To amend the Internal Revenue Code of 1986 to eliminate tax loopholes that allow billionaires to defer tax indefinitely through planning strategies such as “buy, borrow, die”, to modify over 30 tax provisions so that billionaires are required to pay taxes annually, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Wyden (for himself, Ms. Stabenow, Mr. Brown, Mr. Casey, Mr. Whitehouse, Ms. Warren, Mr. Schatz, Ms. Hirono, Ms. Baldwin, Mr. Sanders, Mr. Merkley, Mr. Fetterman, Mr. Reed, and Mr. Welch) introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To amend the Internal Revenue Code of 1986 to eliminate tax loopholes that allow billionaires to defer tax indefinitely through planning strategies such as “buy, borrow, die”, to modify over 30 tax provisions so that billionaires are required to pay taxes annually, and for other purposes.

_ Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, _
SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;

TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Billionaires Income Tax Act”.

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

(c) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.
Sec. 2. Purpose.

TITLE I—ELIMINATION OF DEFERRAL FOR APPLICABLE TAXPAYERS

Sec. 101. Elimination of deferral of tax.
Sec. 102. Carryback of capital losses attributable to mark-to-market rules.

TITLE II—APPLICATION OF OTHER PROVISIONS TO APPLICABLE TAXPAYERS AND ENTITIES

Subtitle A—Individuals

Sec. 201. Applicable taxpayers not eligible for adjusted gross income limitation on net investment tax.

Subtitle B—Rules for Applicable Entities and Trusts

Sec. 211. Treatment of like-kind exchanges by applicable entities.
Sec. 212. Treatment of transfers by applicable entities in exchange for stock.
Sec. 213. Special rules for applicable trusts.

Subtitle C—Treatment of Deferred Compensation and Certain Life Insurance and Annuity Contracts

Sec. 221. Elimination of deferral of tax on certain compensation.
Sec. 222. Rules relating to certain life insurance and annuity contracts of applicable taxpayers.

Subtitle D—Repeal of Special Treatment for Certain Investments
SEC. 2. PURPOSE.

The purpose of this Act is to require billionaires to pay taxes annually by eliminating the ability of high income and high net worth taxpayers to use tax planning strategies such as “buy, borrow, die” to defer paying taxes indefinitely, specifically by—

(1) under the provisions of title I of this Act—

(A) requiring high income and high net worth taxpayers to pay tax on the income they earn on an annual basis, just like working people do on their income from wages, through mark-to-market taxation, and

(B) shutting down the ability of the ultra wealthy to buy and hold appreciating assets and borrow against those assets to support their lavish lifestyles, all completely tax-free, and

(2) under the provisions of title II of this Act, closing loopholes in the tax code that allow high income and high net worth taxpayers to shield their income from taxation, including the loophole that allows ultra wealthy taxpayers to transfer untaxed appreciated assets to their heirs at death and such heirs to sell such assets completely tax-free.
TITLE I—ELIMINATION OF DEFERRAL FOR APPLICABLE TAXPAYERS

SEC. 101. ELIMINATION OF DEFERRAL OF TAX.

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

“PART IV—ELIMINATION OF DEFERRAL FOR APPLICABLE TAXPAYERS

Sec. 490. Elimination of deferral of tax for applicable taxpayers.
Sec. 491. Treatment of tradable covered assets.
Sec. 492. Deferral recapture amount on applicable transfers of nontradable covered assets.
Sec. 493. Special rules for application of nondeferral rules to certain pass-through entities.
Sec. 494. Treatment of gifts, bequests, and transfers in trust.

“Subpart A—General Provisions

Sec. 490. Elimination of deferral of tax for applicable taxpayers.
Sec. 491. Treatment of tradable covered assets.
Sec. 492. Deferral recapture amount on applicable transfers of nontradable covered assets.
Sec. 493. Special rules for application of nondeferral rules to certain pass-through entities.
Sec. 494. Treatment of gifts, bequests, and transfers in trust.

“Sec. 490. ELIMINATION OF DEFERRAL OF TAX FOR APPLICABLE TAXPAYERS.

“In the case of an applicable taxpayer for any taxable year—

“(1) if there is a taxable event with respect to any tradable covered asset of the taxpayer during the taxable year, gain or loss shall be recognized as provided in section 491,

“(2) if there is an applicable transfer by the taxpayer during the taxable year of any nontradable covered asset—
“(A) if such applicable transfer is a disregarded nonrecognition event, gain or loss shall be recognized as provided in section 492(a)(1), and

“(B) the tax imposed by this chapter for the taxable year shall be increased as provided in section 492 with respect to any gain from any such transfer,

“(3) gain or loss with respect to any applicable entity held by the taxpayer shall be taken into account as provided in section 493, and

“(4) in the case of any gift, bequest, or transfer in trust by an applicable taxpayer or applicable entity held by an applicable taxpayer, section 494 shall apply.

“SEC. 491. TREATMENT OF TRADABLE COVERED ASSETS.

“(a) In General.—For purposes of this title, in the case of a taxable event with respect to any tradable covered asset of an applicable taxpayer—

“(1) notwithstanding any other provision of this title—

“(A) gain or loss shall be recognized and taken into account in the taxable year in which the taxable event occurs as if the taxpayer had
sold the tradable covered asset for its fair market value—

“(i) in the case of a taxable event described in subsection (b)(1), on the date of the taxable event, and

“(ii) in the case of a taxable event described in subsection (b)(2), immediately before the taxable event, and

“(B) except as provided in subsection (c)(1), gain or loss taken into account by reason of a taxable event described in subsection (b)(1) with respect to a tradable covered asset which is a capital asset shall be treated as long-term capital gain or long-term capital loss, respectively, and

“(2) proper adjustments shall be made in the amount of gain or loss subsequently realized for gain or loss taken into account under paragraph (1).

“(b) TAXABLE EVENT.—For purposes of this part, the term ‘taxable event’ means, with respect to any tradable covered asset—

“(1) the holding of such asset as of the close of any taxable year with respect to which a taxpayer is an applicable taxpayer, and

“(2) any disregarded nonrecognition event.
“(c) Special Rules.—

“(1) Characterization as ordinary income or loss.— Except as provided by the Secretary, subsection (a)(1)(B) shall not apply to any gain or loss from a tradable covered asset if, under any other provision of this title, such gain or loss—

“(A) is treated as gain or loss from the sale or exchange of an asset which is not a capital asset, or

“(B) is treated as ordinary income or loss on a basis other than the taxpayer’s holding period in such asset.

“(2) Holding period.— For purposes of this title, any taxable event described in subsection (b)(1) with respect to any tradable covered asset shall not be taken into account in determining the holding period of the taxpayer with respect to such tradable covered asset.

“(3) Proper adjustments for subsequent gain or loss.—For purposes of subsection (a)(2), section 492(a)(1)(B), section 493(c)(1)(A)(ii), and section 493(c)(3)(C), the proper adjustments required under such provisions shall include such adjustments in basis of property, or such other adjust-
ments in respect of property, as the Secretary deter-
mines necessary or appropriate.

“SEC. 492. DEFERRAL RECAPTURE AMOUNT ON APPLICA-
BLE TRANSFERS OF NONTRADABLE COV-
ERED ASSETS.

“(a) IN GENERAL.—If there is an applicable transfer
during a taxable year of a nontradable covered asset of
an applicable taxpayer—

“(1) in the case of an applicable transfer which
is a disregarded nonrecognition event—

“(A) notwithstanding any other provision
of this title, gain or loss shall be recognized and
taken into account by the taxpayer (including
for purposes of paragraph (2) and subsection
(c)) in the taxable year in which the transfer
occurs as if the taxpayer had sold the
nontradable covered asset for its fair market
value immediately before such transfer, and

“(B) proper adjustments shall be made in
the amount of gain or loss subsequently realized
for gain or loss taken into account under sub-
paragraph (A), and

“(2) if there is gain from the applicable trans-
fer, the tax imposed by this chapter for the taxable
year (determined without regard to this section)
shall be increased by the sum of the deferral recapture amounts determined under subsection (b) for each such transfer.

“(b) DEFERRAL RECAPTURE AMOUNT.—

“(1) IN GENERAL.—For purposes of this part—

“(A) IN GENERAL.—The term ‘deferral recapture amount’ means, with respect to any applicable transfer of any nontradable covered asset, the aggregate amount of interest (determined in the manner provided under paragraph (3)) on the deemed tax amount determined under paragraph (2) for each taxable year to which gain is allocated under paragraph (2)(A) and which precedes the taxable year of the applicable transfer.

“(B) LIMITATION ON AMOUNT.—The amount determined under subparagraph (A) with respect to any applicable transfer shall not exceed the applicable percentage of the gain from such transfer. For purposes of this subparagraph, the applicable percentage is the excess of—

“(i) 49 percent, over

“(ii) in the case of the transfer of a nontradable covered asset which—
“(I) is a capital asset, the rate of tax in effect under section 1(h)(1)(D) for the taxable year of the transfer, or
“(II) is not a capital asset, the highest rate of tax in effect under section 1 for such taxable year.

“(2) DEEMED TAX AMOUNT.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The deemed tax amount for any taxable year preceding the taxable year of any applicable transfer of a nontradable covered asset shall be the amount determined—

“(i) first, except as provided in subparagraph (B), by allocating the amount of gain from such transfer ratably to each day in the taxpayer’s holding period of such asset, and

“(ii) then by multiplying the amount allocated under clause (i) to days in such preceding taxable year by—

“(I) if such asset is a capital asset, the rate of tax in effect under section 1(h)(1)(D) for the taxable year of such transfer, or
“(II) if such asset is not a capital asset, the highest rate of tax in effect under section 1 for such taxable year.

“(B) Special rule for periods before becoming applicable taxpayer.—Notwithstanding subparagraph (A)(i), any gain allocated under such subparagraph to any taxable year preceding the first taxable year for which the taxpayer is treated as an applicable taxpayer shall be allocated to such first taxable year.

“(C) Increase in deemed tax amount by tax on net investment income.—If gain from a transfer to which this section applies for any taxable year is of a type taken into account in computing net investment income (as defined in section 1411), the deemed tax amount under this paragraph for any preceding taxable year to which such gain is allocated under subparagraph (A)(i) shall be increased by an amount equal to the amount of such allocated gain multiplied by the rate of tax in effect under section 1411(a)(1) for the taxable year of such transfer.

“(3) Computation of interest.—
“(A) In general.—The amount of interest referred to in paragraph (1) on any deemed tax amount determined under paragraph (2) for any preceding taxable year shall be determined for the period—

“(i) beginning on the due date for such preceding taxable year, and

“(ii) ending on the date on which the applicable transfer occurs,

by using the rates determined under section 6621(b) (plus 1 percentage point), and the method applicable under section 6621, for underpayments of tax for such period.

“(B) Due date.—For purposes of this paragraph, the term ‘due date’ means, with respect to any preceding taxable year, the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year.

“(c) Special rule for taxpayers with net capital losses.—

“(1) In general.—If a taxpayer has a net capital loss for any taxable year for which there is an increase in tax under subsection (a)(2), such in-
crease in tax shall be reduced (but not below zero) by the credit equivalent of such net capital loss.

“(2) CREDIT EQUIVALENT.—For purposes of this subsection, the term ‘credit equivalent’ means, with respect to any net capital loss for any taxable year, an amount equal to such loss multiplied by the rate of tax in effect under section 1(h)(1)(D) for such taxable year.

“(3) COORDINATION WITH CARRYOVERS OF LOSS.—For purposes of subsection (b) of section 1212, the net capital loss for a taxable year to which paragraph (1) applies (determined without regard to this subsection) shall be reduced (but not below zero) by an amount equal to the amount of the reduction under paragraph (1) for such taxable year divided by the rate of tax in effect under section 1(h)(1)(D) for such taxable year.

