing services outside of the  
8 United States.

9           “(2) SPECIAL RULE FOR SUBSTANTIAL CON-  
10 TRIBUTIONS TO MANUFACTURING AND SERVICES.—

11 If a trade or business consists of making a substan-  
12 tial contribution through the activities of the officers  
13 and employees of the controlled foreign corporation  
14 to a qualified trade or business which is described in  
15 subparagraph (A) or (B) of paragraph (1) of an-  
16 other person, then the trade or business shall be  
17 treated as a qualified trade or business described in  
18 subparagraph (A) or (B) of paragraph (1), which-  
19 ever is applicable.

20 **“SEC. 954. DEFINITION OF PASSIVE INCOME.**

21           “(a) PASSIVE INCOME.—

22                   “(1) IN GENERAL.—For purposes of this part,  
23 the term ‘passive income’ means the portion of the  
24 gross income which consists of:

1           “(A) DIVIDENDS, ETC.—Dividends, inter-  
2 est, royalties, rents, and annuities.

3           “(B) CERTAIN PROPERTY TRANS-  
4 ACTIONS.—The excess of gains over losses from  
5 the sale or exchange of property—

6           “(i) which gives rise to income de-  
7 scribed in subparagraph (A) (after applica-  
8 tion of paragraph (2)(A)) other than prop-  
9 erty which gives rise to income not treated  
10 as passive income by reason of subsection  
11 (c) or (d) for the taxable year,

12           “(ii) which is an interest in a trust,  
13 partnership, or REMIC, or

14           “(iii) which does not give rise to any  
15 income.

16 Gains and losses from the sale or exchange of  
17 any property which, in the hands of the con-  
18 trolled foreign corporation, is property de-  
19 scribed in section 1221(a)(1) shall not be taken  
20 into account under this subparagraph.

21           “(C) COMMODITIES TRANSACTIONS.—The  
22 excess of gains over losses from transactions  
23 (including futures, forward, and similar trans-  
24 actions) in any commodities. This subparagraph  
25 shall not apply to gains or losses which—

1                   “(i) arise out of commodity hedging  
2                   transactions (as defined in paragraph  
3                   (5)(A)),

4                   “(ii) are active business gains or  
5                   losses from the sale of commodities, but  
6                   only if substantially all of the controlled  
7                   foreign corporation's commodities are  
8                   property described in paragraph (1), (2),  
9                   or (8) of section 1221(a), or

10                   “(iii) are foreign currency gains or  
11                   losses (as defined in section 988(b)) attrib-  
12                   utable to any section 988 transactions.

13                   “(D) FOREIGN CURRENCY GAINS.—The ex-  
14                   cess of foreign currency gains over foreign cur-  
15                   rency losses (as defined in section 988(b)) at-  
16                   tributable to any section 988 transactions. This  
17                   subparagraph shall not apply in the case of any  
18                   transaction, other than a borrowing, directly re-  
19                   lated to the business needs of the controlled for-  
20                   eign corporation.

21                   “(E) INCOME EQUIVALENT TO INTER-  
22                   EST.—Any income equivalent to interest, in-  
23                   cluding income from commitment fees (or simi-  
24                   lar amounts) for loans actually made.

1           “(F) INCOME FROM NOTIONAL PRINCIPAL  
2 CONTRACTS.—

3           “(i) IN GENERAL.—Net income from  
4 notional principal contracts.

5           “(ii) COORDINATION WITH OTHER  
6 CATEGORIES OF PASSIVE INCOME.—Any  
7 item of income, gain, deduction, or loss  
8 from a notional principal contract entered  
9 into for purposes of hedging any item de-  
10 scribed in any preceding subparagraph  
11 shall not be taken into account for pur-  
12 poses of this subparagraph but shall be  
13 taken into account under such other sub-  
14 paragraph.

15           “(G) PAYMENTS IN LIEU OF DIVIDENDS.—  
16 Payments in lieu of dividends which are made  
17 pursuant to an agreement to which section  
18 1058 applies.

19           “(H) PERSONAL SERVICE CONTRACTS.—

20           “(i) Amounts received under a con-  
21 tract under which the corporation is to fur-  
22 nish personal services if—

23                   “(I) some person other than the  
24 corporation has the right to designate  
25 (by name or by description) the indi-

1                   vidual who is to perform the services,  
2                   or

3                   “(II) the individual who is to per-  
4                   form the services is designated (by  
5                   name or by description) in the con-  
6                   tract, and

7                   “(ii) amounts received from the sale  
8                   or other disposition of such a contract.

9                   This subparagraph shall apply with respect to  
10                  amounts received for services under a particular  
11                  contract only if at some time during the taxable  
12                  year 25 percent or more in value of the out-  
13                  standing stock of the corporation is owned, di-  
14                  rectly or indirectly, by or for the individual who  
15                  has performed, is to perform, or may be des-  
16                  ignated (by name or by description) as the one  
17                  to perform, such services.

18                  “(2) EXCEPTION FOR CERTAIN AMOUNTS.—

19                  “(A) RENTS AND ROYALTIES DERIVED IN  
20                  ACTIVE BUSINESS.—Passive income shall not  
21                  include rents and royalties which are derived in  
22                  the active conduct of a trade or business and  
23                  which are received from a person other than a  
24                  related person. For purposes of the preceding  
25                  sentence, rents derived from leasing an aircraft

1 or vessel in foreign commerce shall not fail to  
2 be treated as derived in the active conduct of a  
3 trade or business if, as determined under regu-  
4 lations prescribed by the Secretary, the active  
5 leasing expenses are not less than 10 percent of  
6 the profit on the lease.

7 “(B) EXCEPTION FOR DEALERS.—Except  
8 as provided by regulations, in the case of a reg-  
9 ular dealer in property which is property de-  
10 scribed in paragraph (1)(B), forward contracts,  
11 option contracts, or similar financial instru-  
12 ments (including notional principal contracts  
13 and all instruments referenced to commodities),  
14 there shall not be taken into account in com-  
15 puting passive income any item of income, gain,  
16 deduction, or loss from any transaction (includ-  
17 ing hedging transactions and transactions in-  
18 volving physical settlement) entered into in the  
19 ordinary course of such dealer’s trade or busi-  
20 ness as such a dealer.

21 “(3) LOOK-THRU RULE FOR CERTAIN PARTNER-  
22 SHIP SALES.—

23 “(A) IN GENERAL.—In the case of any  
24 sale or exchange by a controlled foreign cor-  
25 poration of an interest in a partnership with re-

1 spect to which such corporation is a 25-percent  
2 owner, gain or loss on such sale shall be treated  
3 as being described in paragraph (1)(B)(ii) in  
4 the amount which bears the same ratio to the  
5 amount of such gain or loss as the controlled  
6 foreign corporation's distributable share of pas-  
7 sive income from the partnership over the appli-  
8 cable period (as defined in section  
9 953(b)(4)(A)(ii)) bears to the controlled foreign  
10 corporation's distributable share of gross in-  
11 come from the partnership over such period.  
12 The Secretary shall prescribe such regulations  
13 as may be appropriate to prevent abuse of the  
14 purposes of this paragraph, including regula-  
15 tions providing for the coordination of this  
16 paragraph with the provisions of subchapter K.

17 “(B) 25-PERCENT OWNER.—For purposes  
18 of this paragraph, the term ‘25-percent owner’  
19 has the meaning given such term under section  
20 953(b)(4)(B).

21 “(4) DEFINITION AND SPECIAL RULES RELAT-  
22 ING TO COMMODITY TRANSACTIONS.—

23 “(A) COMMODITY HEDGING TRANS-  
24 ACTIONS.—For purposes of paragraph  
25 (1)(C)(i), the term ‘commodity hedging trans-

1           action' means any transaction with respect to a  
2           commodity if such transaction—

3                   “(i) is a hedging transaction as de-  
4                   fined in section 1221(b)(2), determined—

5                           “(I) without regard to subpara-  
6                           graph (A)(ii) thereof,

7                           “(II) by applying subparagraph  
8                           (A)(i) thereof by substituting ‘ordi-  
9                           nary property or property described in  
10                          section 1231(b)’ for ‘ordinary prop-  
11                          erty’, and

12                          “(III) by substituting ‘controlled  
13                          foreign corporation’ for ‘taxpayer’  
14                          each place it appears, and

15                          “(ii) is clearly identified as such in ac-  
16                          cordance with section 1221(a)(7).

17                          “(B) TREATMENT OF DEALER ACTIVITIES  
18                          UNDER PARAGRAPH (1)(C).—Commodities with  
19                          respect to which gains and losses are not taken  
20                          into account under paragraph (2)(B) in com-  
21                          puting a controlled foreign corporation's passive  
22                          income shall not be taken into account in apply-  
23                          ing the substantially all test under paragraph  
24                          (1)(C)(ii) to such corporation.

1                   “(C) REGULATIONS.—The Secretary shall  
2                   prescribe such regulations as are appropriate to  
3                   carry out the purposes of paragraph (1)(C) in  
4                   the case of transactions involving related per-  
5                   sons.

6                   “(b) RELATED PERSON DEFINED.—For purposes of  
7 this section, a person is a related person with respect to  
8 a controlled foreign corporation, if—

9                   “(1) such person is an individual, corporation,  
10                  partnership, trust, or estate which controls, or is  
11                  controlled by, the controlled foreign corporation, or

12                  “(2) such person is a corporation, partnership,  
13                  trust, or estate which is controlled by the same per-  
14                  son or persons which control the controlled foreign  
15                  corporation.

16 For purposes of the preceding sentence, control means,  
17 with respect to a corporation, the ownership, directly or  
18 indirectly, of stock possessing more than 50 percent of the  
19 total voting power of all classes of stock entitled to vote  
20 or of the total value of stock of such corporation. In the  
21 case of a partnership, trust, or estate, control means the  
22 ownership, directly or indirectly, of more than 50 percent  
23 (by value) of the beneficial interests in such partnership,  
24 trust, or estate. For purposes of this subsection, rules  
25 similar to the rules of section 958 shall apply.

