AMENDMENT TO THE SENATE AMENDMENTS TO
H.R. 22
OFFERED BY MR. GARAMENDI OF CALIFORNIA

Add at the end of division E the following:

TITLE LIII—DEEMED REPATRIATION AND INVESTMENT IN
DOMESTIC INFRASTRUCTURE

SEC. 53101. ELIMINATION OF INCENTIVE FOR CORPORATIONS TO CONTINUE TO HOLD ACCUMULATED EARNINGS OFFSHORE.

(a) IN GENERAL.—Section 965 of the Internal Revenue Code of 1986 is amended to read as follows:

“SEC. 965. ELIMINATION OF INCENTIVE TO HOLD ACCUMULATED EARNINGS AND PROFITS OFFSHORE.

“(a) Treatment of Deferred Foreign Income as Subpart F Income.—In the case of the last taxable year of a deferred foreign income corporation which ends before the date of the enactment of the Transportation Funding Act of 2015, the subpart F income of such foreign corporation (as otherwise determined for such taxable year under section 952) shall be increased by the accumulated post-1986 deferred foreign income of such corporation determined as of the close of such taxable year.
“(b) REDUCTION IN AMOUNTS INCLUDED IN GROSS INCOME OF UNITED STATES SHAREHOLDERS OF SPECIFIED FOREIGN CORPORATIONS WITH DEFICITS IN EARNINGS AND PROFITS.—

“(1) IN GENERAL.—In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 951(a)(1) by reason of subsection (a) as such United States shareholder’s pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced (but not below zero) by the amount of such United States shareholder’s aggregate foreign E&P deficit which is allocated under paragraph (2) to such deferred foreign income corporation.

“(2) ALLOCATION OF AGGREGATE FOREIGN E&P DEFICIT.—The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as—

“(A) such United States shareholder’s pro rata share of the accumulated post-1986 de-
ferred foreign income of each such deferred for-

eign income corporation, bears to

“(B) the aggregate of such United States

shareholder’s pro rata share of the accumulated

post-1986 deferred foreign income of all de-

tered foreign income corporations of such

United States shareholder.

“(3) DEFINITIONS RELATED TO E&P DEFI-

CITS.—For purposes of this subsection—

“(A) AGGREGATE FOREIGN E&P DEF-

ICIT.—The term ‘aggregate foreign E&P deficit’

means, with respect to any United States share-

holder, the aggregate of such shareholder’s pro

rata shares of the specified E&P deficits of the

E&P deficit foreign corporations of such share-

holder.

“(B) E&P DEFICIT FOREIGN CORPORA-

TION.—The term ‘E&P deficit foreign corpora-

tion’ means, with respect to any taxpayer, any

specified foreign corporation with respect to

which such taxpayer is a United States share-

holder, if—

“(i) such specified foreign corporation

has a deficit in post-1986 earnings and

profits, and
“(ii) as of January 30, 2015—

“(I) such corporation was a specified foreign corporation, and

“(II) such taxpayer was a United States shareholder of such corporation.

“(C) SPECIFIED E&P DEFICIT.—The term ‘specified E&P deficit’ means, with respect to any E&P deficit foreign corporation, the amount of the deficit referred to in subparagraph (B).

“(c) DEDUCTION FOR PORTION OF INCLUDED INCOME.—In the case of a United States shareholder of a deferred foreign income corporation, there shall be allowed as a deduction for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section an amount equal to 60 percent of the amount so included in gross income.

“(d) DEFERRED FOREIGN INCOME CORPORATION; ACCUMULATED POST-1986 DEFERRED FOREIGN INCOME.—For purposes of this section—

“(1) DEFERRED FOREIGN INCOME CORPORATION.—The term ‘deferred foreign income corporation’ means, with respect to any United States
shareholder, any specified foreign corporation of
such United States shareholder which has accumu-
lated post-1986 deferred foreign income (as of the
close of the taxable year referred to in subsection
(a)) greater than zero.