“(d) SPECIAL RULES FOR CERTAIN DIVIDEND DISTRIBUTIONS.—

“(1) EXCESS DIVIDEND DISTRIBUTIONS.—

“(A) IN GENERAL.—For purposes of applying this section, any excess dividend shall be treated as gain from an applicable transfer of a nontradable covered asset occurring on the date such dividend is received.
“(B) Excess dividend.—For purposes of this part, the term ‘excess dividend’ means, with respect to any nontradable covered asset which consists of stock in a C corporation, any dividend in respect of such stock received during any taxable year to the extent such dividend does not exceed its ratable portion of the total excess dividends (if any) for such taxable year.

“(C) Total excess dividends.—For purposes of this paragraph—

“(i) In general.—The term ‘total excess dividends’ means, with respect to stock in a C corporation described in subparagraph (B), the excess (if any) of—

“(I) the amount of the dividends in respect of such stock received by the taxpayer during the taxable year, over

“(II) 125 percent of the average amount of dividends received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer’s holding period before the taxable year).
“(ii) NO EXCESS FOR 1ST YEAR.—Except as provided by the Secretary, the total excess dividends with respect to any stock shall be zero for the taxable year in which the taxpayer’s holding period in such stock begins.

“(D) ADJUSTMENTS.—Under regulations prescribed by the Secretary—

“(i) determinations under this paragraph shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated and other shares may be aggregated to the extent provided by the Secretary,

“(ii) proper adjustments shall be made for stock splits and stock dividends,

“(iii) if the taxpayer does not hold the stock during the entire taxable year, dividends received during such year shall be annualized, and

“(iv) if the taxpayer’s holding period includes periods during which the stock was held by 1 or more other persons, dividends with respect to such stock received
by such other person shall be taken into account as if received by the taxpayer.

“(2) CAPITAL GAIN DIVIDENDS OF CERTAIN REITS.—

“(A) IN GENERAL.—For purposes of applying this section, if an applicable taxpayer holds directly (or indirectly through 1 or more nontradable interests) stock in a real estate investment trust which is a nontradable covered asset, any capital gain dividend received by such taxpayer from such entity shall be treated as gain from an applicable transfer of a nontradable covered asset occurring on the date such dividend is received.

“(B) REPORTING.—A real estate investment trust shall include in the written notice for a capital gain dividend under section 857(b)(3)(B) its holding period in the asset giving rise to the capital gain dividend. The Secretary shall provide rules for the determination of holding periods in cases where the dividend is properly allocable to gain from more than 1 asset.

“(3) HOLDING PERIOD.—Except as prescribed by the Secretary, if an applicable taxpayer is treated
under this subsection as receiving gain from an applicable transfer of a nontradable covered asset, the taxpayer’s holding period for purposes of computing the deferral recapture amount under this section shall be the taxpayer’s holding period with respect to the stock or ownership interest in the entity to which paragraph (1) or (2) applies (or, if shorter, the holding period included in the notice described in paragraph (2)(B) in the case of a capital gain dividend).

“(e) HOLDING PERIOD.—For purposes of this section—

“(1) IN GENERAL.—The taxpayer’s holding period shall be determined under section 1223, except that if a tradable covered asset of an applicable taxpayer is converted to, or exchanged for, a nontradable covered asset, such period shall only include the period after the most recent taxable event under this part with respect to such tradable covered asset.

“(2) SECRETARIAL AUTHORITY.—The Secretary shall prescribe such regulations, rules, or guidance providing for other modifications to holding periods as may be necessary to carry out the purposes of this section.
"SEC. 493. SPECIAL RULES FOR APPLICATION OF NON-DEFERRAL RULES TO CERTAIN PASS-THROUGH ENTITIES.

"(a) Treatment of Ownership Interests in Applicable Entities.—For purposes of applying this part, except as provided in this section, any ownership interest in an applicable entity held directly (or indirectly through 1 or more nontradable interests) by an applicable taxpayer which is a tradable or nontradable covered asset shall be treated in the same manner as any other such asset.

"(b) Additional Requirements for Applicable Taxpayers Who Are Significant Owners.—For purposes of this part—

"(1) In General.—In the case of any applicable taxpayer which is a significant owner of an applicable entity—

"(A) such taxpayer shall meet the reporting requirements under paragraph (2) with respect to such entity, and

"(B) such taxpayer shall take into account amounts with respect to such entity as required under paragraph (3).

"(2) Reporting Requirements for Significant Owners.—

"(A) Notice to Entity of Status.—
“(i) In general.—In the case of the first taxable year for which a taxpayer—

“(I) is an applicable taxpayer,

“(II) is a significant owner of an applicable entity, and

“(III) holds directly a nontradable interest in such applicable entity,
such taxpayer shall, at such time and in such manner as the Secretary shall pre-
scribe, notify such applicable entity that such taxpayer is a taxpayer meeting the requirements of subclauses (I), (II), and (III) and that the applicable entity is sub-
ject to the notice requirements under subsection (c) with respect to such taxpayer. Such taxpayer shall include with such no-
tice such information as the Secretary may prescribe.

“(ii) Period of notice.—Any notice provided by a taxpayer under clause (i) shall remain in effect, and such entity shall continue to be subject to the reporting re-
quirements under subsection (c) with re-
spect to such taxpayer, for the period spee-
ified by the Secretary. The Secretary may require additional reporting by the taxpayer for purposes of carrying out this clause.

“(B) Reporting of elections to treat nontradable interests as tradable assets.—If—

“(i) section 496(a)(1) applies to an applicable taxpayer for any taxable year for which a notice with respect to such taxpayer is in effect under subparagraph (A), and

“(ii) the applicable taxpayer made the election under section 496(a)(3) to treat any nontradable interest in an applicable entity as a tradable covered asset for purposes of section 496(a)(1),

the applicable taxpayer shall, at such times and in such manner as the Secretary shall prescribe, report to such applicable entity notice of such election, the amount of gain described in section 496(c)(1) with respect to such treatment, and the requirement for the entity to make the basis adjustments described in section 496(c)(2).
“(3) Certain gain or loss of applicable entity taken into account by significant owners.—

“(A) In general.—Each applicable taxpayer for which a notice with respect to such taxpayer is in effect under paragraph (2)(A) or subsection (c)(2) with respect to an applicable entity for any taxable year of the taxpayer shall, in computing the taxpayer’s tax liability under this chapter for such taxable year, take into account such taxpayer’s share of any gain or loss reported under subsection (c)(1)(A)(i) or (c)(1)(B)(i) to the taxpayer for any taxable year of such entity ending with or within such taxable year of the taxpayer.

“(B) Basis adjustments.—Under rules prescribed by the Secretary, if gain or loss is taken into account by an applicable taxpayer under subparagraph (A) with respect to any tradable covered asset by reason of the taxpayer holding a nontradable interest in an applicable entity—

“(i) the applicable entity’s adjusted basis of such asset (solely for purposes of
computing the taxpayer’s share of such adjusted basis, and

“(ii) the taxpayer’s adjusted basis of such nontradable interest,

shall each be appropriately adjusted to reflect gain or loss so taken into account. Such rules shall also provide proper adjustments to adjusted bases where such ownership is held through tiered entities.

“(C) Special rules for deferral recapture amount.—

“(i) Holding period.—Except as prescribed by the Secretary, if an applicable taxpayer takes into account gain under subparagraph (A) for any taxable year from an applicable transfer by such applicable entity of a nontradable covered asset, the taxpayer’s holding period with respect to such asset for purposes of computing the deferral recapture amount under section 492 shall be the shorter of—

“(I) the entity’s holding period in such asset, or

“(II) the taxpayer’s holding period in such entity.
“(ii) Other rules.—The Secretary shall prescribe rules for purposes of this section—

“(I) for the treatment of fragmented holding periods,

“(II) for the determination of holding periods in the case of tiered structures, and

“(III) to prevent the shifting of any deferral recapture amount between taxpayers holding ownership interests in an applicable entity.

“(D) Taxpayers failing to file notice.—Under rules required by the Secretary, if a taxpayer fails to file a notice with any applicable entity as required under paragraph (2)(A), such taxpayer shall take into account, in computing the taxpayer’s tax liability under this chapter for any taxable year for which such notice (or a related notice under subsection (c)(2)) would otherwise have been in effect, gain or loss described in subparagraph (A) which would have been reported if such notice had been filed.
“(4) Significant owner.—For purposes of this subsection—

“(A) In general.—The term ‘significant owner’ means, with respect to any applicable entity, an applicable taxpayer who, at any time during the applicable taxpayer’s taxable year—

“(i) is a 5-percent owner with respect to such entity, or

“(ii) holds nontradable interests in such entity with an aggregate applicable value of greater than $50,000,000.

“(B) 5-percent owner.—

“(i) In general.—The term ‘5-percent owner’ mean, with respect to any applicable entity, an applicable taxpayer who owns (or is considered as owning within the meaning of section 318) at least 5 percent of—

“(I) in the case of a corporation, the stock (by vote or value) in such corporation, or

“(II) in the case of an applicable entity other than a corporation, the capital or profits interests in such entity.
“(ii) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of this subparagraph—

“(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting ‘5 percent’ for ‘50 percent’, and

“(II) in the case of an applicable entity which is not a corporation, ownership in such entity shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

“(c) ADDITIONAL ENTITY REPORTING REQUIREMENTS.—

“(1) IN GENERAL.—Except as provided in paragraph (4), an applicable entity for any taxable year shall, at such times and in such manner as the Secretary shall prescribe, report to each applicable taxpayer with respect to which a notice is in effect under subsection (b)(2)(A) or paragraph (2)—

“(A) in the case of tradable covered assets held by such entity, such taxpayer’s share of—
“(i) gain or loss determined by the entity under rules similar to the rules under section 491, and

“(ii) proper adjustments shall be made in the amount of gain or loss subsequently realized for gain or loss taken into account under clause (i),

“(B) in the case of nontradable covered assets held by such entity—

“(i) such person’s share of any gain or loss on any applicable transfer during such taxable year of any such asset, and

“(ii) the holding period in each such asset, and

“(C) such other information as the Secretary determines necessary to carry out this part.

“(2) Notice of taxpayers holding indirect interests in other applicable entities.—

“(A) In general.—Under rules prescribed by the Secretary, except as provided in subparagraph (B), if an applicable entity in a tier of entities—
“(i) receives a notice under subsection (b)(2)(A) with respect to an applicable taxpayer, such entity shall notify each other applicable entity in which such applicable taxpayer holds, by reason of holding a nontradable interest in such entity, a nontradable interest in such other entity that the person holding such interest in such other entity is an applicable taxpayer with respect to which the notice requirements of paragraph (1) apply to such other entity, or

“(ii) receives a notice under clause (i) or this clause, such entity shall notify each other applicable entity in which the applicable taxpayer holds, by reason of holding an interest in the entity receiving such notice, a nontradable interest in such other entity that the person holding such interest in such other entity is an applicable taxpayer with respect to which the notice requirements of paragraph (1) apply to such other entity.

Any such notice shall remain in effect, and any entity receiving such notice shall treat such tax-
payer as an applicable taxpayer, for the period specified by the Secretary. The Secretary may require additional reporting by such entities for purposes of carrying out this clause.

“(B) REQUIREMENT ONLY APPLIES IF APPLICABLE TAXPAYER IS SIGNIFICANT OWNER.—An applicable entity shall be required to report under subparagraph (A) to another applicable entity only if the applicable taxpayer is a significant owner (within the meaning of subsection (b)(4)) of such other entity, determined only by taking into account interests in such other entity which such applicable taxpayer holds by reason of its ownership interests in the entity otherwise required to report and such other ownership interests in such other entity as the Secretary may require to be taken into account to prevent the avoidance of the purposes of this part.