1           “(c) SPECIAL RULE FOR INCOME DERIVED IN THE  
2 ACTIVE CONDUCT OF BANKING, FINANCING, OR SIMILAR  
3 BUSINESSES.—

4           “(1) IN GENERAL.—For purposes of subsection  
5 (a)(1), passive income shall not include qualified  
6 banking or financing income of an eligible controlled  
7 foreign corporation.

8           “(2) ELIGIBLE CONTROLLED FOREIGN COR-  
9 PORATION.—For purposes of this subsection, the  
10 term ‘eligible controlled foreign corporation’ means  
11 any controlled foreign corporation if—

12           “(A) more than 80 percent of the gross in-  
13 come of the controlled foreign corporation is de-  
14 rived directly from the active and regular con-  
15 duct of a lending, finance, or financial services  
16 business from transactions with customers  
17 which are located outside the United States and  
18 are not related persons, or

19           “(B) it is a regulated financial institution.

20           “(3) QUALIFIED BANKING OR FINANCING IN-  
21 COME.—For purposes of this subsection—

22           “(A) IN GENERAL.—The term ‘qualified  
23 banking or financing income’ means income of  
24 an eligible controlled foreign corporation  
25 which—

1                   “(i) is derived in the active conduct of  
2                   a banking, financing, or similar business  
3                   by such eligible controlled foreign corpora-  
4                   tion,

5                   “(ii) is derived from one or more  
6                   transactions—

7                   “(I) with customers located in a  
8                   country other than the United States,  
9                   and

10                   “(II) substantially all of the ac-  
11                   tivities in connection with which are  
12                   conducted directly by the corporation  
13                   in its home country, and

14                   “(iii) is treated as earned by such cor-  
15                   poration in its home country for purposes  
16                   of such country's tax laws.

17                   “(B) INCOME DERIVED FROM CUSTOMERS  
18                   TO INCLUDE CERTAIN INVESTMENT INCOME.—

19                   For purposes of subparagraph (A), in the case  
20                   of a regulated financial institution, income de-  
21                   rived from customers includes income derived  
22                   from—

23                   “(i) reserves that are required to be  
24                   held pursuant to banking regulations,

1                   “(ii) deposits placed with the central  
2                   bank (or equivalent thereof) in the cor-  
3                   poration’s home country, and

4                   “(iii) investments in debt instruments  
5                   issued by the home country.

6                   “(C) SUBSTANTIAL ACTIVITY REQUIRE-  
7                   MENT FOR CROSS BORDER INCOME.—The term  
8                   ‘qualified banking or financing income’ shall  
9                   not include income derived from 1 or more  
10                  transactions with customers located in a coun-  
11                  try other than the home country of the eligible  
12                  controlled foreign corporation unless such cor-  
13                  poration conducts substantial activity with re-  
14                  spect to a banking, financing, or similar busi-  
15                  ness in its home country.

16                  “(D) DIRECT CONDUCT OF ACTIVITIES.—  
17                  For purposes of subparagraph (A)(ii)(II), an  
18                  activity shall be treated as conducted directly by  
19                  an eligible controlled foreign corporation in its  
20                  home country if the activity is performed by  
21                  employees of a related person and—

22                  “(i) the related person is a resident  
23                  subject to tax under the laws of the home  
24                  country of the corporation to which sub-  
25                  paragraph (A)(ii)(II) is being applied,

1                   “(ii) the activity is performed in such  
2                   home country, and

3                   “(iii) the related person is com-  
4                   pensated on an arm’s-length basis for the  
5                   performance of the activity by its employ-  
6                   ees and such compensation is treated as  
7                   earned by such person in such home coun-  
8                   try for purposes of the home country’s tax  
9                   laws.

10                   “(4) LENDING, FINANCE, OR FINANCIAL SERV-  
11                   ICES BUSINESS.—For purposes of this subsection,  
12                   except as provided in regulations, the term ‘lending,  
13                   finance, or financial services business’ means the  
14                   business of—

15                   “(A) making loans,

16                   “(B) purchasing, selling, discounting, or  
17                   negotiating on a regular basis accounts receiv-  
18                   able, notes, or installment obligations,

19                   “(C) engaging in leasing (including enter-  
20                   ing into leases and purchasing, servicing, and  
21                   disposing of leases and leased assets),

22                   “(D) issuing letters of credit or providing  
23                   guarantees,

24                   “(E) providing charge and credit card  
25                   services,

1           “(F) performing trust services, including  
2 as a fiduciary, agent, or custodian, other than  
3 trust services provided by a broker or dealer in  
4 stock, securities, or other financial instruments,

5           “(G) arranging interest rate or currency  
6 futures, forwards, options, or notional principal  
7 contracts for, or entering into such transactions  
8 with, customers,

9           “(H) providing traveler’s check and money  
10 order services for customers,

11           “(I) providing correspondent bank services  
12 for customers,

13           “(J) engaging in hedging activities directly  
14 related to an activity described in any other  
15 subparagraph of this paragraph,

16           “(K) underwriting issues of stock, debt, or  
17 other securities for customers,

18           “(L) providing financial, investment advi-  
19 sory, or investment management services,

20           “(M) purchasing or selling stock, debt in-  
21 struments, interest rate or currency futures, or  
22 other securities or derivative financial products  
23 (including notional principal contracts) from or  
24 to customers and holding such stock, debt in-  
25 struments, futures, or other securities or prod-

1           ucts as inventory for sale to customers, unless  
2           such stock, debt instruments, futures, or other  
3           securities or products are not held in a dealer  
4           capacity,

5           “(N) effecting transactions in securities for  
6           customers as a securities broker, or

7           “(O) rendering services or making facilities  
8           available in connection with activities described  
9           in subparagraphs (A) through (N) carried on  
10          by—

11           “(i) the corporation rendering services  
12           or making facilities available, or

13           “(ii) another corporation which is a  
14           member of the same affiliated group (as  
15           defined in section 1504, but determined  
16           without regard to section 1504(b)(3)).

17          “(5) OTHER DEFINITIONS.—For purposes of  
18          this subsection—

19           “(A) CUSTOMER.—The term ‘customer’  
20           means, with respect to any controlled foreign  
21           corporation, any person which has a customer  
22           relationship with such corporation and which is  
23           acting in its capacity as such.

24           “(B) HOME COUNTRY.—Except as pro-  
25           vided in regulations, the term ‘home country’

1 means, with respect to any entity, the country  
2 with respect to which the entity is a resident for  
3 purposes of the country's income tax laws.

4 “(C) LOCATED.—Except as provided in  
5 regulations, for purposes of paragraph (3)(A)—

6 “(i) if a customer is a natural person,  
7 the customer is considered to be located in  
8 the country in which the customer is phys-  
9 ically located when entering into the trans-  
10 action, and

11 “(ii) if a customer is not a natural  
12 person, the customer is considered to be lo-  
13 cated in the country from which the cus-  
14 tomer enters into the transaction.

15 “(D) QUALIFIED BUSINESS UNIT.—The  
16 term ‘qualified business unit’ has the meaning  
17 given such term by section 989(a).

18 “(E) REGULATED FINANCIAL INSTITU-  
19 TION.—Except as provided in regulations, the  
20 term ‘regulated financial institution’ means a  
21 controlled foreign corporation which—

22 “(i) is engaged in the active conduct  
23 of a banking business and is an institution  
24 licensed to do business as a bank in the  
25 United States (or is any other corporation

1 not so licensed which is specified by the  
2 Secretary in regulations), or

3 “(ii) satisfies each of the following  
4 conditions:

5 “(I) The corporation is directly  
6 or indirectly wholly owned by a do-  
7 mestic corporation that is a bank (as  
8 defined in section 581) or a depository  
9 institution holding company (as de-  
10 fined in section 3(w)(1) of the Federal  
11 Deposit Insurance Act (12 U.S.C.  
12 1813(w)(1)).

13 “(II) The corporation is subject  
14 to bank regulatory supervision in a ju-  
15 risdiction the central bank of which  
16 (or equivalent thereof) is a member of  
17 the Basel Committee on Banking Su-  
18 pervision.

19 “(III) The corporation is licensed  
20 and regulated in such jurisdiction as a  
21 bank.

22 “(6) SEPARATE APPLICATION TO QUALIFIED  
23 BUSINESS UNITS.—

1           “(A) IN GENERAL.—If a controlled foreign  
2 corporation has 1 or more qualified business  
3 units—

4           “(i) this subsection shall be applied  
5 separately to each such unit in the same  
6 manner as if it were a controlled foreign  
7 corporation, and

8           “(ii) if any such unit is treated as an  
9 eligible controlled foreign corporation after  
10 application of clause (i), the qualified  
11 banking or financing income of such unit  
12 shall be treated as qualified banking or fi-  
13 nancing income of the controlled foreign  
14 corporation of which such unit is a part.

15           “(B) DETERMINATIONS MADE SEPA-  
16 RATELY.—For purposes of the separate applica-  
17 tion of this subsection to a controlled foreign  
18 corporation and its qualified business units—

19           “(i) in the case of the controlled for-  
20 eign corporation, only activities and items  
21 of income, deduction, gain, or loss and ac-  
22 tivities of such corporation not properly al-  
23 locable or attributable to any qualified  
24 business unit of such corporation shall be  
25 taken into account, and

1                   “(ii) in the case of a qualified busi-  
2                   ness unit, only activities and items of in-  
3                   come, deduction, gain, or loss and activities  
4                   properly allocable or attributable to such  
5                   unit shall be taken into account.

6                   “(C) HOME COUNTRY.—For purposes of  
7                   this subsection, except as provided in regula-  
8                   tions, notwithstanding paragraph (5)(B), the  
9                   home country with respect to any qualified  
10                  business unit treated as a controlled foreign  
11                  corporation under subparagraph (A) shall be  
12                  the country in which such unit maintains its  
13                  principal office.