“(2) ACCUMULATED POST-1986 DEFERRED FOR-
EIGN INCOME.—The term ‘accumulated post-1986
deferred foreign income’ means the post-1986 earn-
ings and profits except to the extent such earnings—

“(A) are attributable to income of the
specified foreign corporation which is effectively
connected with the conduct of a trade or busi-
ness within the United States and subject to
tax under this chapter,

“(B) if distributed, would—

“(i) in the case of a controlled foreign
corporation, be excluded from the gross in-
come of a United States shareholder under
section 959, or

“(ii) in the case of any passive foreign
investment company (as defined in section
1297) other than a controlled foreign cor-
poration, be treated as a distribution which
is not a dividend, or
“(C) in the case of any passive foreign investment company (as so defined), is properly attributable to an unreversed inclusion of a United States person under section 1296.

To the extent provided in regulations or other guidance prescribed by the Secretary, in the case of any controlled foreign corporation which has shareholders which are not United States shareholders, accumulated post-1986 deferred foreign income shall be appropriately reduced by amounts which would be described in subparagraph (B)(i) if such shareholders were United States shareholders. Such regulations or other guidance may provide a similar rule for purposes of subparagraph (B)(ii) and (C).

“(3) POST-1986 EARNINGS AND PROFITS.—The term ‘post-1986 earnings and profits’ means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986, and determined—

“(A) as of the close the taxable year referred to in subsection (a), and

“(B) without diminution by reason of dividends distributed during such taxable year.

“(e) SPECIFIED FOREIGN CORPORATION.—
“(1) In general.—For purposes of this section, the term ‘specified foreign corporation’ means—

“(A) any controlled foreign corporation,

and

“(B) any section 902 corporation (as defined in section 909(d)(5)).

“(2) Application to section 902 corporations.—For purposes of section 951, a section 902 corporation (as so defined) shall be treated as a controlled foreign corporation solely for purposes of taking into account the subpart F income of such corporation under subsection (a) (and for purposes of applying subsection (f)).

“(f) Determinations of pro rata share.—For purposes of this section, the determination of any United States shareholder’s pro rata share of any amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating such amount in the same manner as subpart F income (and by treating such specified foreign corporation as a controlled foreign corporation).

“(g) Disallowance of foreign tax credit, etc.—
“(1) IN GENERAL.—No credit shall be allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section.

“(2) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term ‘applicable percentage’ means the percentage specified in subsection (c).

“(3) DENIAL OF DEDUCTION.—No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

“(4) COORDINATION WITH SECTION 78.—Section 78 shall not apply to any tax for which credit is not allowable under section 901 by reason of paragraph (1).

“(h) ELECTION TO PAY LIABILITY IN INSTALLMENTS.—

“(1) IN GENERAL.—In the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder may elect to pay the net tax liability under this section in 5 equal installments.
“(2) 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 taxable year described in subsection (b) 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.

“(3) Acceleration of payment.—If there is an addition to tax for failure to pay timely assessed with respect to any installment required under this subsection, a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, 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).

The preceding sentence shall not apply to the sale of substantially all the assets of a taxpayer to a buyer if such buyer enters into an agreement with the Secretary under which such buyer is liable for the remaining installments due under this subsection.
in the same manner as if such buyer were the taxpayer.

“(4) Proration of deficiency to installments.—If an election is made under paragraph (1) to pay the net 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 with intent to evade tax.

“(5) Election.—Any election under paragraph (1) shall be made not later than the due date for the return of tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary may provide.

“(6) Net tax liability under this section.—For purposes of this subsection—
“(A) IN GENERAL.—The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

“(i) such taxpayer’s net income tax for the taxable year described in subsection (a), over

“(ii) such taxpayer’s net income tax for such taxable year determined without regard to this section.

“(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.

“(i) INCLUSION OF DEFERRED FOREIGN INCOME UNDER THIS SECTION NOT TO TRIGGER RECAPTURE OF OVERALL FOREIGN LOSS.—For purposes of section 904(f)(1), in the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder’s taxable income from sources without the United States shall be determined without regard to this section.

“(j) REGULATIONS.—The Secretary may prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.”.
(b) Dedication of Revenues Attributable to Section 965.—Section 9503(f) of such Code is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

“(7) ADDITIONAL SUMS.—Out of money in the Treasury not otherwise appropriated, there is hereby appropriated $189,968,000,000 to the Highway Trust Fund.”.

(c) Clerical Amendment.—The table of sections for subpart F of part III of subchapter N of chapter 1 of such Code is amended by striking the item relating to section 965 and inserting the following:

“Sec. 965. Elimination of incentive to hold accumulated earnings and profits offshore.”.