“(3) SPECIAL RULES FOR DISREGARDED NON-RECOGNITION EVENTS.—In the case of an applicable transfer of a nontradable covered asset of an applicable entity which is a disregarded nonrecognition event—
“(A) notwithstanding any other provision of this title, gain or loss shall be recognized and taken into account in the taxable year in which the transfer occurs as if the entity had sold the nontradable covered asset for its fair market value immediately before such transfer (or such other value as is determined as of such time under rules prescribed by the Secretary),

“(B) such entity shall report the amount of gain or loss required to be taken into account under subparagraph (A) to—

“(i) each applicable taxpayer with respect to which a notice is in effect which such entity has received under subsection (b)(1), and

“(ii) each other applicable entity from which it has received a notice under paragraph (2) with respect to such an applicable taxpayer, and

“(C) proper adjustments shall be made in the amount of gain or loss subsequently realized for gain or loss taken into account under subparagraph (A).

“(4) DELAY IN REPORTING REQUIREMENT.—
“(A) a notice is received by an applicable entity under subsection (b)(2)(A) or paragraph (2) for any taxable year of the entity with respect to any person holding directly (or indirectly through 1 or more nontradable interests) a nontradable interest in such entity, and

“(B) no notice is in effect with respect to such person or any other person for the preceding taxable year,

then, except as provided by the Secretary, such notice shall be treated as first taking effect for purposes of this subsection, section 351(h), and section 1031(i) for the taxable year immediately following the taxable year in which the notice is received. This paragraph shall not apply to a notice described in subparagraph (A) received by an applicable entity from a person who was a significant owner (within the meaning of subsection (b)(4)) of such entity (or any predecessor entity) on the date of the enactment of this part.

“(5) SECRETARIAL AUTHORITY.—In prescribing rules for the application of this subsection, the Secretary may provide—

“(A) simplified methods for applicable entities to meet the requirements of this sub-
section, including the aggregation of gains and losses where appropriate,

“(B) rules for determining a holder’s share of amounts required to be reported by an applicable entity under paragraph (1), and

“(C) any rules necessary to prevent the avoidance of the purposes of this section, including through the delay in the reporting requirement under paragraph (4).

“(d) Definitions and Rules Relating to Application of Section.—For purposes of this part—

“(1) Applicable Entity.—The term ‘applicable entity’ means any—

“(A) partnership,

“(B) S corporation, or

“(C) other pass-through entity specified in regulations or guidance prescribed by the Secretary.

“(2) Election to Treat Entity as Applicable Taxpayer for Taxable Events Involving Tradable Assets.—If an applicable entity elects the application of this paragraph for any taxable year—

“(A) this section shall not apply with respect to any gain or loss in connection with a
taxable event involving any tradable covered asset held directly (or indirectly through 1 or more nontradable interests) by such entity, and

“(B) such entity shall be treated as an applicable taxpayer for purposes of applying sections 490(1) and 491 to such taxable event.

Such an election shall be made at such time and in such manner as the Secretary may prescribe and, once made, shall be irrevocable without the consent of the Secretary.

“(e) NONTRADABLE INTEREST.—For purposes of this part, the term ‘nontradable interest’ means any ownership interest in an applicable entity which is a nontradable covered asset.

“(f) REGULATIONS AND GUIDANCE.—The Secretary shall prescribe such regulations and guidance as are necessary to carry out the provisions of this section, including regulations or guidance necessary—

“(1) to prevent the use of pass-through entities to avoid the purposes of this part,

“(2) to simplify the application of this part.

“SEC. 494. TREATMENT OF GIFTS, BEQUESTS, AND TRANSFERS IN TRUST.

“(a) IN GENERAL.—
“(1) DEEMED SALE.—If any person described in paragraph (3) transfers any covered asset by gift, upon death, or in trust, such covered asset shall be treated as sold by such person for its fair market value to the transferee on the date of such gift, death, or transfer.

“(2) NO RECOGNITION FOR LOSSES ON TRANSFERS BY GIFT OR IN TRUST.—

“(A) IN GENERAL.—No loss shall be recognized with respect to any covered asset which is treated as sold under subsection (a) by reason of a transfer by gift or in trust.

“(B) AMOUNT OF GAIN FOR TRANSFEREE.—If a loss is not recognized by the transferor by reason of subparagraph (A) and the transferee sells or otherwise disposes of the covered asset (or of other property the basis of which in the taxpayer’s hands is determined directly or indirectly by reference to such property) at a gain, then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the covered asset sold or otherwise disposed of by the transferee.
“(3) PERSON DESCRIBED.—A person is described in this section if such person is—

“(A) an individual who is an applicable taxpayer for the taxable year in which the transfer is made, or

“(B) an applicable entity with respect to which a notice received by the entity under subsection (b)(2)(A) or (c)(2) of section 493 is in effect at the time of such transfer.

“(b) SPECIAL RULES FOR CERTAIN GRANTOR TRUSTS.—

“(1) TRANSFERS OF NONTRADABLE COVERED ASSETS INTO CERTAIN GRANTOR TRUSTS.—For purposes of applying this section to any transfer in trust, except as otherwise provided in this paragraph, any transfer of a nontradable covered asset from the person treated as the owner of an applicable grantor trust (other than a grantor trust which is a wholly revocable trust) to such trust shall be treated as a transfer to which subsection (a) applies.

“(2) DEEMED DISTRIBUTIONS.—In the case of any applicable grantor trust, any property held by such trust shall be treated as transferred by the owner in a transfer to which subsection (a) applies—
“(A) on any date that—

“(i) the owner ceases to be treated as
the owner under this chapter,

“(ii) such property is distributed to
any person other than the owner, or

“(iii) the property would no longer be
included in the owner’s gross estate under
chapter 11, or

“(B) on the date of the death of the owner.

“(3) APPLICABLE GRANTOR TRUST.—For pur-
poses of this subsection—

“(A) IN GENERAL.—The term ‘applicable
grantor trust’ means the portion of any trust
with respect to which an applicable taxpayer is
considered the owner under subpart E of part
I of subchapter J.

“(B) EXCEPTIONS.—The Secretary shall
provide for appropriate exceptions to the treat-
ment of categories of trusts as applicable grant-
or trusts under subparagraph (A), including ar-
rangements which are ordinarily used in the
course of a trade or business, employee benefit
arrangements, and arrangements for
securitization transactions.

“(c) EXCEPTIONS.—
“(1) Spousal exception.—

“(A) In general.—Subsection (a) shall not apply to any transfer if such transfer—

“(i) is—

“(I) made to the spouse or the surviving spouse of the transferor, or

“(II) made to a former spouse of the transferor if the transfer is incident to divorce, or

“(ii) is a transfer of qualified terminable interest property or of property to which section 2056(b)(5) or 2523(e) applies.

“(B) Certain remainder interests treated as transferred by spouse.—Property described in subparagraph (A)(ii) shall be treated as sold by the spouse or surviving spouse on the earlier of the date of the disposition of such property by such spouse or surviving spouse or the date of the death of such spouse or surviving spouse.

“(C) Qualified terminable interest property.—For purposes of this paragraph, the term ‘qualified terminable interest property’
means any property described in section 2056(b)(7) or 2523(f)(2).

“(D) **Disallowance of Spousal Exception Where Spouse or Surviving Spouse Not United States Citizen or Long-Term Resident.**—

“(i) **In General.**—Subparagraph (A) shall not apply if the spouse or surviving spouse of the decedent is not a citizen or long-term resident of the United States.

“(ii) **Long-Term Resident.**—For purposes of clause (i), the term ‘long-term resident’ means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States—

“(I) for the taxable year in which the transfer described in subsection (a) occurs, and

“(II) in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the transfer described in subsection (a) or (b)(1) occurs.
For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

“(2) GIFTS AND BEQUESTS TO CHARITY.—

“(A) IN GENERAL.—Subsection (a) shall not apply to any transfer if such transfer is made to or for the use of an organization described in section 170(c).

“(B) SPECIAL RULE FOR SPLIT-INTEREST TRUSTS.—In the case of any transfer—

“(i) to a charitable remainder annuity trust (as defined in section 664) or a charitable remainder unitrust (as defined in section 664), or

“(ii) of an interest described in section 170(f)(2)(B),
subsection (a) shall not apply to the portion of such transfer which is to or for the use of an organization described in section 170(c).

“(C) Special rule for pooled income funds.—In the case of any transfer to a pooled income fund (as defined in section 642(c)(5)), subsection (a) shall not apply to the portion of such transfer which is to or for the use of an organization described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)).

“(3) Qualified disability trusts and cemetery perpetual care funds.—Subsection (a) shall not apply to transfers to any qualified disability trust (as defined in section 642(b)(2)(C)(ii)) or to transfers to any cemetery perpetual care fund described in section 642(i).

“(d) Basis of transferee.—

“(1) In general.—Notwithstanding sections 1014 and 1015, to the extent that subsection (a) applies to any transfer of property—

“(A) except as provided in subparagraph (B), the basis of the property in the hands of the transferee shall be the fair market value of the property (consistent with the amount taken
into account by the transferor under subsection (a), and

“(B) in the case such transfer is a transfer upon death to any individual described in subsection (c)(1)(A)(i), the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor, except that if such basis (adjusted for the period before the date of the transfer as provided in section 1016) is greater than the fair market value of the property at the time of death, then for the purpose of determining loss the basis shall be such fair market value.

“(2) Consistent Basis Rules for Transfers by Death.—In the case of any transfer upon death, rules similar to section 1014(f) shall apply for purposes of this section.

“(e) Application of Depreciation Recapture Rules.—Paragraphs (1) and (2) of section 1245(b) and paragraphs (1) and (2) of section 1250(d) shall not apply to any property treated as sold by reason of subsection (a).

“Subpart B—Definitions and Rules Relating to Applicable Taxpayers

"Sec. 495. Applicable taxpayer defined.
"Sec. 496. Special rules for taxpayers entering or changing status as applicable taxpayers."
SEC. 495. APPLICABLE TAXPAYER DEFINED.

“(a) IN GENERAL.—For purposes of this part—

“(1) IN GENERAL.—The term ‘applicable taxpayer’ means, with respect to any taxable year, any taxpayer—

“(A) which is an individual who met either the income test of paragraph (2) or the asset test of paragraph (3) for each of the 3 immediately preceding taxable years (including taxable years beginning before the date of the enactment of this part which are included in any such 3-taxable year period), or

“(B) which is—

“(i) an applicable trust, or

“(ii) the estate of an individual who was an applicable taxpayer for any taxable year during the 4-taxable year period ending with the taxable year in which the individual died.

“(2) INCOME TEST.—The requirements of this paragraph are met for any taxable year if the applicable adjusted gross income of the taxpayer for the taxable year exceeds $100,000,000 ($50,000,000 in the case of a married individual filing separately).

“(3) ASSET TEST.—The requirements of this paragraph are met for any taxable year if the aggre-
gate applicable value of all tradable and nontradable
covered assets held by the taxpayer as of the close
of the taxable year exceeds $1,000,000,000
($500,000,000 in the case of a married individual
filing separately).

“(4) Special rules relating to applicable
taxpayer status.—

“(A) Termination of status of individual taxpayers.—A taxpayer who is treated
as an applicable taxpayer under paragraph
(1)(A) for any taxable year shall continue to be
so treated until the first taxable year with re-
spect to which—

“(i) the taxpayer does not, for each of
the 3 taxable years immediately preceding
such taxable year, meet either—

“(I) the income test of paragraph
(2) in effect for such preceding taxable year, or

“(II) the asset test of paragraph
(3) in effect for such preceding taxable year,
except that each such paragraph shall be
applied for purposes of this clause by sub-
stituting an amount equal to one-half of
the dollar amount otherwise in effect for such taxpayer under such paragraph for each such preceding taxable year for such dollar amount, and

“(ii) the taxpayer elects, in such manner and form and at such time as the Secretary may prescribe, not to be so treated for such first taxable year.