14                  “(7) ANTI-ABUSE RULES.—For purposes of ap-  
15                  plying this subsection—

16                  “(A) there shall be disregarded any item of  
17                  income, gain, loss, or deduction with respect to  
18                  any transaction or series of transactions one of  
19                  the principal purposes of which is qualifying in-  
20                  come or gain for the exclusion under this sec-  
21                  tion, including any transaction or series of  
22                  transactions a principal purpose of which is the  
23                  acceleration or deferral of any item in order to  
24                  claim the benefits of such exclusion through the  
25                  application of this subsection,

1           “(B) there shall be disregarded any item of  
2 income, gain, loss, or deduction of an entity  
3 which is not engaged in regular and continuous  
4 transactions with customers which are not re-  
5 lated persons,

6           “(C) there shall be disregarded any item of  
7 income, gain, loss, or deduction with respect to  
8 any transaction or series of transactions uti-  
9 lizing, or doing business with—

10           “(i) one or more entities in order to  
11 satisfy any home country requirement  
12 under this subsection, or

13           “(ii) a special purpose entity or ar-  
14 rangement, including a securitization, fi-  
15 nancing, or similar entity or arrangement,  
16 if one of the principal purposes of such trans-  
17 action or series of transactions is qualifying in-  
18 come or gain for the exclusion under this sub-  
19 section, and

20           “(D) a related person, an officer, a direc-  
21 tor, or an employee with respect to any con-  
22 trolled foreign corporation which would other-  
23 wise be treated as a customer of such corpora-  
24 tion with respect to any transaction shall not be  
25 so treated if a principal purpose of such trans-

1           action is to satisfy any requirement of this sub-  
2           section.

3           “(8) REGULATIONS.—The Secretary shall pre-  
4           scribe such regulations as may be necessary or ap-  
5           propriate to carry out the purposes of this sub-  
6           section and subsection (a)(1)(B)(i).

7           “(d) SPECIAL RULE FOR INCOME DERIVED IN THE  
8           ACTIVE CONDUCT OF INSURANCE BUSINESS.—

9           “(1) IN GENERAL.—For purposes of subsection  
10          (a)(1), passive income shall not include qualified in-  
11          surance income of a qualifying insurance company.

12          “(2) QUALIFIED INSURANCE INCOME.—For  
13          purposes of this subsection, the term ‘qualified in-  
14          surance income’ means income of a qualifying insur-  
15          ance company which is—

16                 “(A) received from a person other than a  
17                 related person and derived from the invest-  
18                 ments made by a qualifying insurance company  
19                 or a qualifying insurance company branch of its  
20                 reserves allocable to exempt contracts or of 80  
21                 percent of its unearned premiums from exempt  
22                 contracts (as both are determined in the man-  
23                 ner prescribed under paragraph (4)), or

24                 “(B) received from a person other than a  
25                 related person and derived from investments

1 made by a qualifying insurance company or a  
2 qualifying insurance company branch of an  
3 amount of its assets allocable to exempt con-  
4 tracts equal to—

5 “(i) in the case of property, casualty,  
6 or health insurance contracts, one-third of  
7 its premiums earned on such insurance  
8 contracts during the taxable year (as de-  
9 fined in section 832(b)(4)), and

10 “(ii) in the case of life insurance or  
11 annuity contracts, 10 percent of the re-  
12 serves described in subparagraph (A) for  
13 such contracts.

14 “(3) PRINCIPLES FOR DETERMINING QUALI-  
15 FIED INSURANCE INCOME.—Except as provided by  
16 the Secretary, for purposes of subparagraphs (A)  
17 and (B) of paragraph (2)—

18 “(A) in the case of any contract which is  
19 a separate account-type contract (including any  
20 variable contract not meeting the requirements  
21 of section 817), income credited under such  
22 contract shall be allocable only to such contract,  
23 and

1           “(B) income not allocable under subpara-  
2 graph (A) shall be allocated ratably among con-  
3 tracts not described in subparagraph (A).

4           “(4) METHODS FOR DETERMINING UNEARNED  
5 PREMIUMS AND RESERVES.—For purposes of para-  
6 graph (2)(A)—

7           “(A) PROPERTY AND CASUALTY CON-  
8 TRACTS.—The unearned premiums and reserves  
9 of a qualifying insurance company or a quali-  
10 fying insurance company branch with respect to  
11 property, casualty, or health insurance con-  
12 tracts shall be determined using the same meth-  
13 ods and interest rates which would be used if  
14 such company or branch were subject to tax  
15 under subchapter L, except that—

16           “(i) the interest rate determined for  
17 the functional currency of the company or  
18 branch, and which, except as provided by  
19 the Secretary, is calculated in the same  
20 manner as the Federal mid-term rate  
21 under section 1274(d), shall be substituted  
22 for the applicable Federal interest rate,  
23 and



1            mining the foreign statement reserve pro-  
2            vide an appropriate means of measuring  
3            income.

4            “(C) LIMITATION ON RESERVES.—In no  
5            event shall the reserve determined under this  
6            paragraph for any contract as of any time ex-  
7            ceed the amount which would be taken into ac-  
8            count with respect to such contract as of such  
9            time in determining foreign statement reserves  
10           (less any catastrophe, deficiency, equalization,  
11           or similar reserves).

12           “(5) AMOUNT OF RESERVE.—The amount of  
13           the reserve determined under this paragraph with  
14           respect to any contract shall be determined in the  
15           same manner as it would be determined if the quali-  
16           fying insurance company or qualifying insurance  
17           company branch were subject to tax under sub-  
18           chapter L, except that in applying such sub-  
19           chapter—

20           “(A) the interest rate determined for the  
21           functional currency of the company or branch,  
22           and which, except as provided by the Secretary,  
23           is calculated in the same manner as the Federal  
24           mid-term rate under section 1274(d), shall be

1 substituted for the applicable Federal interest  
2 rate,

3 “(B) the highest assumed interest rate  
4 permitted to be used in determining foreign  
5 statement reserves shall be substituted for the  
6 prevailing State assumed interest rate, and

7 “(C) tables for mortality and morbidity  
8 which reasonably reflect the current mortality  
9 and morbidity risks in the company's or  
10 branch's home country shall be substituted for  
11 the mortality and morbidity tables otherwise  
12 used for such subchapter.

13 The Secretary may provide that the interest rate  
14 and mortality and morbidity tables of a qualifying  
15 insurance company may be used for 1 or more of its  
16 qualifying insurance company branches when appro-  
17 priate.

18 “(6) DEFINITIONS.—For purposes of this sec-  
19 tion, any term used in this subsection which is also  
20 used in section 955(c) shall have the meaning given  
21 such term under section 955(c).

22 **“SEC. 955. DEFINITION OF INSURANCE INCOME.**

23 “(a) INSURANCE INCOME.—

1           “(1) IN GENERAL.—For purposes of section  
2           953(c), the term ‘insurance income’ means the gross  
3           income which—

4                   “(A) is attributable to the issuing (or rein-  
5                   suring) of an insurance or annuity contract,  
6                   and

7                   “(B) is of a kind that would be subject to  
8                   tax under subchapter L of this chapter if such  
9                   income were the income of a domestic insurance  
10                  company.

11           “(2) EXCEPTION.—Such term shall not include  
12           any exempt insurance income (as defined in sub-  
13           section (c)).

14           “(b) SPECIAL RULES FOR DETERMINATION OF  
15           GROSS INCOME AND ALLOCABLE DEDUCTIONS.—For  
16           purposes of determining gross income under subsection (a)  
17           and deductions allocable to insurance income under sec-  
18           tion 952(e), the following rules shall apply:

19                   “(1) CERTAIN DEDUCTIONS NOT ALLOWED.—  
20           The following provisions of subchapter L shall not  
21           apply:

22                   “(A) The small life insurance company de-  
23                   duction.

24                   “(B) Section 805(a)(5) (relating to oper-  
25                   ations loss deduction).

1           “(C) Section 832(c)(5) (relating to certain  
2           capital losses).

3           “(2) SPECIAL RULES FOR AMOUNTS INCLUDED  
4           IN INCOME.—The items referred to in—

5           “(A) section 803(a)(1) (relating to gross  
6           amount of premiums and other considerations),

7           “(B) section 803(a)(2) (relating to net de-  
8           crease in reserves),

9           “(C) section 805(a)(2) (relating to net in-  
10          crease in reserves), and

11          “(D) section 832(b)(4) (relating to pre-  
12          miums earned on insurance contracts),

13          shall be taken into account only to the extent they  
14          are in respect of any reinsurance or the issuing of  
15          any insurance or annuity contract described in sub-  
16          section (a)(1).

17          “(3) TREATMENT OF RESERVES.—Reserves for  
18          any insurance or annuity contract shall be deter-  
19          mined in the same manner as under section 954(d).

20          “(c) EXEMPT INSURANCE INCOME.—For purposes of  
21          this section—

22          “(1) EXEMPT INSURANCE INCOME DEFINED.—

23                 “(A) IN GENERAL.—The term ‘exempt in-  
24                 surance income’ means income derived by a  
25                 qualifying insurance company which—

1                   “(i) is attributable to the issuing (or  
2                   reinsuring) of an exempt contract by such  
3                   company or a qualifying insurance com-  
4                   pany branch of such company, and

5                   “(ii) is treated as earned by such com-  
6                   pany or branch in its home country for  
7                   purposes of such country's tax laws.

8                   “(B) EXCEPTION FOR CERTAIN ARRANGE-  
9                   MENTS.—Such term shall not include income  
10                  attributable to the issuing (or reinsuring) of an  
11                  exempt contract as the result of any arrange-  
12                  ment whereby another corporation receives a  
13                  substantially equal amount of premiums or  
14                  other consideration in respect of issuing (or re-  
15                  insuring) a contract which is not an exempt  
16                  contract.

17                  “(C) DETERMINATIONS MADE SEPA-  
18                  RATELY.—For purposes of this subsection and  
19                  section 954(d), the exempt insurance income  
20                  and exempt contracts of a qualifying insurance  
21                  company or any qualifying insurance company  
22                  branch of such company shall be determined  
23                  separately for such company and each such  
24                  branch by taking into account—

1                   “(i) in the case of the qualifying in-  
2                   surance company, only items of income, de-  
3                   duction, gain, or loss, and activities of such  
4                   company not properly allocable or attrib-  
5                   utable to any qualifying insurance com-  
6                   pany branch of such company, and

7                   “(ii) in the case of a qualifying insur-  
8                   ance company branch, only items of in-  
9                   come, deduction, gain, or loss and activities  
10                  properly allocable or attributable to such  
11                  branch.