“(B) Earlier termination election of applicable taxpayer status for divorced individuals.—If—

“(i) an applicable taxpayer ceases to be a married individual by reason of a decree of divorce or separate maintenance issued during any taxable year, and

“(ii) such taxpayer, for the first taxable year following the taxable year described in clause (i), does not meet either—

“(I) the income test of paragraph (2), except that such paragraph shall be applied for purposes of this subclause by substituting ‘$1,000,000’ for the dollar amount otherwise in ef-
fect for such taxpayer under such paragraph, or

“(II) the asset test of paragraph (3), except that such paragraph shall be applied for purposes of this subclause by substituting ‘$10,000,000’ for the dollar amount otherwise in effect for such taxpayer under such paragraph,

then such taxpayer may elect, in such manner and form and at such time as the Secretary may prescribe, not to be treated as an applicable taxpayer beginning with such first taxable year.

“(C) ELECTION.—An election under subparagraph (A) or (B)—

“(i) shall be made with the taxpayer’s return of tax for the taxable year to which such election first applies (or such other time as the Secretary shall prescribe) and shall be in such form and manner as the Secretary may prescribe, and

“(ii) shall apply to such first taxable year and all subsequent taxable years until the first taxable year for which the tax-
payer is again treated as an applicable taxpayer by reason of meeting the requirements of paragraph (1)(A).

“(5) Special rules for married individuals.—

“(A) Applicable taxpayers becoming married individuals.—If an individual was an applicable taxpayer for the taxable year before the individual became a married individual (within the meaning of section 7703), such individual and the individual’s spouse shall be treated as applicable taxpayers for such taxable year of marriage and subsequent taxable years until such status is otherwise terminated under this section.

“(B) Married individuals filing separately.—If a married individual filing separately is treated as an applicable taxpayer for any taxable year, such individual’s spouse shall be treated as an applicable taxpayer for such taxable year.

“(C) First-year elections.—Under rules prescribed by the Secretary, if an individual is first treated as an applicable taxpayer for a taxable year by reason of the application
of subparagraph (A) or (B), section 496 shall apply to such taxpayer for such first taxable year only with respect to assets held separately by such individual unless such taxable year is also the first taxable year for which the individual’s spouse is an applicable taxpayer.

“(6) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations and guidance as may be necessary to carry out the provisions of this subsection, including—

“(A) rules waiving the application of paragraph (5)(B) in cases where the Secretary determines equitable relief is appropriate,

“(B) rules providing for the application of this subsection in cases where the filing status of a taxpayer changes between any taxable year and any of the 3 immediately preceding taxable years, including the first taxable year in which a taxpayer files a joint return after becoming married, and

“(C) rules requiring such information reporting as the Secretary determines necessary to determine whether a taxpayer is an applicable taxpayer
“(b) Applicable Adjusted Gross Income.—For purposes of this section, the term ‘applicable adjusted gross income’ means modified adjusted gross income as defined in section 36B(d)(2)(B), except that—

“(1) clause (i) thereof shall be applied by substituting ‘sections 911, 931, and 933’ for ‘section 911’, and

“(2) in the case of a trust, no deduction under section 651 or 661 shall be allowed.

“(c) Applicable Trust.—For purposes of this section—

“(1) In General.—The term ‘applicable trust’ means a trust (other than a grantor trust) which, for each of the 3 taxable years immediately preceding such taxable year (including taxable years beginning before the date of the enactment of this part which are included in any such 3-taxable year period), meets either—

“(A) the income test of subsection (a)(2), except that such subsection shall be applied for purposes of this subparagraph by substituting ‘$10,000,000’ for the dollar amount otherwise in effect for such taxable year under such paragraph, or
“(B) the asset test of subsection (a)(3), except that such subsection shall be applied for purposes of this subparagraph by substituting ‘$100,000,000’ for the dollar amount otherwise in effect for such taxable year under such paragraph.

“(2) EXCEPTIONS.—Such term shall not include—

“(A) a qualified disability trust (as defined in section 642(b)(2)(C)(ii)),

“(B) any portion of a trust which consists of property permanently set aside for the exclusive use of an organization described in section 170(c),

“(C) a pooled income fund (as defined in section 642(c)(5)) or a cemetery perpetual care fund (as described in section 642(i)),

“(D) a settlement trust (as defined in section 646),

“(E) any charitable remainder annuity trust (as defined in section 664),

“(F) any charitable remainder unitrust (as defined in section 664), or
“(G) any other category of trust identified in regulations or guidance provided by the Secretary.

“(3) GRANTOR TRUSTS.—

“(A) GRANTOR TRUST DEFINED.—For purposes of this section, the term ‘grantor trust’ means any portion of a trust with respect to which the grantor or any other person is considered the owner under subpart E of part I of subchapter J.

“(B) ASSETS OF GRANTOR TRUST TAKEN INTO ACCOUNT.—For purposes of subsection (a)(1)(A), the assets of a grantor trust shall be included in the assets of—

“(i) the grantor of such trust if the grantor is considered the owner of such assets, and

“(ii) if a person other than the grantor is considered the owner of such assets, both the grantor and such person.

“(d) SPECIAL RULES FOR FOREIGN PERSONS AND EXPATRIATES.—For purposes of this part—

“(1) NONRESIDENT ALIEN INDIVIDUALS.—The following rules shall apply in determining whether a
nonresident alien individual is an applicable taxpayer:

“(A) **Income Test.**—For purposes of the income test under subsection (a)(2)—

“(i) such subsection shall be applied for purposes of this subparagraph by substituting ‘$50,000,000’ for the dollar amount otherwise in effect for such taxable year under such paragraph, and

“(ii) the applicable adjusted gross income of such individual shall be equal to the taxable income of such individual, determined by only taking into account items of income, gain, deduction, and loss which are effectively connected with the conduct of trades or businesses within the United States.

“(B) **Asset Test.**—For purposes of the asset test under subsection (a)(3)—

“(i) such subsection shall be applied for purposes of this subparagraph by substituting ‘$500,000,000’ for the dollar amount otherwise in effect for such taxable year under such paragraph, and
“(ii) only assets which produce income described in subparagraph (A) shall be taken into account.

“(2) Expatriates.—

“(A) In general.—If, for the taxable year which includes a covered expatriate’s expatriation date, such expatriate—

“(i) was an applicable taxpayer (without regard to this paragraph), or

“(ii) is an applicable taxpayer under the rules of subparagraph (B),

such expatriate shall be treated as an applicable taxpayer during each of the taxable years during the 10-taxable-year period beginning with such taxable year (and such status shall not be terminated during such period by reason of any other provision of this part).

“(B) Special rules for determining status.—For purposes of subparagraph (A)(ii), a covered expatriate not otherwise treated as an applicable taxpayer shall be treated as an applicable taxpayer if, during any of the 5 taxable years immediately preceding the taxable year which includes the covered expatriate’s expatriation date (including taxable years begin-
ning before the date of the enactment of this
part which are included in any such 5-taxable
year period), the expatriate meets either—

“(i) the income test of subsection
(a)(2), except that such subsection shall be
applied for purposes of this subparagraph
by substituting ‘$50,000,000’ for the dollar
amount otherwise in effect for such taxable
year under such paragraph, or

“(ii) the asset test of subsection
(a)(3), except that such subsection shall be
applied for purposes of this subparagraph
by substituting ‘$500,000,000’ for the dol-
lar amount otherwise in effect for such
taxable year under such paragraph.

“(C) DEFINITIONS.— Any term used in
this paragraph which is also used in section
877A shall have the same meaning as when
used in such section.

“SEC. 496. SPECIAL RULES FOR TAXPAYERS ENTERING OR
CHANGING STATUS AS APPLICABLE TAX-
PAYERS.

“(a) INITIAL TREATMENT AS APPLICABLE TAX-
PAYER.—
“(1) IN GENERAL.—In the case of the first taxable year for which a taxpayer is an applicable taxpayer—

“(A) the taxpayer may make the election under paragraph (3) with respect to nontradable covered assets, and

“(B) if the taxpayer elects the application of this subparagraph, the net first-year tax liability of the taxpayer for such taxable year shall be payable in 5 equal annual installments over the 5-taxable year period beginning with such taxable year.

“(2) NET FIRST-YEAR TAX LIABILITY.—For purposes of this section—

“(A) IN GENERAL.—The term ‘net first-year tax liability’ means, with respect to the first taxable year described in paragraph (1), the excess (if any) of—

“(i) such taxpayer’s net income tax for such taxable year, over

“(ii) such taxpayer’s net income tax for such taxable year determined without regard to gain or loss of the taxpayer taken into account for such taxable year by
reason of a taxable event described in section 491(b)(1).

“(B) NET INCOME TAX.—The term ‘net income tax’ means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

“(3) ELECTION TO PAY AND DEFER TAX ON NONTRADABLE ASSETS.—

“(A) IN GENERAL.—Except as provided in subparagraph (C), a taxpayer may elect to treat any nontradable covered asset held by the taxpayer as of the end of the first taxable year described in paragraph (1) as a tradable covered asset for purposes of applying section 491(b)(1) and this subsection.

“(B) DETERMINATION OF GAIN.—

“(i) IN GENERAL.—For purposes of applying section 491(a)(1)(A), the fair market value of any asset with respect to which an election is in effect under subparagraph (A) shall be the amount specified by the taxpayer in such election, except that such value may not, unless otherwise provided by the Secretary, be less than the taxpayer’s adjusted basis in such
asset as of the end of the first taxable year described in paragraph (1).

“(ii) No deductions or credits for basis increases.—If there is any increase under this part in the taxpayer’s adjusted basis of any asset by reason of an election under this paragraph, no deduction or credit shall be allowed under this title with respect to the portion of such adjusted basis attributable to such increase.

“(C) Only significant owner of applicable entity may elect.—In the case of a nontradable covered asset which is a nontradable interest in an applicable entity, an applicable taxpayer may make an election under subparagraph (A) with respect to such asset only if such taxpayer is a significant owner (as defined in section 493(b)(4)(A)) of such entity with respect to whom a notice is in effect under section 493(b)(2)(A) for the taxable year for which the election is being made.

“(4) Special rule where delay in reporting by applicable entity.—

“(A) In general.—If—
“(i) there is a delay in reporting to an applicable taxpayer by 1 or more applicable entities by reason of section 493(c)(4), and
“(ii) any gain or loss is reported by such entities to such taxpayer under section 493(c)(1)(A)(i) and is taken into account in such taxpayer’s taxable year immediately succeeding the first taxable year described in paragraph (1),
then, subject to such rules as the Secretary may prescribe, the taxpayer may elect under paragraph (1)(B) to treat the net tax liability described in subparagraph (B) as net first-year tax liability payable in 5 equal annual installments beginning with such succeeding taxable year. The rules of paragraph (5) shall apply to such installments in the same manner as such rules apply to installments for such first taxable year.
“(B) NET TAX LIABILITY.—For purposes of subparagraph (A), the net tax liability described in this subparagraph is, with respect to the taxable year described in such subparagraph, the excess (if any) of—
“(i) such taxpayer’s net income tax for such taxable year, over

“(ii) such taxpayer’s net income tax for such taxable year determined without regard to gain or loss of the taxpayer described in subparagraph (A)(ii).

“(5) Rules relating to installment payments.—

“(A) Date for payment of installments.—If an election is made under paragraph (1), the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the first taxable year described in paragraph (1) and each succeeding installment shall be paid on the due date (as so determined) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made.

“(B) Acceleration of payment.—

“(i) Disposition of assets.—

“(I) In general.—If, before the close of the 5-year period described in paragraph (1), a taxpayer sells or exchanges, transfers, or otherwise dis-
poses of an asset with respect to which an election is in effect under paragraph (1)(B), then the applicable percentage of the unpaid portion of all remaining installments described in paragraph (1)(B) shall be due on the date of such disposition (or such later date as the Secretary may prescribe).

“(II) APPLICABLE PERCENTAGE.—For purposes of this subparagraph, the applicable percentage is the percentage determined by dividing the gain not taken into account in determining net income tax under paragraph (2)(A)(ii) with respect to the asset described in subclause (I) by the aggregate amount of all gain not so taken into account.