12                  “(2) EXEMPT CONTRACT.—

13                  “(A) IN GENERAL.—The term ‘exempt  
14                  contract’ means an insurance or annuity con-  
15                  tract issued or reinsured by a qualifying insur-  
16                  ance company or qualifying insurance company  
17                  branch in connection with property in, liability  
18                  arising out of activity in, or the lives or health  
19                  of residents of, a country other than the United  
20                  States.

21                  “(B) MINIMUM NON-RELATED INCOME RE-  
22                  QUIRED.—No contract of a qualifying insurance  
23                  company or of a qualifying insurance company  
24                  branch shall be treated as an exempt contract  
25                  unless such company or branch derives more

1 than 30 percent of its net written premiums  
2 from exempt contracts (determined without re-  
3 gard to this subparagraph) with respect to  
4 which no policyholder, insured, annuitant, or  
5 beneficiary is a related person (as defined in  
6 section 954(b)).

7 “(C) SUBSTANTIAL ACTIVITY REQUIRE-  
8 MENTS.—A contract issued by a qualifying in-  
9 surance company or qualifying insurance com-  
10 pany branch shall not be treated as an exempt  
11 contract unless such company or branch, as the  
12 case may be—

13 “(i) conducts substantial activity with  
14 respect to an insurance business in its  
15 home country, and

16 “(ii) performs in its home country  
17 substantially all of the activities necessary  
18 to give rise to the income generated by  
19 such contract.

20 “(3) QUALIFYING INSURANCE COMPANY.—

21 “(A) IN GENERAL.—The term ‘qualifying  
22 insurance company’ means any controlled for-  
23 eign corporation—

24 “(i) which—

1                   “(I) is subject to regulation as an  
2                   insurance (or reinsurance) company  
3                   by its home country, and is licensed,  
4                   authorized, or regulated by the appli-  
5                   cable insurance regulatory body for its  
6                   home country to sell insurance, rein-  
7                   surance, or annuity contracts to per-  
8                   sons other than related persons (with-  
9                   in the meaning of section 954(b)) in  
10                  such home country, and

11                  “(II) is engaged in the insurance  
12                  business and would be subject to tax  
13                  under subchapter L if it were a do-  
14                  mestic corporation,

15                  “(ii) which derives more than 50 per-  
16                  cent of its aggregate net written premiums  
17                  from the issuance or reinsurance by such  
18                  controlled foreign corporation and each of  
19                  its qualifying insurance company branches  
20                  of contracts with respect to which no pol-  
21                  icyholder, insured, annuitant, or bene-  
22                  ficiary is a related person (as defined in  
23                  section 954(b)), except that in the case of  
24                  a branch, such premiums shall only be  
25                  taken into account to the extent such pre-

1           miums are treated as earned by such  
2           branch in its home country for purposes of  
3           such country's tax laws,

4           “(iii) more than 50 percent of the  
5           gross receipts of which for the taxable  
6           year—

7                       “(I) consist of premiums for in-  
8                       surance or reinsurance in connection  
9                       with property, liability, or the lives or  
10                      health of individuals, and

11                     “(II) are treated as earned by  
12                     such controlled foreign corporation in  
13                     its home country for purposes of such  
14                     country's tax laws, and

15                     “(iv) the applicable insurance liabil-  
16                     ities of which constitute more than 35 per-  
17                     cent of its total assets as reported on the  
18                     company's applicable financial statement  
19                     for the year with which or in which the  
20                     taxable year ends.

21                     “(B) APPLICABLE INSURANCE LIABIL-  
22                     ITIES.—For purposes of subparagraph (A)(iv),  
23                     the term ‘applicable insurance liabilities’  
24                     means—

1                   “(i) loss and loss adjustment ex-  
2                   penses,

3                   “(ii) unearned premiums, and

4                   “(iii) reserves (other than any catas-  
5                   trophe, deficiency, equalization, or similar  
6                   reserves) for life and health insurance risks  
7                   and life and health insurance claims with  
8                   respect to contracts providing coverage for  
9                   mortality or morbidity risks (not to exceed  
10                  the amount of such reserve that is required  
11                  to be reported to the home country insur-  
12                  ance regulatory body).

13                  “(C) APPLICABLE FINANCIAL STATE-  
14                  MENT.—For purposes of subparagraph (A)(iv),  
15                  the term ‘applicable financial statement’ means  
16                  a statement for financial reporting purposes  
17                  which—

18                         “(i) is made on the basis of generally  
19                         accepted accounting principles,

20                         “(ii) is made on the basis of inter-  
21                         national financial reporting standards, but  
22                         only if there is no statement that meets  
23                         the requirement of clause (i), or

24                         “(iii) except as otherwise provided by  
25                         the Secretary in regulations, is the annual

1 statement which is required to be filed  
2 with the home country insurance regu-  
3 latory body, but only if there is no state-  
4 ment which meets the requirements of  
5 clause (i) or (ii).

6 “(D) REGULATIONS.—The Secretary shall  
7 prescribe such regulations as necessary to carry  
8 out the purposes of this paragraph.

9 “(4) QUALIFYING INSURANCE COMPANY  
10 BRANCH.—The term ‘qualifying insurance company  
11 branch’ means a qualified business unit (within the  
12 meaning of section 989(a)) of a controlled foreign  
13 corporation if—

14 “(A) such unit is licensed, authorized, or  
15 regulated by the applicable insurance regulatory  
16 body for its home country to sell insurance, re-  
17 insurance, or annuity contracts to persons other  
18 than related persons (within the meaning of  
19 section 954(b)) in such home country, and

20 “(B) such controlled foreign corporation is  
21 a qualifying insurance company, determined  
22 under paragraph (3) as if such unit were a  
23 qualifying insurance company branch.

24 “(5) LIFE INSURANCE OR ANNUITY CON-  
25 TRACT.—For purposes of this section and section

1 954, the determination of whether a contract issued  
2 by a controlled foreign corporation or a qualifying  
3 insurance company branch is a life insurance con-  
4 tract or an annuity contract shall be made without  
5 regard to sections 72(s), 101(f), 817(h), and 7702  
6 if—

7 “(A) such contract is regulated as a life in-  
8 surance or annuity contract by the corpora-  
9 tion’s or branch’s home country, and

10 “(B) no policyholder, insured, annuitant,  
11 or beneficiary with respect to the contract is a  
12 United States person.

13 “(6) HOME COUNTRY.—For purposes of this  
14 subsection, except as provided in regulations—

15 “(A) CONTROLLED FOREIGN CORPORA-  
16 TION.—The term ‘home country’ means, with  
17 respect to a controlled foreign corporation, the  
18 country in which such corporation is created or  
19 organized.

20 “(B) QUALIFYING INSURANCE COMPANY  
21 BRANCH.—The term ‘home country’ means,  
22 with respect to a qualifying insurance company  
23 branch, the country in which the principal office  
24 of such branch is located and in which such  
25 branch is licensed, authorized, or regulated by

1 the applicable insurance regulatory body to sell  
2 insurance, reinsurance, or annuity contracts to  
3 persons other than related persons (as defined  
4 in section 954(b)) in such country.

5 “(7) ANTI-ABUSE RULES.—For purposes of ap-  
6 plying this subsection and section 954(d)—

7 “(A) the rules of section 954(c)(7) (other  
8 than subparagraph (B) thereof) shall apply,

9 “(B) there shall be disregarded any item of  
10 income, gain, loss, or deduction of, or derived  
11 from, an entity which is not engaged in regular  
12 and continuous transactions with persons which  
13 are not related persons,

14 “(C) there shall be disregarded any change  
15 in the method of computing reserves a principal  
16 purpose of which is the acceleration or deferral  
17 of any item in order to claim the benefits of  
18 this subsection or section 954(d),

19 “(D) a contract of insurance or reinsur-  
20 ance shall not be treated as an exempt contract  
21 (and premiums from such contract shall not be  
22 taken into account for purposes of paragraph  
23 (2)(B) or (3)) if—

24 “(i) any policyholder, insured, annu-  
25 itant, or beneficiary is a resident of the

1 United States and such contract was mar-  
2 keted to such resident and was written to  
3 cover a risk outside the United States, or

4 “(ii) the contract covers risks located  
5 within and without the United States and  
6 the qualifying insurance company or quali-  
7 fying insurance company branch does not  
8 maintain such contemporaneous records,  
9 and file such reports, with respect to such  
10 contract as the Secretary may require,

11 “(E) the Secretary may prescribe rules for  
12 the allocation of contracts (and income from  
13 contracts) among 2 or more qualifying insur-  
14 ance company branches of a qualifying insur-  
15 ance company in order to clearly reflect the in-  
16 come of such branches, and

17 “(F) premiums from a contract shall not  
18 be taken into account for purposes of para-  
19 graph (2)(B) or (3) if such contract reinsures  
20 a contract issued or reinsured by a related per-  
21 son (as defined in section 954(b)).

22 “(8) COORDINATION WITH SECTION 956(a).—

23 “(A) IN GENERAL.—In determining insur-  
24 ance income for purposes of section 956(a), ex-  
25 empt insurance income shall not include income

1 derived from exempt contracts which cover risks  
2 other than applicable home country risks.

3 “(B) APPLICABLE HOME COUNTRY  
4 RISKS.—For purposes of subparagraph (A), the  
5 term ‘applicable home country risks’ means  
6 risks in connection with property in, liability  
7 arising out of activity in, or the lives or health  
8 of residents of, the home country of the quali-  
9 fying insurance company or qualifying insur-  
10 ance company branch, as the case may be,  
11 issuing or reinsuring the contract covering the  
12 risks.

13 “(9) REGULATIONS.—The Secretary shall pre-  
14 scribe such regulations as may be necessary or ap-  
15 propriate to carry out the purposes of this sub-  
16 section and section 954(d).

17 “(10) CROSS REFERENCE.—For treatment of  
18 certain investment income derived by qualifying in-  
19 surance companies, see section 954(d).

20 **“SEC. 956. SPECIAL RULE FOR CERTAIN CAPTIVE INSUR-**  
21 **ANCE COMPANIES.**

22 “(a) TREATMENT AS CONTROLLED FOREIGN COR-  
23 PORATIONS AND UNITED STATES SHAREHOLDERS.—

24 “(1) IN GENERAL.—For purposes only of tak-  
25 ing into account related person insurance income—

1           “(A) the term ‘United States shareholder’  
2 means, with respect to any foreign corporation,  
3 a United States person (as defined in section  
4 957(c)) who owns (within the meaning of sec-  
5 tion 958(a)) any stock of the foreign corpora-  
6 tion,

7           “(B) the term ‘controlled foreign corpora-  
8 tion’ has the meaning given to such term by  
9 section 957(a) determined by substituting ‘25  
10 percent or more’ for ‘more than 50 percent’,  
11 and

12           “(C) the pro rata share referred to in sec-  
13 tion 951(a)(1) shall be determined under para-  
14 graph (5) of this subsection.

15           “(2) RELATED PERSON INSURANCE INCOME.—  
16 For purposes of this subsection, the term ‘related  
17 person insurance income’ means any insurance in-  
18 come (within the meaning of section 955(a)) attrib-  
19 utable to a policy of insurance or reinsurance with  
20 respect to which the person (directly or indirectly)  
21 insured is a United States shareholder in the foreign  
22 corporation or a related person to such a share-  
23 holder.

24           “(3) EXCEPTIONS.—

1           “(A) CORPORATIONS NOT HELD BY IN-  
2           SURED.—Paragraph (1) shall not apply to any  
3           foreign corporation if at all times during the  
4           taxable year of such foreign corporation—

5                   “(i) less than 20 percent of the total  
6                   combined voting power of all classes of  
7                   stock of such corporation entitled to vote,  
8                   and

9                   “(ii) less than 20 percent of the total  
10                  value of such corporation,

11           is owned (directly or indirectly under the prin-  
12           ciples of section 883(c)(4)) by persons who are  
13           (directly or indirectly) insured under any policy  
14           of insurance or reinsurance issued by such cor-  
15           poration or who are related persons to any such  
16           person.

17           “(B) DE MINIMIS EXCEPTION.—Paragraph  
18           (1) shall not apply to any foreign corporation  
19           for a taxable year of such corporation if the re-  
20           lated person insurance income (determined on a  
21           gross basis) of such corporation for such tax-  
22           able year is less than 20 percent of its insur-  
23           ance income (as so determined) for such taxable  
24           year.

1           “(C) ELECTION TO TREAT INCOME AS EF-  
2           FECTIVELY CONNECTED.—Paragraph (1) shall  
3           not apply to any foreign corporation for any  
4           taxable year if—

5                   “(i) such corporation elects (at such  
6                   time and in such manner as the Secretary  
7                   may prescribe)—

8                           “(I) to treat its related person in-  
9                           surance income for such taxable year  
10                          as income effectively connected with  
11                          the conduct of a trade or business in  
12                          the United States, and

13                           “(II) to waive all benefits (other  
14                          than with respect to section 884) with  
15                          respect to related person insurance in-  
16                          come granted by the United States  
17                          under any treaty between the United  
18                          States and any foreign country, and

19                           “(ii) such corporation meets such re-  
20                          quirements as the Secretary shall prescribe  
21                          to ensure that the tax imposed by this  
22                          chapter on such income is paid.

23           An election under this subparagraph made for  
24           any taxable year shall not be effective if the  
25           corporation (or any predecessor thereof) was a

1 disqualified corporation for the taxable year for  
2 which the election was made or for any prior  
3 taxable year beginning after 1986.

4 “(D) SPECIAL RULES FOR SUBPARAGRAPH  
5 (C).—

6 “(i) PERIOD DURING WHICH ELEC-  
7 TION IN EFFECT.—

8 “(I) IN GENERAL.—Except as  
9 provided in subclause (II), any elec-  
10 tion under subparagraph (C) shall  
11 apply to the taxable year for which  
12 made and all subsequent taxable years  
13 unless revoked with the consent of the  
14 Secretary.

15 “(II) TERMINATION.—If a for-  
16 eign corporation which made an elec-  
17 tion under subparagraph (C) for any  
18 taxable year is a disqualified corpora-  
19 tion for any subsequent taxable year,  
20 such election shall not apply to any  
21 taxable year beginning after such sub-  
22 sequent taxable year.

23 “(ii) EXEMPTION FROM TAX IMPOSED  
24 BY SECTION 4371.—The tax imposed by  
25 section 4371 shall not apply with respect

1 to any related person insurance income  
2 treated as effectively connected with the  
3 conduct of a trade or business within the  
4 United States under subparagraph (C).

5 “(E) DISQUALIFIED CORPORATION.—For  
6 purposes of this paragraph the term ‘disquali-  
7 fied corporation’ means, with respect to any  
8 taxable year, any foreign corporation which is a  
9 controlled foreign corporation at any time dur-  
10 ing such taxable year (determined without re-  
11 gard to this subsection) but only if a United  
12 States shareholder (determined without regard  
13 to this subsection) owns (within the meaning of  
14 section 958(a)) stock in such corporation at  
15 some time during such taxable year.

16 “(4) TREATMENT OF MUTUAL INSURANCE COM-  
17 PANIES.—In the case of a mutual insurance com-  
18 pany—

19 “(A) this subsection shall apply,

20 “(B) policyholders of such company shall  
21 be treated as shareholders, and

22 “(C) appropriate adjustments in the appli-  
23 cation of this subpart shall be made under reg-  
24 ulations prescribed by the Secretary.

25 “(5) DETERMINATION OF PRO RATA SHARE.—

1           “(A) IN GENERAL.—The pro rata share  
2 determined under this paragraph for any  
3 United States shareholder is the lesser of—

4                   “(i) the amount which would be deter-  
5 mined under paragraph (2) of section  
6 951(a) if—

7                           “(I) only related person insur-  
8 ance income were taken into account,

9                                   “(II) stock owned (within the  
10 meaning of section 958(a)) by United  
11 States shareholders on the last day of  
12 the taxable year were the only stock  
13 in the foreign corporation, and

14                                   “(III) only distributions received  
15 by United States shareholders were  
16 taken into account under subpara-  
17 graph (B) of such paragraph (2), or

18                                   “(ii) the amount which would be de-  
19 termined under paragraph (2) of section  
20 951(a) if the entire earnings and profits of  
21 the foreign corporation for the taxable year  
22 were subpart F income.

23           “(B) COORDINATION WITH OTHER PROVI-  
24 SIONS.—The Secretary shall prescribe regula-  
25 tions providing for such modifications to the

1 provisions of this subpart as may be necessary  
2 or appropriate by reason of subparagraph (A).

3 “(6) RELATED PERSON.—For purposes of this  
4 subsection—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), the term ‘related person’ has  
7 the meaning given such term by section 954(b).

8 “(B) TREATMENT OF CERTAIN LIABILITY  
9 INSURANCE POLICIES.—In the case of any poli-  
10 cy of insurance covering liability arising from  
11 services performed as a director, officer, or em-  
12 ployee of a corporation or as a partner or em-  
13 ployee of a partnership, the person performing  
14 such services and the entity for which such  
15 services are performed shall be treated as re-  
16 lated persons.

17 “(7) REGULATIONS.—The Secretary shall pre-  
18 scribe such regulations as may be necessary to carry  
19 out the purposes of this subsection, including—

20 “(A) regulations preventing the avoidance  
21 of this subsection through cross insurance ar-  
22 rangements or otherwise, and

23 “(B) regulations which may provide that a  
24 person will not be treated as a United States  
25 shareholder under paragraph (1) with respect

1 to any foreign corporation if neither such per-  
2 son (nor any related person to such person) is  
3 (directly or indirectly) insured under any policy  
4 of insurance or reinsurance issued by such for-  
5 eign corporation.

6 “(b) ELECTION BY FOREIGN INSURANCE COMPANY  
7 TO BE TREATED AS DOMESTIC CORPORATION.—

8 “(1) IN GENERAL.—If—

9 “(A) a foreign corporation is a controlled  
10 foreign corporation (as defined in section  
11 957(a) by substituting ‘25 percent or more’ for  
12 ‘more than 50 percent’ and by using the defini-  
13 tion of United States shareholder under sub-  
14 section (a)(1)(B)),

15 “(B) such foreign corporation would qual-  
16 ify under part I or II of subchapter L for the  
17 taxable year if it were a domestic corporation,

18 “(C) such foreign corporation meets such  
19 requirements as the Secretary shall prescribe to  
20 ensure that the taxes imposed by this chapter  
21 on such foreign corporation are paid, and

22 “(D) such foreign corporation makes an  
23 election to have this paragraph apply and  
24 waives all benefits to such corporation granted  
25 by the United States under any treaty,

1 for purposes of this title, such corporation shall be  
2 treated as a domestic corporation.

3 “(2) PERIOD DURING WHICH ELECTION IS IN  
4 EFFECT.—

5 “(A) IN GENERAL.—Except as provided in  
6 subparagraph (B), an election under paragraph  
7 (1) shall apply to the taxable year for which  
8 made and all subsequent taxable years unless  
9 revoked with the consent of the Secretary.

10 “(B) TERMINATION.—If a corporation  
11 which made an election under paragraph (1) for  
12 any taxable year fails to meet the requirements  
13 of subparagraphs (A), (B), and (C) of para-  
14 graph (1) for any subsequent taxable year, such  
15 election shall not apply to any taxable year be-  
16 ginning after such subsequent taxable year.

17 “(3) EFFECT OF ELECTION.—

18 “(A) IN GENERAL.—For purposes of sec-  
19 tion 367, any foreign corporation making an  
20 election under paragraph (1) shall be treated as  
21 transferring (as of the 1st day of the 1st tax-  
22 able year to which such election applies) all of  
23 its assets to a domestic corporation in connec-  
24 tion with an exchange to which section 354 ap-  
25 plies.



1                   only earnings and profits accumulated in  
2                   taxable years beginning before January 1,  
3                   1988, shall be taken into account.

4                   “(4) EFFECT OF TERMINATION.—For purposes  
5 of section 367, if—

6                   “(A) an election is made by a corporation  
7                   under paragraph (1) for any taxable year, and

8                   “(B) such election ceases to apply for any  
9                   subsequent taxable year,

10                   such corporation shall be treated as a domestic cor-  
11                   poration transferring (as of the 1st day of such sub-  
12                   sequent taxable year) all of its property to a foreign  
13                   corporation in connection with an exchange to which  
14                   section 354 applies.