“(ii) FAILURE TO PAY, ETC.—In the case of an addition to tax for failure to timely pay any installment required under this subsection, the death of the taxpayer, or the filing of a petition by the taxpayer in a title 11 or similar case, then the unpaid portion of all remaining installments
shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed).

“(C) Proration of deficiency to installments.—If an election is made under paragraph (1) to pay the net first-year tax liability under this section in installments and a deficiency has been assessed with respect to such net tax liability, the deficiency shall be prorated to the installments payable under paragraph (1). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud.

“(D) Installments not to prevent credit or refund of overpayments or increase estimated taxes.—If an election is made under paragraph (1) to pay the net first-
year tax liability under this subsection in installments—

“(i) no installment of such liability shall—

“(I) in the case of a request for credit or refund, be taken into account as a liability for purposes of determining whether an overpayment exists for purposes of section 6402 before the date on which such installment is due, or

“(II) be treated as a tax imposed by section 1 for purposes of section 6654, and

“(ii) the first sentence of section 6403 shall not apply with respect to any such installment.

“(6) ELECTIONS.—

“(A) IN GENERAL.—Any election under paragraph (1), (3)(A), or (4)(A) shall be made not later than the due date for the return of tax for the first taxable year described in paragraph (1) and shall be made in such manner as the Secretary shall provide.
“(B) EXTENSIONS.—The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make any election under paragraph (1), (3)(A), or (4)(A). In determining whether to grant relief under this subparagraph, the Secretary shall take into account all relevant circumstances and the time for making the election shall be treated as not expressly provided by statute.

“(b) TREATMENT OF TAXPAYERS LEAVING AND RE-ENTERING APPLICABLE STATUS.—If a taxpayer’s status as an applicable taxpayer is terminated under section 495(a)(4) and the taxpayer is again treated as an applicable taxpayer for a subsequent taxable year by reason of meeting the requirements of section 495(a)(1)(A), the following rules shall apply:

“(1) SUBSEQUENT YEAR NOT TREATED AS FIRST YEAR OF APPLICABLE TAXPAYER STATUS.—Subsection (a) shall not apply to any taxable year in which the taxpayer is again treated as an applicable taxpayer and such subsequent taxable year shall not be treated as the first taxable year for which the taxpayer is an applicable taxpayer for any other purpose of this part.
“(2) NONTRADABLE ASSETS.—If there is an applicable transfer by a taxpayer of a nontradable covered asset after the taxpayer is again treated as an applicable taxpayer, the taxpayer’s holding period of such asset for purposes of section 492 shall include all periods during which the taxpayer’s status as an applicable taxpayer was previously terminated and the taxpayer held such asset.

“(c) SPECIAL RULES RELATING TO OWNERSHIP OF NONTRADABLE INTERESTS IN APPLICABLE ENTITIES.—

“(1) IN GENERAL.—For purposes of subsection (a), if an applicable taxpayer elects under subsection (a)(3) to treat a nontradable interest in an applicable entity held directly as a tradable covered asset for the first taxable year described in subsection (a)(1), the amount of the gain taken into account under subsection (a) with respect to such interest shall be equal to the excess (if any) of—

“(A) the value of such interest specified by the taxpayer under subsection (a)(3)(B), over

“(B) the taxpayer’s adjusted basis in such interest as of the close of such taxable year.

“(2) ADJUSTMENTS TO BASES OF ENTITY’S NONTRADABLE ASSETS.—

“(A) PARTNERSHIPS.—
“(i) IN GENERAL.—If the applicable entity is a partnership, the partnership shall increase the adjusted bases of the partnership’s assets by the amount described in paragraph (1). Such increase shall constitute an adjustment to the bases of partnership assets solely for determining the applicable taxpayer’s share of such bases.

“(ii) ALLOCATION.—The Secretary shall prescribe rules for the allocation of the increase in adjusted bases among partnership assets in a manner which has the effect of reducing the difference between the value and such adjusted bases. Such rules shall also provide proper adjustments to adjusted bases where ownership is held through tiered entities.

“(B) OTHER APPLICABLE ENTITIES.—Rules similar to the rules of clause (i) shall apply to applicable entities other than partnerships.

“(C) NO DEDUCTIONS OR CREDITS FOR BASIS INCREASES.—If there is any increase in the applicable entity’s adjusted basis of any
asset by reason of subparagraph (A), no deduction or credit shall be allowed under this title with respect to the portion of such adjusted basis attributable to such increase.

“(3) Definitions.—Any term used in this subsection which is also used in section 493 shall have the same meaning as when used in such section.

“(d) Special Election for Certain Tradable Assets of Applicable Taxpayers.—

“(1) In general.—If a qualified taxpayer makes an election under this subsection, then any stock held by such qualified taxpayer which would (but for such election) be a tradable covered asset and which is specified in such election shall be treated as a as a nontradable capital asset of the taxpayer for purposes of this part.

“(2) Limitations.—

“(A) Only stock of a single entity taken into account.—An election made under this subsection may not specify stock in more than one C corporation or specify more than one class of stock in such corporation.

“(B) Value.—

“(i) In general.—The aggregate value of stock specified in an election made
under this subsection shall not exceed $1,000,000,000.

“(ii) Determination.—For purposes of clause (i), the value of any stock specified in an election made under this section shall be determined as of the last day of the first taxable year for which the taxpayer is an applicable taxpayer.

“(3) Qualified Taxpayer.—For purposes of this subsection, the term ‘qualified taxpayer’ means any taxpayer—

“(A) which is not an estate or trust, and

“(B) for which the first taxable year for which such taxpayer is an applicable taxpayer is a taxable year that begins before January 1, 2025.

“(4) Election.—

“(A) In General.—Any election under this subsection shall be made not later than the due date for the return of tax for the first taxable year for which the taxpayer is an applicable taxpayer and shall be made in such manner as the Secretary shall provide.

“(B) Extensions.—The Secretary shall by regulation prescribe such circumstances and
procedures under which extensions of time will be granted to make any election under this subsection. In determining whether to grant relief under this subparagraph, the Secretary shall take into account all relevant circumstances and the time for making the election shall be treated as not expressly provided by statute.

“Subpart C—Other Definitions and Rules

“Sec. 497. Terms and rules relating to covered assets.
“Sec. 498. Other definitions; coordination with title.

“SEC. 497. TERMS AND RULES RELATING TO COVERED ASSETS.

“(a) COVERED ASSET.—For purposes of this part, except as otherwise provided in this part, the term ‘covered asset’ means any asset other than—

“(1) any interest of the taxpayer in an applicable savings plan or in a defined benefit plan,

“(2) any cash or cash equivalent, or

“(3) any private placement life insurance or annuity contract described in section 72(e)(12)(D).

“(b) TRADABLE COVERED ASSET.—For purposes of this part, except as provided in section 496(d), the term ‘tradable covered asset’ means—

“(1) any covered asset if—

“(A) interests in such asset are traded on an established securities market,
“(B) interests in such assets are readily tradable on a secondary market (or the substantial equivalent thereof),

“(C) interests in such assets are available on an online or electronic platform that regularly matches, or facilitates the matching of, buyers and sellers of such assets, or

“(D) such asset is an asset for which the Secretary determines there is a reasonable basis to determine the asset’s fair market value annually, and

“(2) any derivative with respect to an underlying investment which—

“(A) is an asset described in paragraph (1), or

“(B) is a nontradable covered asset which is identified in regulations or other guidance provided by the Secretary.

“(c) NONTRADABLE COVERED ASSET.—For purposes of this part—

“(1) In general.—The term ‘nontradable covered asset’ means any covered asset which is not a tradable covered asset.

“(2) Certain assets only counted for determining aggregate value of assets.—
"(A) In general.—Any asset excluded from treatment as a covered asset under paragraph (1), (2), or (3) of subsection (a) shall be taken into account as a nontradable covered asset in computing the aggregate applicable value of all tradable and nontradable covered assets held by the taxpayer as of the close of any taxable year for purposes of section 495(a)(3).

"(B) Private placement life insurance and annuity contracts.—For purposes of subparagraph (A)—

"(i) In general.—The applicable value of a private placement life insurance or annuity contract (as defined in section 72(e)(12)(D)) as of any date shall be its cash surrender value (as determined under section 7702(f)(2)(A)) on such date.

"(ii) Adjustments.—The Secretary shall by regulation provide for adjustments to the cash surrender value determined under clause (i) with respect to any contract to the extent necessary to prevent the avoidance of the purposes of this part, including regulations which ensure that such
value as of any time properly reflects the
value of any underlying investments with
respect to such contract as of such time.

“(3) INVESTMENTS IN QUALIFIED OPPOR-
TUNITY FUNDS.—Notwithstanding subsection (b),
any investment in a qualified opportunity fund (as
defined in section 1400Z–2(d)) shall be treated as a
nontradable covered asset.

“(d) APPLICABLE VALUE.—For purposes of this
part—

“(1) TRADABLE COVERED ASSETS.—The appli-
cable value of any tradable covered asset as of any
date shall be its fair market value on such date.

“(2) NONTRADABLE COVERED ASSETS.—The
applicable value of any nontradable covered asset as
of any date shall be the greatest of—

“(A) the original cost basis of such asset,
“(B) the adjusted basis of such asset,
“(C) the value determined as of the date of
the last event with respect to the asset which
establishes such value,
“(D) in the case of an asset the value of
which is included in an applicable financial
statement, the value in the latest available
statement,
“(E) the value of such asset determined for purposes of using such asset to secure any indebtedness, and

“(F) the value of such asset determined under such other valuation method as the Secretary may prescribe.

If a covered asset would, but for subsection (c)(3) or any other provision of this part, be treated as a tradable covered asset, the asset’s applicable value shall be determined under paragraph (1).

“(3) Adjustment for debt and other liabilities of the taxpayer.—Except as provided by the Secretary, the aggregate applicable value of all covered assets of the taxpayer as of any date (determined without regard to this paragraph) shall be reduced by the aggregate outstanding amount of—

“(A) indebtedness of the taxpayer as of such date, and

“(B) any other liabilities (other than indebtedness) of the taxpayer as of such date which the Secretary determines are appropriate to be taken into account for such purpose.

“(4) Reliance on valuation.—In determining the applicable value of any tradable covered
asset for purposes of this section, the taxpayer may rely on a valuation which is—

“(A) provided to the taxpayer by a broker under section 6045(b),

“(B) provided to the taxpayer by a dealer in securities or a dealer in commodities, within the meaning of section 475,

“(C) determined under an applicable financial statement, or

“(D) provided to the taxpayer by such other persons as may be designated by the Secretary.

“(5) APPLICABLE FINANCIAL STATEMENT.—For purposes of this subsection, the term ‘applicable financial statement’ has the meaning given such term by section 451(b)(3).

“(6) SPECIAL RULES FOR APPLICABLE ENTITIES.—In the case of an applicable entity—

“(A) adjustments to basis of any covered asset under section 493(b)(2) shall be taken into account in determining the adjusted basis of such asset for purposes of paragraph (2)(B),

“(B) the value of a partner’s ownership interest in such partnership under paragraph (2)(C) shall not be less than the value of the
partner’s capital account under section 704,
and
“(C) the Secretary shall provide rules for
determining the share of a holder of an owner-
ship interest in such an entity of amounts in-
cluded in an applicable financial statement of
such entity for purposes of applying paragraph
(2)(D).
“(7) SECRETARIAL AUTHORITY.— The Sec-
retary shall prescribe such regulations, rules, and
guidance as may be necessary to carry out the pur-
poses of this subsection, including regulations, rules,
and guidance which—
“(A) prevent the avoidance of such pur-
poses,
“(B) provide rules for the application of
paragraph (2)(C), including in cases of trans-
actions in which gain or loss is not recognized
in connection with contributions, distributions,
and sales of substantially similar property from
which value may be derived, and
“(C) provide rules for determining the ap-
icable value of assets in taxable years begin-
ning before the date of the enactment of this
part.
"SEC. 498. OTHER DEFINITIONS; COORDINATION WITH TITLE.