15                   “(5) ADDITIONAL TAX ON CORPORATION MAK-  
16                   ING ELECTION.—

17                   “(A) IN GENERAL.—If a corporation  
18                   makes an election under paragraph (1), the  
19                   amount of tax imposed by this chapter for the  
20                   1st taxable year to which such election applies  
21                   shall be increased by the amount determined  
22                   under subparagraph (B).

23                   “(B) AMOUNT OF TAX.—The amount of  
24                   tax determined under this paragraph shall be  
25                   equal to the lesser of—

1                   “(i) 3/4 of 1 percent of the aggregate  
2                   amount of capital and accumulated surplus  
3                   of the corporation as of December 31,  
4                   1987, or  
5                   “(ii) \$1,500,000.”.

6           (b) TREATMENT OF CERTAIN EXCLUDED SUBPART  
7 F INCOME AS PREVIOUSLY TAXED INCOME.—Section  
8 959(g), as added by section \_\_031, is amended to read  
9 as follows:

10           “(g) SPECIAL RULES FOR NONTAXED PORTION OF  
11 CERTAIN INCOME.—For purposes of this section—

12                   “(1) IN GENERAL.—A United States share-  
13 holder’s pro rata share of the excludable portion of  
14 the controlled foreign corporation’s subpart F in-  
15 come shall be treated as an amount which has been  
16 included in gross income under section 951(a).

17                   “(2) ORDERING RULE.—Notwithstanding sub-  
18 section (c), for purposes of subsections (a) and (b),  
19 section 316(a) shall be applied by applying para-  
20 graph (2) thereof and then paragraph (1) thereof—

21                           “(A) first to the deductible portion (as de-  
22 fined in section 965(c)(3)) of the increase in  
23 subpart F income described in section  
24 965(a)(1) included in the gross income of  
25 United States shareholders under section

1 951(a)(1) (after application of section  
2 965(a)(2)(A)),

3 “(B) second to the excludable portion of  
4 the controlled foreign corporation’s subpart F  
5 income, and

6 “(C) then to the amounts described in  
7 paragraphs (1), (2), or (3) of subsection (e) in  
8 accordance with the provisions of subsection (e).

9 “(3) DEFINITIONS.—For purposes of this sub-  
10 section—

11 “(A) DEDUCTIBLE PORTION.—The term  
12 ‘deductible portion’ has the meaning given such  
13 term by section 965(e)(3).

14 “(B) EXCLUDABLE PORTION.—For pur-  
15 poses of this subsection, the term ‘excludable  
16 portion’ means, with respect to the subpart F  
17 income of a controlled foreign corporation, the  
18 **[40]** percent of the modified active income not  
19 taken into account in computing subpart F in-  
20 come by reason of section 952(a)(1).”.

21 (c) GAINS AND LOSSES FROM THE SALE OF CFC  
22 STOCK.—

23 (1) GAINS.—

1 (A) IN GENERAL.—Part I of subchapter P  
2 of chapter 1 is amended by adding at the end  
3 the following new section:

4 **“SEC. 1203. GAINS FROM SALES OR EXCHANGES OF STOCK**  
5 **IN CONTROLLED FOREIGN CORPORATIONS.**

6 “(a) IN GENERAL.—In the case of a United States  
7 shareholder (as defined in section 951), there shall be ex-  
8 cluded from gross income an amount equal to the applica-  
9 ble portion of the amount of any gain recognized from the  
10 sale or exchange of stock in a controlled foreign corpora-  
11 tion.

12 “(b) APPLICABLE PORTION.—For purposes of this  
13 section—

14 “(1) IN GENERAL.—The term ‘applicable por-  
15 tion’ means the amount which bears the same ratio  
16 to the gain recognized from such sale or exchange  
17 as—

18 “(A) the shareholder’s pro rata share (de-  
19 termined under section 951(a)(2)) of the ex-  
20 cludable portion of the aggregate subpart F in-  
21 come of the controlled foreign corporation for  
22 the applicable period, bears to

23 “(B) the sum of the amount determined  
24 under subparagraph (A) plus the shareholder’s  
25 pro rata share (determined under section



1 **“SEC. 1213. LOSSES FROM SALES OR EXCHANGES OF STOCK**  
2 **IN CONTROLLED FOREIGN CORPORATIONS.**

3 “(a) **IN GENERAL.**—In the case of a United States  
4 shareholder (as defined in section 951), any loss from the  
5 sale or exchange of stock in a controlled foreign corpora-  
6 tion shall be reduced (but not below zero) by an amount  
7 equal to the shareholder’s aggregate pro rata share (deter-  
8 mined under section 951(a)(2)) of the excludable portion  
9 of the subpart F income of the controlled foreign corpora-  
10 tion during the shareholder’s holding period in the stock.

11 “(b) **EXCLUDABLE PORTION.**—For purposes of this  
12 section, the term ‘excludable portion’ has the meaning  
13 given such term by section 959(g)(3)(B).”.

14 (B) **CLERICAL AMENDMENT.**—The table of  
15 sections for part I of subchapter P of chapter  
16 1 is amended by adding at the end the following  
17 new item:

“Sec. 1213. Losses from sales or exchanges of stock in controlled foreign cor-  
porations.”.

18 (d) **REPEAL OF ORDINARY INCOME TREATMENT FOR**  
19 **GAINS FROM THE SALE OF STOCK IN CERTAIN FOREIGN**  
20 **CORPORATIONS.**—

21 (1) **IN GENERAL.**—Part IV of subchapter P of  
22 chapter 1 is amended by striking section 1248.

23 (2) **CONFORMING AMENDMENTS.**—

1 (A) Section (a) is amended by striking  
2 paragraph (11).

3 (B) Section 338(h) is amended—  
4 (i) in paragraph (6)(B)(ii), by striking  
5 “or described in section 1248(e)”, and  
6 (ii) in paragraph (16), by striking the  
7 second sentence.

8 (C) Section 751 is amended—  
9 (i) in subsection (c), by striking  
10 “stock in certain foreign corporations (as  
11 described in section 1248),”, and  
12 (ii) by striking subsection (e) and re-  
13 designating subsection (f) as subsection  
14 (e).

15 (D) Section 865(k) is amended to read as  
16 follows:

17 “(k) CROSS REFERENCE.—For sourcing of income  
18 from certain foreign currency transactions, see section  
19 988.”.

20 (E) Section 904(h)(7) is amended by strik-  
21 ing “or as a dividend under section 1248”.

22 (F) Section 951(a)(2) is amended by strik-  
23 ing the last sentence thereof.

24 (G) Section 964 is amended by striking  
25 subsection (e).

1 (H) Section 989(b) is amended by striking  
2 paragraph (2) and by redesignating paragraphs  
3 (3) and (4) as paragraphs (2) and (3), respec-  
4 tively.

5 (e) COORDINATION WITH AMOUNTS INCLUDED IN  
6 GROSS INCOME OF UNITED STATES SHAREHOLDERS.—

7 (1) IN GENERAL.—Paragraph (1) of section  
8 951(a) is amended by striking “such taxable year of  
9 the corporation ends—” and all that follows through  
10 the end period and inserting: “such taxable year of  
11 the corporation ends, the shareholder’s pro rata  
12 share (determined under paragraph (2)) of the cor-  
13 poration’s subpart F income for such taxable year.”.

14 (2) CONFORMING AMENDMENTS.—

15 (A) Section 951(a) is amended—

16 (i) by striking “paragraph (1)(A)(i)”  
17 in paragraph (2) and inserting “paragraph  
18 (1)”, and

19 (ii) by striking paragraph (3).

20 (B) Subparagraph (A) of section  
21 512(b)(17) is amended by striking  
22 “951(a)(1)(A)” and inserting “951(a)(1)”.

23 (C) Section 851(b) is amended by striking  
24 “951(a)(1)(A)(i)” in the first sentence following  
25 paragraph (3) and inserting “951(a)(1)”.

1 (D) Section 959(a) is amended—

2 (i) by striking “shall not, when” and  
3 all that follows through “such shareholder”  
4 and inserting “shall not, when actually dis-  
5 tributed to such shareholder”, and

6 (ii) by striking “and the rules of sub-  
7 section (f) shall apply for purposes of para-  
8 graph (2) of this subsection”.

9 (E) Section 959(c) is amended by adding  
10 at the end the following: “References in this  
11 subsection and subsection (f) to section  
12 951(a)(1)(B) shall be treated as references to  
13 such provisions as in effect on the day before  
14 the enactment of the \_\_\_\_\_ Act of  
15 2013.”.

16 (F) Section 959(e) is amended by striking  
17 “951(a)(1)(A)” and inserting “951(a)(1)”.

18 (G) Section 989(b)(3) is amended by strik-  
19 ing “951(a)(1)(A)” and inserting “951(a)(1)”.

20 (H) Section 1298(b) is amended by strik-  
21 ing paragraph (8).

22 (f) APPLICATION OF ANTI-LOSS IMPORTATION  
23 RULES.—Section 362(e)(1)(B) is amended by adding at  
24 the end the following new sentence: “For purposes of  
25 clause (i), except as provided under regulations, a con-

1 trolled foreign corporation shall be considered to be sub-  
2 ject to tax under this subtitle.”.

3 (g) OTHER CONFORMING AMENDMENTS.—

4 (1) Sections 163(e)(3)(B)(i) and  
5 267(a)(3)(B)(i) are each amended by striking “and  
6 qualified deficits under section 952(c)(1)(B)” and  
7 inserting “and loss carryforwards under sections  
8 952(d) and 953(b)”.

9 (2) Section 304(b)(5)(B)(ii) is amended by  
10 striking “953(c)” and inserting “956(a)”.

11 (3) Section 355(g)(2)(B)(ii)(I) is amended by  
12 striking “section 954(h)(4)” and inserting “section  
13 954(c)(4)”.

14 (4) Section 512(b)(17) is amended by striking  
15 “953” and inserting “section 955”.

16 (5) Section 864(d)(8) is amended by striking  
17 “or section 956(b)(3)”.