“(a) APPLICABLE TRANSFER.—For purposes of this part—

“(1) IN GENERAL.—The term ‘applicable transfer’ means—

“(A) any sale, exchange, disposition, or other transfer if—

“(i) gain or loss (if any) is, without regard to this part, recognized under this chapter on such sale, exchange, disposition, or other transfer, and

“(ii) such sale, exchange, disposition, or other transfer is not in the ordinary course of a trade or business, and

“(B) any disregarded nonrecognition event.

“(2) DISREGARDED NONRECOGNITION EVENT.—The term ‘disregarded nonrecognition event’ means—

“(A) any exchange to which section 351 applies,

“(B) any exchange to which section 1031 applies,

“(C) any transfer of an asset which—

“(i) is identified by the Secretary,

“(ii) involves a C corporation, and
“(iii) is in connection with an asset with respect to which no gain or loss has been recognized by such corporation, or

“(D) any other transaction in which gain or loss is not otherwise recognized and which the Secretary determines is necessary to be treated as a disregarded nonrecognition event in order to prevent the avoidance of the purposes of this part.

“(3) CONVERSION OF ASSETS.—

“(A) NONTRADABLE TO TRADABLE.—If a taxpayer holds a nontradable covered asset (other than an investment in a qualified opportunity fund (as defined in section 1400Z–2(d))) which, as part of a transaction or series of transactions, is converted to, or exchanged for, a tradable covered asset, such conversion or exchange shall be treated as a disregarded nonrecognition event if gain or loss (if any) on such conversion or exchange is, without regard to this part, not recognized under this chapter.

“(B) TRADABLE TO NONTRADABLE.—If a taxpayer holds a tradable covered asset which, as part of a transaction or series of transactions, is converted to, or exchanged for, a
nontradable covered asset, such conversion or exchange shall be treated as a taxable event with respect to the asset being converted or exchanged if gain or loss (if any) on such conversion or exchange is, without regard to this part, not recognized under this chapter.

“(b) APPLICABLE SAVINGS PLAN.—The term ‘applicable savings plan’ means—

“(1) a defined contribution plan to which section 401(a) or 403(a) applies,

“(2) an annuity contract under section 403(b),

“(3) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),

“(4) an individual retirement plan.

“(5) an Archer MSA (within the meaning of section 220(d)),

“(6) a qualified tuition program (as defined in section 529(b),

“(7) an ABLE account (as defined in section 529A(e)(6)),

“(8) a Coverdell education savings account (as defined in section 530), or

“(9) a health savings account (within the meaning of section 223(d)).
“(c) Derivative; Underlying Investment.—

“(1) Derivative.—The term ‘derivative’ has the meaning given such term under section 59A(h)(4).

“(2) Underlying investment.—The term ‘underlying investment’ means, with respect to any derivative, any item—

“(A) which is described in clauses (i) through (v) of section 59A(h)(4)(A) (or any item substantially the same as any such item), and

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

“(d) Regulatory Authority to Prevent Avoidance and to Coordinate With Other Provisions of This Title.—The Secretary shall issue such regulations or other guidance as are necessary to—

“(1) prevent taxpayers from avoiding the application of this part, and

“(2) coordinate the provisions of this part with other provisions of this title which require taxpayers to take income into account in the absence of a payment or other distribution.”.
(b) CLERICAL AMENDMENT.—The table of parts for subchapter E of chapter 1 is amended by adding at the end the following new item:

“Part IV. Elimination of deferral for applicable taxpayers.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events and applicable transfers occurring in taxable years beginning after December 31, 2023.

SEC. 102. CARRYBACK OF CAPITAL LOSSES ATTRIBUTABLE TO MARK-TO-MARKET RULES.

(a) IN GENERAL.—Section 1212 is amended by adding at the end the following new subsection:

“(d) CARRYBACK OF LOSSES OF APPLICABLE TAXPAYERS FROM ASSETS MARKED TO MARKET.—

“(1) IN GENERAL.—If an applicable taxpayer elects to have this subsection apply to any taxable year in which the taxpayer has a net marked-to-market loss (in this subsection referred to as the ‘loss year’), the amount of such net marked-to-market loss—

“(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

“(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding tax-
able year, the amount so allowed shall be treated as a long-term capital loss.

“(2) Amount carried to each taxable year.—The entire amount of the net marked-to-market loss for any loss year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3), was allowed as a carryback for any prior taxable year

“(3) Amount which may be used in any prior taxable year.—An amount shall be allowed as a carryback under paragraph (1) from a loss year to any prior taxable year only to the extent—

“(A) such amount does not exceed the net marked-to-market gain for such prior year, and

“(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

“(4) Net marked-to-market loss.—For purposes of this subsection, the term ‘net marked-to-
market loss’ means, with respect to any taxable year, an amount equal to—

“(A) the net capital loss for the taxable year determined by taking into account only marked-to-market gains and losses, reduced (but not below zero) by

“(B) the aggregate amount of gains from the sale or exchange of capital assets which are not marked-to-market gains.

“(5) NET MARKED-TO-MARKET GAIN.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘net marked-to-market gain’ means, with respect to any taxable year, an amount equal to—

“(i) the capital gain net income for the taxable year determined by taking into account only marked-to-market gains and losses, reduced (but not below zero) by

“(ii) the aggregate amount of losses from the sale or exchange of capital assets which are not marked-to-market losses.

“(B) SPECIAL RULE.—The net marked-to-market gain for any taxable year before the loss year shall be computed without regard to the
net marked-to-market loss for the loss year or for any taxable year thereafter.

“(6) COORDINATION WITH CARRYFORWARD PROVISIONS OF SUBSECTION (B)(1).—

“(A) CARRYFORWARD AMOUNT REDUCED BY AMOUNT USED AS CARRYBACK.—For purposes of applying subsection (b)(1)(B), if any portion of the net marked-to-market loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year, the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

“(B) CARRYOVER LOSS RETAINS CHARACTER AS ATTRIBUTABLE TO MARKED-TO-MARKET.—Any amount carried forward as a long-term capital loss to any taxable year under subsection (b)(1)(B) (after the application of subparagraph (A)) shall, to the extent attributable to marked-to-market losses, be treated as marked-to-market loss.

“(C) COORDINATION WITH REDUCTION IN NET CAPITAL LOSS FOR CREDIT.—For purposes of this paragraph and paragraph (4), any reduction in net capital loss under section
492(c)(3) (relating to reduction for credit against tax attributable to deferral recapture amount) shall, except as provided by the Secretary, be applied before the application of such paragraphs.

“(7) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

“(A) MARKED-TO-MARKET GAINS AND LOSSES.—

“(i) IN GENERAL.—The terms ‘marked-to-market gains’ and ‘marked-to-market losses’ means, with respect to any applicable taxpayer for any taxable year, gains or losses which are recognized and taken into account by such taxpayer for such taxable year under section 491 by reason of taxable events described in section 491(b)(1) with respect to tradable covered assets which are capital assets. Such terms shall not include gains and losses from nontradable covered assets which are treated as tradable covered assets (and to which section 491 applies) by reason of an election under section 496(a)(3).
“(ii) APPLICABLE ENTITIES.—In the case of marked-to-market gains or losses of an applicable entity, this subsection shall be applied at the partner or other ownership level.

“(B) OTHER TERMS.—Any term used in this subsection which is also used in part IV of subchapter E shall have the same meaning as when used in such part.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to loss years beginning after December 31, 2023.

TITLE II—APPLICATION OF OTHER PROVISIONS TO APPLICABLE TAXPAYERS AND ENTITIES

Subtitle A—Individuals

SEC. 201. APPLICABLE TAXPAYERS NOT ELIGIBLE FOR ADJUSTED GROSS INCOME LIMITATION ON NET INVESTMENT TAX.

(a) IN GENERAL.—Section 1411(a) is amended by adding at the end the following new paragraph:

“(3) NO ADJUSTED GROSS INCOME LIMIT FOR APPLICABLE TAXPAYERS.—In the case of an applicable taxpayer (as defined in section 495) for any tax-
able year, notwithstanding paragraph (1) or (2), the
tax under this subsection for such taxable year shall
be equal to the product of—

“(A) in the case of an individual, the rate
of tax in effect under paragraph (1) multiplied
by the amount determined under paragraph
(1)(A), and

“(B) in the case of an estate or trust, the
rate of tax in effect under paragraph (2) multi-
plied by the amount determined under para-
graph (2)(A).”.

(b) EFFECTIVE DATE.—The amendment made by
this section shall apply to taxable years beginning after

SEC. 202. TREATMENT OF COVERED EXPATRIATES.

(a) APPLICATION OF EXPATRIATE RULES TO APPLIC-
ABLE TAXPAYERS.—Section 877A is amended by redes-
ignating subsection (i) as subsection (j) and by inserting
after subsection (h) the following new subsection:

“(i) SPECIAL RULES FOR APPLICABLE TAX-
PAYERS.—

“(1) IN GENERAL.—In the case of a covered ex-
patriate who is an applicable taxpayer (as defined in
section 495) for the taxable year which includes the
expatriation date—
“(A) no election may be made under subsection (b) with respect to any property treated as sold by reason of subsection (a) (after application of subparagraph (B)), and

“(B) the covered expatriate shall, for purposes of subsection (a)(1), also be treated as having sold on the last day of the 10-taxable year period described in section 495(d)(2)(A) all property held by the covered expatriate as of the close of such day which is not otherwise treated as sold under part IV of subchapter E as of such time.

“(2) APPLICATION OF SECTION 877.—Notwithstanding section 877(h)—

“(A) a covered expatriate described in paragraph (1) shall be treated as an individual to whom section 877 applies, and

“(B) such individual shall be taxable as provided in such section for each of the taxable years in the 10-taxable year period described in section 495(d)(2)(A).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2023.
Subtitle B—Rules for Applicable Entities and Trusts

SEC. 211. TREATMENT OF LIKE-KIND EXCHANGES BY APPLICABLE ENTITIES.

(a) In General.—Section 1031 is amended by adding at the end the following new subsection:

“(i) Special Rules for Applicable Entities.—Subsection (a) shall not apply to an exchange by an applicable entity if a notice received by the entity under subsection (b)(2)(A) or (c)(2) of section 493 is in effect at the time of such exchange.”.

(b) Effective Date.—The amendment made by this section shall apply to exchanges completed after December 31, 2023.

SEC. 212. TREATMENT OF TRANSFERS BY APPLICABLE ENTITIES IN EXCHANGE FOR STOCK.

(a) In General.—Section 351 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) Special Rules for Applicable Entities.—“(1) In general.—Subsection (a) shall not apply to an exchange by an applicable entity if an applicable notice received by the entity is in effect at the time of such exchange.
“(2) APPLICABLE NOTICE.—For purposes of paragraph (1)—

“(A) IN GENERAL.—The term ‘applicable notice’ means, with respect to any applicable entity, a notice—

“(i) which is received by the entity under subsection (b)(2)(A) or (c)(2) of section 493, and

“(ii) which relates to an applicable taxpayer who is a 20-percent owner with respect to such entity.

“(B) 20-PERCENT OWNER.—For purposes of subparagraph (A), a 20-percent owner shall be determined in the same manner as a 5-percent owner under section 493(b)(4)(B), except that ‘20 percent’ shall be substituted for ‘5 percent’ in applying clauses (i) and (ii)(1) thereof.

“(3) APPLICABLE ENTITY.—For purposes of this subsection, the term ‘applicable entity’ has the meaning given such term by section 493.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to exchanges completed after December 31, 2023.
SEC. 213. SPECIAL RULES FOR APPLICABLE TRUSTS.