18 (6) Section 864(d)(5)(A) is amended—

19 (A) by striking clause (iii) and redesignig-  
20 nating clause (iv) as clause (iii), and

21 (B) by striking “954(c)(3)(A)” in clause  
22 (iii) (as redesignated by subparagraph (A)) and  
23 inserting “954(a)(3)(A)”.

24 (7) Section 864(d)(7)(B) is amended by strik-  
25 ing “foreign base company income (as defined in

1 section 954(a), determined without regard to section  
2 954(b)(3)(A))” and inserting “passive income (as  
3 defined in section 954(a))”.

4 (8) Section 881(c)(5)(A)(iii) is amended by  
5 striking “954(c)(3)(A)” and inserting  
6 “954(a)(3)(A)”.

7 (9) Section 884(d)(2)(D) is amended by strik-  
8 ing “953(c)(3)(C)” and inserting “956(a)(3)(C)”.

9 (10) Section 898(b)(3) is amended—

10 (A) by striking “953(c)(2)” and inserting  
11 “956(a)(2)”, and

12 (B) by striking “953(c)(1)” and inserting  
13 “956(a)(1)”.

14 (11) Section 936(h)(5) is amended—

15 (A) by inserting “(as in effect on the day  
16 before the enactment of the \_\_\_\_\_ Act of  
17 2013)” after “section 954” in the last sentence  
18 of subparagraph (B)(ii), and

19 (B) in subparagraph (F)(iv)(II)—

20 (i) by inserting “(as in effect on the  
21 day before the enactment of the  
22 \_\_\_\_\_ Act of 2013)” after “section  
23 954”, and

24 (ii) by inserting “(as so in effect)”  
25 after “section 954(a)”.

1 (12) Section 957(b) is amended—

2 (A) by striking “income described in sec-  
3 tion 953(a)” and inserting “income described in  
4 section 955(a)”, and

5 (B) by striking “contracts described in sec-  
6 tion 953(a)(1)” and inserting “contracts de-  
7 scribed in section 955(a)(1)”.

8 (13) Section 958(b) is amended—

9 (A) by striking “956(c)(2),” before “and  
10 957”,

11 (B) by striking “to treat the stock of a do-  
12 mestic corporation as owned by a United States  
13 shareholder of the controlled foreign corpora-  
14 tion for purposes of section 956(c)(2),” and

15 (C) by striking the last sentence.

16 (14) Section 964(b) is amended by striking  
17 “sections 952, 955, and 956” and inserting “section  
18 952”.

19 (15) Section 964(e)(2) is amended by striking  
20 “954(e)(3)(A)” and inserting “954(a)(3)(A)”.

21 (16)(A) Part III of subchapter N of chapter 1  
22 is amended by striking subpart G.

23 (B) Section 865(e)(2)(A) is amended by strik-  
24 ing the last sentence.

1 (C) The table of subparts for part III of sub-  
2 chapter N of chapter 1 is amended by striking the  
3 item relating to subpart G.

4 (17) Section 999(c) is amended—

5 (A) by striking “, 952(a)(3)” in paragraph  
6 (1), and

7 (B) by striking “, the addition to subpart  
8 F income under section 952(a)(3),” in para-  
9 graph (2).

10 (18) Section 1296(f)(2) is amended—

11 (A) by striking “foreign personal holding  
12 company income described in section  
13 954(c)(1)(A)” in subparagraph (A) and insert-  
14 ing “passive income (as defined in section  
15 954(a))”, and

16 (B) by striking “foreign personal holding  
17 company income so described” and inserting  
18 “such passive income”.

19 (19) Section 1297(b) is amended to read as fol-  
20 lows:

21 “(b) PASSIVE INCOME.—

22 “(1) IN GENERAL.—Except as provided in para-  
23 graph (2), the term ‘passive income’ means any in-  
24 come received or accrued by any foreign corporation  
25 which is of a kind which would be passive income as

1 defined in section 954 if the foreign corporation  
2 were a controlled foreign corporation.

3 “(2) EXCEPTION.—Except as provided in regu-  
4 lations, the term ‘passive income’ does not include  
5 any income which is interest, a dividend, or a rent  
6 or royalty, which is received or accrued from a re-  
7 lated person (within the meaning of section 954(b))  
8 to the extent that such amount is properly allocable  
9 (under regulations prescribed by the Secretary) to  
10 income of such related person which is not passive  
11 income.”.

12 (20) Section 2057(e)(2)(D)(ii) is amended by  
13 striking “section 954(c)(1)” and inserting “section  
14 954(a)(1)”.

15 (21) The following sections are amended by  
16 striking “954(d)(3)” each place it appears and in-  
17 serting “954(b)”:

18 (A) Section 861(c)(2)(B).

19 (B) Section 958(b).

20 (C) Section 988(a)(3)(C).

21 (D) Subsections (d)(3)(A) and (e)(2)(B)(i)  
22 of section 1298.

23 (E) Section 1471(e)(2).

24 (F) Section 3121(z)(2).

1           (22) The table of sections for subpart F of part  
2           III of subchapter 1 is amended by striking the items  
3           relating to sections 952 through 956 and inserting  
4           the following:

“Sec. 952. Subpart F income defined.

“Sec. 953. Active foreign market income.

“Sec. 954. Definition of passive income.

“Sec. 955. Definition of insurance income.

“Sec. 956. Special rule for certain captive insurance companies.”.

5           (h) EFFECTIVE DATES.—

6           (1) IN GENERAL.—Except as provided in para-  
7           graph (2), the amendments made by this section  
8           shall apply to taxable years of foreign corporations  
9           beginning after December 31, 2014, and to taxable  
10          years of United States shareholders with or within  
11          which such taxable years of foreign corporations  
12          end.

13          (2) GAINS AND LOSSES FROM THE SALE OF CFC  
14          STOCK; REPEAL OF SECTION 1248.—The amend-  
15          ments made by subsections (c) and (d) shall apply  
16          to sales or exchanges after December 31, 2014.

17       **PART II—FOREIGN TAX CREDIT LIMITATIONS**

18       **SEC. \_\_11. REFORM OF FOREIGN TAX CREDIT LIMITATION.**

19          (a) IN GENERAL.—Subsection (d) of section 904 is  
20          amended to read as follows:

21          “(d) SEPARATE APPLICATION OF SECTION WITH RE-  
22          SPECT TO CERTAIN CATEGORIES OF INCOME.—

1           “(1) IN GENERAL.—The provisions of sub-  
2 sections (a), (b), and (c) and section 907 and 960  
3 shall be applied separately with respect to—

4           “(A) amounts included under section  
5 951(a) which are attributable to active foreign  
6 market income (as defined in section 953),

7           “(B) passive category income, and

8           “(C) income other than income described  
9 in either of the preceding subparagraphs.

10          “(2) DEFINITIONS AND SPECIAL RULES.—

11          “(A) PASSIVE CATEGORY INCOME.—

12               “(i) IN GENERAL.—The term ‘passive  
13 category income’ means—

14                       “(I) United States taxpayer pas-  
15 sive income described in subparagraph  
16 (B), and

17                       “(II) income which is included in  
18 gross income of the taxpayer under  
19 section 951(a)(1) to the extent such  
20 income is attributable to passive in-  
21 come (as defined in section 954(a)).

22               “(ii) EXCEPTION FOR HIGH-TAXED  
23 INCOME.—Passive category income shall  
24 not include any high-taxed income.





1 pass-thru entities which are not members  
2 of a financial services group.

3 “(D) FINANCIAL SERVICES INCOME.—

4 “(i) IN GENERAL.—Except as other-  
5 wise provided in this subparagraph, the  
6 term ‘financial services income’ means any  
7 income which is received or accrued by any  
8 person predominantly engaged in the active  
9 conduct of a banking, insurance, financing,  
10 or similar business, and which is—

11 “(I) described in clause (ii), or

12 “(II) United States taxpayer pas-  
13 sive income (determined without re-  
14 gard to subparagraph (A)(ii)).

15 “(ii) GENERAL DESCRIPTION OF FI-  
16 NANCIAL SERVICES INCOME.—Income is  
17 described in this clause if such income is—

18 “(I) derived in the active conduct  
19 of a banking, financing, or similar  
20 business,

21 “(II) derived from the investment  
22 by an insurance company of its un-  
23 earned premiums or reserves ordinary  
24 and necessary for the proper conduct  
25 of its insurance business, or

1                   “(III) of a kind which would be  
2                   insurance income as defined in section  
3                   955(a).

4                   “(E) HIGH-TAXED INCOME.—The term  
5                   ‘high-taxed income’ means any income which  
6                   (but for this subparagraph) would be passive  
7                   category income if the sum of—

8                   “(i) the foreign income taxes paid or  
9                   accrued by the taxpayer with respect to  
10                  such income, and

11                  “(ii) the foreign income taxes deemed  
12                  paid by the taxpayer with respect to such  
13                  income under section 960,

14                  exceeds the highest rate of tax specified in sec-  
15                  tion 1 or 11 (whichever applies) multiplied by  
16                  the amount of such income (determined with re-  
17                  gard to section 78). For purposes of the pre-  
18                  ceding sentence, the term ‘foreign income taxes’  
19                  means any income, war profits, or excess profits  
20                  tax imposed by any foreign country or posses-  
21                  sion of the United States.

22                  “(F) TREATMENT OF INCOME TAX BASE  
23                  DIFFERENCES.—

24                  “(i) IN GENERAL.—In the case of tax-  
25                  able years beginning after December 31,

1           2006, tax imposed under the law of a for-  
2           foreign country or possession of the United  
3           States on an amount which does not con-  
4           stitute income under United States tax  
5           principles shall be treated as imposed on  
6           income described in paragraph (1)(C).

7           “(ii) SPECIAL RULES FOR YEARS  
8           AFTER 2006 AND BEFORE 2015.—In the  
9           case of taxable years beginning after De-  
10          cember 31, 2006, and before January 1,  
11          2015, tax imposed under the law of a for-  
12          foreign country or possession of the United  
13          States on an amount which does not con-  
14          stitute income under United States tax  
15          principles shall be treated as imposed on  
16          income described in paragraph (1)(B) (as  
17          in effect for taxable years beginning in  
18          2014).

19          “(iii) SPECIAL RULE FOR YEARS BE-  
20          FORE 2007.—

21                 “(I) IN GENERAL.—In the case  
22                 of taxes paid or accrued in taxable  
23                 years beginning after December 31,  
24                 2004, and before January 1, 2007, a  
25                 taxpayer may elect to treat tax im-

1                   posed under the law of a foreign coun-  
2                   try or possession of the United States  
3                   on an amount which does not con-  
4                   stitute income under United States  
5                   tax principles as tax imposed on in-  
6                   come described in subparagraph (C)  
7                   or (I) of paragraph (1) (as in effect  
8                   for taxable years beginning in 2006).

9                   “(II) REVOCATION.—Any such  
10                  election shall apply to the taxable year  
11                  for which made and all subsequent  
12                  taxable years described in subclause  
13                  (I) unless revoked with the consent of  
14                  the Secretary.

15                  “(G) TRANSITION RULES FOR CERTAIN  
16                  CARRYFORWARDS AND CARRYBACKS.—For pur-  
17                  poses of paragraph (1)—

18                  “(i) in the case of any taxes carried  
19                  from any taxable year beginning before  
20                  January 1, 2015, to any taxable year be-  
21                  ginning on or after such date—

22                  “(I) if such taxes were treated as  
23                  attributable to income described in  
24                  paragraph (1)(A) (as in effect for tax-  
25                  able years beginning in 2014), such

1 taxes shall be treated as attributable  
2 to income described in paragraph  
3 (1)(B), and

4 “(II) if such taxes were treated  
5 as attributable to income described in  
6 paragraph (1)(B) (as in effect for tax-  
7 able years beginning in 2014), such  
8 taxes shall be treated as attributable  
9 to income described in paragraph  
10 (1)(C), and

11 “(ii) the Secretary may by regulations  
12 provide for the allocation of any carryback  
13 of taxes with respect to income from a tax-  
14 able year beginning on or after January 1,  
15 2015, to a taxable year beginning before  
16 such date for purposes of allocating such  
17 income among the separate categories in  
18 effect for the taxable year to which carried.

19 “(3) CONTROLLED FOREIGN CORPORATION;  
20 UNITED STATES SHAREHOLDER.—For purposes of  
21 this subsection—

22 “(A) CONTROLLED FOREIGN CORPORA-  
23 TION.—The term ‘controlled foreign corpora-  
24 tion’ has the meaning given such term by sec-  
25 tion 957 (taking into account section 956(a)).

1           “(B) UNITED STATES SHAREHOLDER.—  
2           The term ‘United States shareholder’ has the  
3           meaning given such term by section 951(b)  
4           (taking into account section 956(a)).

5           “(4) SEPARATE APPLICATION TO ITEMS  
6           RESOURCED UNDER TREATIES.—

7           “(A) IN GENERAL.—If—

8                   “(i) without regard to any treaty obli-  
9                   gation of the United States, any item of  
10                   income would be treated as derived from  
11                   sources within the United States,

12                   “(ii) under a treaty obligation of the  
13                   United States, such item would be treated  
14                   as arising from sources outside the United  
15                   States, and

16                   “(iii) the taxpayer chooses the bene-  
17                   fits of such treaty obligation,  
18                   subsections (a), (b), and (c) of this section and  
19                   sections 907 and 960 shall be applied sepa-  
20                   rately with respect to each such item.

21           “(B) COORDINATION WITH OTHER PROVI-  
22           SIONS.—This paragraph shall not apply to any  
23           item of income to which subsection (h)(10) or  
24           section 865(h) applies.



1           “(1) IN GENERAL.—Notwithstanding section  
2           960(b), no credit shall be allowed under subsection  
3           (a) for any income, war profits, or excess profits  
4           taxes paid or accrued (or deemed paid or accrued  
5           under section 960) with respect to the excludable  
6           portion of subpart F income or any distribution re-  
7           ceived by a United States shareholder (as defined in  
8           section 951(b)) which is properly attributable to  
9           such excludable portion. No deduction shall be al-  
10          lowed to a taxpayer under this chapter for any tax  
11          for which a credit is not allowable by reason of the  
12          preceding sentence.

13           “(2) EXCLUDABLE PORTION.—The term ‘ex-  
14          cludable portion’ has the meaning given such term  
15          by section 959(g)(3)(B).

16           “(3) COORDINATION WITH SECTION 78.—Sec-  
17          tion 78 shall not apply to any tax which is not allow-  
18          able as a credit under this section by reason of this  
19          subsection.”.

20          (b) EFFECTIVE DATE.—The amendments made by  
21          this section shall apply to taxable years of foreign corpora-  
22          tions beginning after December 31, 2014, and to taxable  
23          years of United States shareholders with or within which  
24          such taxable years of foreign corporations end.

1                   **PART III—EXPENSE DISALLOWANCE**

2   **SEC. 21. DISALLOWANCE OF DEDUCTION FOR EXPENSES**

3                   **ALLOCABLE TO EXEMPT INCOME OF A CON-**

4                   **TROLLED FOREIGN CORPORATION.**

5           (a) IN GENERAL.—Part IX of subchapter B of chap-  
6   ter 1 is amended by adding at the end the following:

7   **“SEC. 265A. EXPENSES ALLOCABLE TO EXEMPT INCOME OF**

8                   **A CONTROLLED FOREIGN CORPORATION.**

9           “(a) IN GENERAL.—In the case of a United States  
10   shareholder of a controlled foreign corporation for any tax-  
11   able year, no deduction shall be allowed under this chapter  
12   for—

13                   “(1) the disallowed portion of any allocable  
14   CFC interest, or

15                   “(2) expenses directly allocable to the exclud-  
16   able portion of subpart F income (as defined in sec-  
17   tion 959(g)(3)(B)).

18           “(b) DISALLOWED PORTION.—For purposes of this  
19   section—

20                   “(1) IN GENERAL.—The term ‘disallowed por-  
21   tion’ means, with respect to any allocable CFC inter-  
22   est in connection with a controlled foreign corpora-  
23   tion, **[40]** percent of the amount which bears the  
24   same ratio to the amount of such interest as—

1           “(A) the corporation’s modified active in-  
2 come (as defined in section 952) for the appli-  
3 cable taxable year, bears to

4           “(B) the corporation’s current earnings  
5 and profits.

6           “(2) CURRENT EARNINGS AND PROFITS.—For  
7 purposes of this subsection—

8           “(A) IN GENERAL.—The term ‘current  
9 earnings and profits’ means the earnings and  
10 profits of the controlled foreign corporation for  
11 the applicable taxable year, without diminution  
12 by reason of distributions made during the tax-  
13 able year.

14           “(B) SPECIAL RULE FOR DETERMINING  
15 EARNINGS AND PROFITS.—Earnings and profits  
16 of any controlled foreign corporation shall be  
17 determined without regard to paragraphs (4),  
18 (5), and (6) of section 312(n). Under regula-  
19 tions, the preceding sentence shall not apply to  
20 the extent it would increase earnings and prof-  
21 its by an amount which was previously distrib-  
22 uted by the controlled foreign corporation.

23           “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
24 poses of this section—

1           “(1) **ALLOCABLE CFC INTEREST.**—The term  
2           ‘allocable CFC interest’ means any interest expense  
3           paid or accrued during the taxable year by a United  
4           States shareholder of a controlled foreign corpora-  
5           tion which under section 861, and subsection (e) or  
6           (f) of section 864 (whichever is applicable), is appor-  
7           tioned to income of the controlled foreign corpora-  
8           tion.

9           “(2) **APPLICABLE TAXABLE YEAR.**—The term  
10          ‘applicable taxable year’ means, with respect to any  
11          controlled foreign corporation, the taxable year of  
12          such corporation which ends with or within the tax-  
13          able year of the United States shareholder described  
14          in subsection (a).

15          “(3) **UNITED STATES SHAREHOLDER; CON-**  
16          **TROLLED FOREIGN CORPORATION.**—The term  
17          ‘United States shareholder’ has the meaning given  
18          such term by section 951(b) and the term ‘controlled  
19          foreign corporation’ shall have the meaning given  
20          such term by section 957(a).

21          “(4) **SPECIAL RULE FOR MEMBERS OF AN AF-**  
22          **FILIATED GROUP.**—If a United States shareholder  
23          to which subsection (a) applies is a domestic cor-  
24          poration which is a member of a group all members  
25          of which are treated as a single corporation under

1 subsection (e) or (f) of section 864, whichever is ap-  
2 plicable, all domestic corporations which are mem-  
3 bers of such group shall be treated as a single cor-  
4 poration for purposes of this section.

5 “(5) SPECIAL RULES.—

6 “(A) COORDINATION WITH OTHER PROVI-  
7 SIONS.—Except as provided in regulations, this  
8 section shall be applied before any other provi-  
9 sion of this chapter limiting the deductibility of  
10 any allocable CFC interest.

11 “(B) SEPARATE APPLICATION TO INCOME  
12 IN SEPARATE BASKETS.—This section shall be  
13 applied separately with respect to the categories  
14 of income under section 904(d)(1).

15 “(d) REGULATIONS.—The Secretary shall prescribe  
16 such regulations as may be necessary to carry out the pur-  
17 poses of this section, including regulations providing—

18 “(1) for the sharing of information between  
19 shareholders if necessary to carry out the provisions  
20 of this section,

21 “(2) for directly associating interest or other  
22 expenses disallowed under this section with income  
23 of a controlled foreign corporation and for coordi-  
24 nating this section with other provisions of this

1 chapter limiting the deductibility of interest or other  
2 expenses, and

3 “(3) for the proper application of this section  
4 with respect to the taxpayer’s share of net operating  
5 losses of a controlled foreign corporation.”.

6 (b) CONFORMING AMENDMENT.—The table of sec-  
7 tions for part IX of subchapter B of chapter 1 is amended  
8 by inserting after the item relating to section 265 the fol-  
9 lowing:

“Sec. 265A. Expense allocable to exempt income of a controlled foreign cor-  
poration.”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to taxable years of foreign corpora-  
12 tions beginning after December 31, 2014, and to taxable  
13 years of United States shareholders with or within which  
14 such taxable years of foreign corporations end.