(a) IN-KIND DISTRIBUTIONS.—Section 643(e)(3) is amended—

(1) in subparagraph (A), by striking “to which an election under this paragraph applies” and inserting “to which this paragraph applies”, and

(2) by striking subparagraph (B) and inserting the following:

“(B) DISTRIBUTIONS TO WHICH THIS PARAGRAPH APPLIES.—This paragraph shall apply to—

“(i) any distribution of property by an estate which is described in section 495(a)(1)(B)(ii) or by an applicable trust (as defined in section 495(c)), and

“(ii) any distribution during the taxable year of any other estate or trust which makes an election under this paragraph.

Any election made under clause (ii) shall be made on the return of such estate or trust for such taxable year, and, once made, may be revoked only with the consent of the Secretary.”.

(b) TREATMENT OF LOANS.—Section 643(i) is amended—
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(1) by inserting “or an applicable trust (as defined in section 495(e))” after “foreign trust” in paragraph (1),

(2) by striking “who is a United States person” in paragraph (1)(A) and inserting “who is not exempt from tax under this chapter”,

(3) by striking “United States person” in paragraph (1)(B) and inserting “person (other than a person who is exempt from tax under this chapter)”,

(4) by striking paragraph (2)(C), and

(5) by striking “FOREIGN” in the heading thereof and inserting “CERTAIN”.

(c) TREATMENT OF MULTIPLE TRUSTS.—Section 643(f)(2) is amended by inserting “or the rules of part IV of subchapter E” after “this chapter”.

(d) FOREIGN TRUSTS.—

(1) IN GENERAL.—Subpart F of part I of subchapter J is amended by adding at the end the following new section:

“SEC. 686. SPECIAL RULES FOR APPLICABLE FOREIGN TRUSTS.

“(a) IN GENERAL.—For purposes of this part, in the case of any beneficiary of an applicable foreign trust who is required to include in income any amount attributable to gain on an applicable transfer of any covered asset, the
amount of tax imposed under this chapter shall be increased by the amount which bears the same ratio to the amount of the deferral recapture amount which would be determined on such applicable transfer under section 492(a) (determined as if such trust were an applicable taxpayer and section 492 applied to any covered asset of the trust) as—

“(1) the amount required to be included in income attributable to the gain on such applicable transfer, bears to

“(2) the total amount of the gain on such applicable transfer.

“(b) Exception.—Subsection (a) shall not apply to any amount to the extent that the applicable foreign trust pays (at such time and in such manner as provided by the Secretary) the tax which would be imposed under section 492(a) (determined as if such trust were an applicable taxpayer and section 492 applied to any covered asset of the trust) with respect to the applicable transfer described in subsection (a).

“(c) Applicable Foreign Trust.—For purposes of this section, the term ‘applicable foreign trust’ means any foreign trust which would be an applicable trust if such trust were a domestic trust.
“(d) **OTHER TERMS.**—Any term used in this section which is also used in part IV of subchapter E shall have the same meaning as when used in such part.”.

(2) **REPORTING.**—Section 6048(c)(1) is amended by striking “and”, at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

“(C) such information as the Secretary shall require for purposes of determining the increase (if any) in tax under section 686, and”.

(3) **CLERICAL AMENDMENT.**—The table of sections for subpart F of part I of subchapter J is amended by adding at the end the following new item:

“Sec. 686. Special rules for applicable foreign trusts.”.

(e) **COORDINATION WITH THROWBACK RULES.**—The Secretary of the Treasury (or the Secretary’s delegate) shall provide such regulations or other guidance as necessary to coordinate the amendments made by this section with the rules of subpart D of part I of subchapter J.

(f) **EFFECTIVE DATES.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2023.
(2) Foreign trusts.—The amendments made by subsection (e) shall apply to applicable transfers occurring in taxable years beginning after December 31, 2023.

Subtitle C—Treatment of Deferred Compensation and Certain Life Insurance and Annuity Contracts

SEC. 221. ELIMINATION OF DEFERRAL OF TAX ON CERTAIN COMPENSATION.

(a) In general.—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

“SEC. 409B. SPECIAL RULES FOR CERTAIN DEFERRED COMPENSATION.

“(a) In general.—In the case of an individual who is an applicable taxpayer for any taxable year, the taxpayer’s tax under this chapter for the taxable year (determined without regard to this section) shall be increased by an amount equal to the sum of—

“(1) the deferral recapture amount determined under subsection (b)(1) for any applicable deferred compensation which is includible in the gross income of the individual for the taxable year, and
“(2) 10 percent of the amount of any severance pay which is includible in the gross income of the individual during the taxable year.

“(b) DEFERRAL RECAPTURE AMOUNT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘deferral recapture amount’ means, with respect to any applicable deferred compensation includible in gross income for the taxable year, the aggregate amount of interest (determined in the manner provided under paragraph (3)) on the deemed tax amount determined under paragraph (2) for each preceding taxable year to which compensation is allocated under paragraph (2)(A).

“(2) DEEMED TAX AMOUNT.—

“(A) IN GENERAL.—The deemed tax amount for any taxable year preceding the taxable year in which applicable deferred compensation is includible in gross income shall be the amount determined—

“(i) first, except as provided in subparagraph (B), by allocating the amount of such compensation ratably to each day in the deferral period with respect to the applicable deferred compensation, and
“(ii) then by multiplying the amount, if any, allocated under clause (i) to such preceding taxable year by the highest rate of tax in effect under section 1 for the taxable year in which the compensation is includible in gross income of the individual.

“(B) Special rule for periods before becoming applicable taxpayer.—Notwithstanding subparagraph (A)(i), any compensation which would be otherwise allocated under such subparagraph to any taxable year preceding the first taxable year for which the taxpayer is treated as an applicable taxpayer shall be allocated to such first taxable year.

“(3) Computation of interest.—

“(A) In general.—The amount of interest referred to in paragraph (1) on any deemed tax amount determined under paragraph (2) for any preceding taxable year with respect to applicable deferred compensation shall be determined for the period beginning on the due date for such preceding taxable year and ending on the last day of the deferral period with respect to the applicable deferred compensation, by using the rates determined under section
6621(b) (plus 1 percentage point), and the method applicable under section 6621, for underpayments of tax for such period.

“(B) DUE DATE.—For purposes of this paragraph, the term ‘due date’ means, with respect to any preceding taxable year, the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year.

“(4) LIMITATION.—In no case shall the deferral recapture amount determined with respect to any applicable deferred compensation which is includible in gross income for a taxable year exceed an amount equal to 10 percent of the amount of such compensation.

“(c) DEFINITIONS.—For purposes of this section—

“(1) APPLICABLE TAXPAYER.—The term ‘applicable taxpayer’ has the meaning given such term by section 495.

“(2) APPLICABLE DEFERRED COMPENSATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘applicable deferred compensation’ means—
“(i) any compensation provided under a nonqualified deferred compensation plan, as defined in section 409A(d)(1), except that—

“(I) such term shall include stock appreciation rights, and

“(II) compensation shall not fail to be treated as deferred solely because such compensation is not treated as deferred for purposes of section 409A by reason of such compensation being includible in gross income for the first taxable year after a taxable year in which such compensation is no longer subject to a substantial risk of forfeiture, and

“(ii) any other property transferred in connection with the performance of services which is subject to section 83.

“(B) EXCEPTIONS.—Such term does not include—

“(i) severance pay, or

“(ii) any transfer of a profits interest in a partnership.
“(C) Earnings and Interest.—Any earnings, interest, or similar adjustment included in an amount of applicable deferred compensation shall not be treated as separately deferred from such amount.

“(3) Severance Pay.—The term ‘severance pay’ means any compensation the payment or vesting of which is contingent, in whole or in part, upon the termination of employment or other services, including cash, property, reimbursement or direct provision of living, travel, and business expenses, and life, health, or other insurance, to the extent otherwise includible in gross income.

“(4) Deferral Period.—

“(A) In General.—Except as provided in subparagraphs (B) and (C), the term ‘deferral period’, with respect to any applicable deferred compensation, means the period—

“(i) beginning on the date the compensation was first deferred, without regard to vesting, transferability, or risk of forfeiture, and

“(ii) ending on the date such compensation is includible in gross income or, if applicable, the date described in section
83(a)(1) with respect to such compensation.

For purposes of the preceding sentence, compensation shall be treated as first deferred as of the date the applicable taxpayer first has a legally binding right to the compensation or, in the case of property subject to section 83, the date of transfer of the property.

“(B) Computation of Interest.—Solely for purposes of subsection (b)(3), the deferral period shall end on the last day of the taxable year which includes the date described in subparagraph (A)(ii).

“(C) Property transferred pursuant to the exercise of an option.—In the case of property acquired pursuant to an option described in section 83(e)(3), the deferral period shall begin on the date of grant of the option pursuant to which the property was acquired.

“(d) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”.

(b) Information Reporting With Respect to Applicable Deferred Compensation.—Subpart B of part III of subchapter A of chapter 61, as in effect after
the amendments made by section 334(d) of the SECURE 2.0 Act of 2022, is amended by adding at the end the following new section:

“SEC. 6050AA. INFORMATION WITH RESPECT TO APPLICABLE DEFERRED COMPENSATION.

“(a) IN GENERAL.—Every person making a payment to an individual in excess of $5,000,000 of—

“(1) any applicable deferred compensation described in section 409B(c)(2)(A), or

“(2) any severance pay (as defined in section 409B(d)(3)),

shall make a return, not later than January 31 of the first calendar year beginning after the close of the taxable year during which such payment is includible in gross income of the individual.

“(b) INFORMATION REQUIRED.—The return required by subsection (a) shall include—

“(1) the name, taxpayer identification number, and address of the individual to whom the payment of applicable deferred compensation or severance pay is made,

“(2) the date any applicable deferred compensation was first deferred (the date of the transfer, in the case of property subject to section 83, or the date of grant of the option, in the case of property
acquired pursuant to an option described in section 83(e)(3)), without regard to vesting, transferability, or risk of forfeiture,

“(3) the amount of such compensation includible in gross income of the individual for the taxable year,

“(4) the amount of such severance pay includible in gross income of the individual for the taxable year, and

“(5) such other information as the Secretary may require.

“(c) Special Rules.—

“(1) Section 83 Compensation.—With respect to transfers of property to which section 83 applies, the information required under paragraphs (2) and (3) of subsection (b) shall be reported separately for each item of property transferred, except that property for which the information required by such paragraphs is identical may be aggregated.

“(2) Other Compensation.—With respect to any applicable deferred compensation not described in paragraph (1), if such compensation is paid pursuant to more than 1 plan or arrangement or involves amounts which were first deferred on more than 1 date, the information required under para-
graphs (2) and (3) of subsection (b) shall be reported separately with respect to each such plan or arrangement and each such date.

“(d) Statements to Be Furnished to Individuals With Respect to Whom Information Is Reported.—Every person required to make a return under subsection (a) shall furnish to each individual with respect to whom such a return is required a written statement showing—

“(1) the name, address, and phone number of the information contact of the person making such return, and

“(2) the information required by paragraphs (2) through (5) of subsection (b).

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the first calendar year beginning after the close of the taxable year for which the return under subsection (a) was made.

“(e) Adjustments for Inflation.—

“(1) In general.—In the case of any taxable year beginning after 2024, the $5,000,000 amount under subsection (a) shall be increased by an amount equal to the product of—

“(A) such dollar amount, and
“(B) the cost-of-living adjustment under section 1(f)(3) for the calendar year in which such taxable year begins, determined by substituting ‘calendar year 2023’ for ‘calendar year 1992’ in subparagraph (B) thereof.

“(2) Rounding.—If any amount as adjusted under paragraph (1) is not a multiple of $250,000, such amount shall be rounded to the next lowest multiple of $250,000.

“(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations specifying what constitutes a payment to an individual of applicable deferred compensation for purposes of subsection (a).”.

(e) Penalties.—

(1) Returns.—Section 6724(d)(1)(B), as in effect after the amendments made by section 334(d) of the SECURE 2.0 Act of 2022, is amended by striking “or” at the end of clause (xxvii), by striking “and” at the end of clause (xxviii) and inserting “or”, and by inserting after clause (xxviii) the following new clause:
“(xxix) section 6050AA (a) (relating to returns of information with respect to applicable deferred compensation), and”.

(2) STATEMENTS.—Section 6724(d)(2), as so in effect, is amended—

(A) by striking “or” at the end of subparagraph (KK),

(B) by striking the period at the end of subparagraph (LL) and inserting “, or”, and

(C) by inserting after subparagraph (LL) the following new subparagraph:

“(MM) section 6050AA(d) (relating to statements of information with respect to applicable deferred compensation).”.

(d) CLERICAL AMENDMENTS.—

(1) IN GENERAL.—The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 409A the following new item:

“Sec. 409B. Special rules for certain deferred compensation.”.

(2) INFORMATION REPORTING.—The table of sections for subpart B of part III of subchapter A of chapter 61, as in effect after the amendments made by section 334(d) of the SECURE 2.0 Act of
2022, is amended by inserting after the item relating to section 6050Z the following new item:

"Sec. 6050AA. Information with respect to applicable deferred compensation."

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2023.

SEC. 222. RULES RELATING TO CERTAIN LIFE INSURANCE AND ANNUITY CONTRACTS OF APPLICABLE TAXPAYERS.

(a) Treatment of Amounts Received.—

(1) In general.—Section 72(e) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following:

“(12) Treatment of certain amounts received under certain life insurance and annuity contracts of applicable taxpayers.—

“(A) In general.—In the case of any applicable amount which is received during any taxable year, notwithstanding paragraph (5)(A) or (5)(E)—

“(i) if such amount is received on or after the annuity starting date, paragraph (2)(A) shall apply, and

“(ii) if such amount is received before the annuity starting date or is received with respect to a life insurance contract to
which this section applies, the rules of clauses (i) and (ii) of paragraph (2)(B) shall apply.

“(B) APPLICABLE AMOUNT.—

“(i) IN GENERAL.—For purposes of this paragraph, the term ‘applicable amount’ means—

“(I) any amount to which this subsection applies which is received under an applicable private placement life insurance or annuity contract, and

“(II) in the case of an applicable taxpayer, notwithstanding paragraph (5)(A), (5)(E), or (10)(A), any amount or portion described in paragraph (4)(A) with respect to a life insurance or annuity contract, except that ‘any applicable taxpayer or any related person (as defined in section 144(a)(3)) to an applicable taxpayer’ shall be substituted for ‘an individual’ in applying such paragraph.

“(ii) TREATMENT OF REFUNDS, SURRENDERS, REDEMPTIONS AND MATURITIES.—Notwithstanding paragraph
(5)(A) or (5)(E), amounts described in clause (i)(I) shall include amounts described in clause (i) or (ii) of paragraph (5)(E) received under an applicable private placement life insurance or annuity contract.

“(iii) Amounts under Pre-1982 and Qualified Plan Contracts, etc. Excluded.—Such term shall not include amounts received—

“(I) under a contract which is described in paragraph (5)(B) or (5)(D), or

“(II) under a qualified tuition program (as defined in section 529(b)) or under a Coverdell education savings account (as defined in section 530(b)).

“(C) Applicable Private Placement Life Insurance or Annuity Contract.—For purposes of this paragraph—

“(i) In General.—The term ‘applicable private placement life insurance or annuity contract’ means a private placement life insurance or annuity contract the hold-
er of which (whether directly or indirectly) is an applicable taxpayer.

“(ii) Secretarial Authority.—The Secretary shall prescribe regulations or other guidance which treat a private placement life insurance or annuity contract as an applicable private placement life insurance or annuity contract in cases where an applicable taxpayer (or a related person) has an interest in such contract not described in clause (i) if such treatment is necessary to prevent the avoidance of the purposes of this paragraph.

“(D) Private Placement Life Insurance or Annuity Contract.—For purposes of this paragraph, the term ‘private placement life insurance or annuity contract’ means any contract—

“(i) which is an annuity contract or a life insurance contract, and

“(ii) with respect to which the holder of the contract is required, for purposes of obtaining a registration exemption under securities laws as in effect on the date of enactment of this section (including the
Securities Exchange Act of 1934 and the Investment Advisors Act of 1940), to make a representation that such owner—

“(I) has a specified minimum amount of income or assets,

“(II) has completed a specified minimum level of education, or

“(III) holds a specific license or credential.

“(E) APPLICABLE TAXPAYER.—For purposes of this paragraph, the term ‘applicable taxpayer’ has the meaning given such term under section 495.”.

(2) CONFORMING AMENDMENT.—Section 72(e)(5)(C) is amended by inserting “or (12)” after “(10)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after December 31, 2023.

(b) 10-PERCENT ADDITIONAL TAX FOR DISTRIBUTIONS FROM APPLICABLE PRIVATE PLACEMENT LIFE INSURANCE OR ANNUITY CONTRACTS.—

(1) IN GENERAL.—Section 72(v) is amended—

(A) by inserting “or an applicable private placement life insurance or annuity contract (as
defined in subsection (e)(12))” after “a modified endowment contract (as defined in section 7702A)” in paragraph(1), and

(B) by inserting “AND APPLICABLE PRIVATE PLACEMENT LIFE INSURANCE OR ANNUITY CONTRACTS” after “MODIFIED ENDOWMENT CONTRACTS” in the heading thereof.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after December 31, 2023.

(c) REPEAL OF EXCLUSION FOR DEATH BENEFITS.—

(1) IN GENERAL.—Section 101 is amended by adding at the end the following new subsection:

“(k) EXCLUSION NOT TO APPLY.—

“(1) IN GENERAL.—Subsection (a)(1) shall not apply to amounts received by reason of the death of the insured under an applicable private placement life or annuity contract (within the meaning of section 72(c)(12)).

“(2) AMOUNTS PREVIOUSLY INCLUDED.—The Secretary shall prescribe rules to ensure that paragraph (1) shall not apply to any portion of any amount received which was previously included in gross income.”.
CONFORMING AMENDMENT.—Section 101(a)(1) is amended by striking “and subsection (j),” and inserting “subsection (j), and subsection (k),”.

EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after December 31, 2023.

(d) REPORTING REQUIREMENTS.—

IN GENERAL.—Subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by adding at the end the following new section:

“SEC. 6050BB. RETURNS RELATING TO AMOUNTS RECEIVED UNDER CERTAIN LIFE INSURANCE AND ANNUITY CONTRACTS.

“(a) IN GENERAL.—Every person who issues a life insurance or annuity contract or who reinsures such a contract shall make an annual return (at such time and in such manner as the Secretary shall prescribe) setting forth—

“(1) the name, address, and TIN of such person,

“(2) the name, address, and TIN of each person who receives an applicable amount (as defined in section 72(e)(12)) during the year with respect to
any life insurance or annuity contract issued or reinsured by such person,

“(3) the aggregate applicable amounts received by each person identified in paragraph (2), and

“(4) such other information as the Secretary may require.

“(b) Statement to Be Furnished to Taxpayers With Respect to Whom Information Is Required.—

“(1) In general.—Every person that is required to make a return under subsection (a) shall furnish to each person whose identity is required to be set forth under subsection (a)(2) a written statement showing—

“(A) the name, address, and phone number of the information contact of the person required to make such return, and

“(B) the information required to be shown on such return with respect to the person described in subsection (a)(2) and with respect to applicable amounts received by such person.

“(2) Furnishing of Information.—The written statement required under paragraph (1) shall be furnished to the person on or before January 31 of the year following the calendar year for
which the return under subsection (a) is required to be made.

“(c) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations and other guidance as necessary for purposes of carrying out this section, including regulations or other guidance to require reporting under this section by such other persons as necessary to carry out the purposes of section 72(e)(12).”.

(2) PENALTIES.—

(A) RETURNS.—Section 6724(d)(1)(B), as amended by this Act, is amended by striking “or” at the end of clause (xxviii), by striking “and” at the end of clause (xxix) and inserting “or”, and by inserting after clause (xxix) the following new clause:

“(xxx) section 6050BB(a) (relating to returns of information with respect to private placement life insurance and annuity contracts),”.

(B) STATEMENTS.—Section 6724(d)(2), as so amended, is amended—

(i) by striking “or” at the end of sub-paragraph (LL),
(ii) by striking the period at the end of subparagraph (MM) and inserting “, or”, and

(iii) by inserting after subparagraph (MM) the following new subparagraph:

“(NN) section 6050BB(b) (relating to statements of information with respect to private placement life insurance and annuity contracts).”.

(3) Clerical Amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61, as amended by this Act, is amended by inserting after the item relating to section 6050AA the following new item:

“Sec. 6050BB. Returns relating to amounts received under certain life insurance and annuity contracts.”.

(4) Effective Date.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2023.
Subtitle D—Repeal of Special Treatment for Certain Investments

SEC. 231. TREATMENT OF EXCLUSION FOR CERTAIN SMALL BUSINESS STOCK.

(a) In General.—Section 1202(a) is amended by adding at the end the following new paragraph:

“(5) Special rules for applicable taxpayers.—

“(A) In general.—This subsection shall not apply to any gain from the sale or exchange of qualified small business stock by an applicable taxpayer (as defined in section 495).

“(B) Exception.—Subparagraph (A) shall not apply to any qualified small business stock acquired before November 30, 2023.”.

(b) Effective Date.—The amendment made by this subsection shall apply to sales or exchanges on or after November 30, 2023.

SEC. 232. MODIFICATIONS FOR INVESTMENTS IN QUALIFIED OPPORTUNITY FUNDS.

(a) Termination of Election.—

(1) In general.—Section 1400Z–2(a)(2)(B) is amended to read as follows:
“(B) except as provided in paragraph (3),
with respect to any sale or exchange after the
earlier of—

“(i) December 31, 2026, or

“(ii) in the case of an applicable tax-
payer, the last day of the taxable year pre-
ceding the first taxable year for which the
taxpayer is an applicable taxpayer.”.

(2) SPECIAL RULES.—Section 1400Z–2(a) is
amended by adding at the end the following new
paragraph:

“(3) SPECIAL RULES FOR APPLICABLE TAX-
payers and entities.—For purposes of paragraph
(2)(B)—

“(A) APPLICABLE ENTITIES.—No election
may be made under paragraph (1) by an appli-
cable entity with respect to any sale or ex-
change if a notice received by the entity under
subsection (b)(2)(A) or (c)(2) of section 493 is
in effect at the time of such sale or exchange.

“(B) SPECIAL RULE FOR 2023.—In the
case of a taxpayer which would be an applicable
taxpayer for its first taxable year beginning in
2023 (determined as if part IV of subchapter E
applied to taxable years beginning in 2023),
clause (ii) of paragraph (2)(B) shall be applied by substituting ‘November 30, 2023’ for the date otherwise specified in such clause.

“(C) DEFINITIONS.—For purposes of this paragraph and subsection (c), any term used in this paragraph which is also used in part IV of subchapter E shall have the same meaning as when used in such part.”.

(b) MODIFICATION OF SPECIAL RULE FOR INVESTMENTS HELD 10 YEARS.—Section 1400Z–2(c) is amended by striking “shall be equal to” and all that follows and inserting “shall be equal to—

“(1) in the case of any taxpayer who is an applicable taxpayer for any taxable year during which such investment was held by the taxpayer or any taxpayer which is an applicable entity, the lesser of—

“(A) the fair market value of such investment as of the last day of the taxable year which includes the later of—

“(i) the date that such investment has been held for 10 years, or

“(ii) in the case of—
“(I) an applicable taxpayer, the date that such taxpayer first became an applicable taxpayer, or

“(II) an applicable entity, the first date a notice was received by the entity under subsection (b)(2)(A) or (c)(2) of section 493, or

“(B) the fair market value of such investment on the date that investment is sold or exchanged, and

“(2) in the case of any other taxpayer, the fair market value of such investment on the date the investment is sold or exchanged.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after November 30, 2023, in taxable years ending after such date.