

115TH CONGRESS
1ST SESSION

S. 851

To end offshore corporate tax avoidance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 5 (legislative day, APRIL 4), 2017

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To end offshore corporate tax avoidance, and for other purposes.

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

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

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Stop Tax Haven Abuse Act”.

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference
10 shall be considered to be made to a section or other provi-
11 sion of the Internal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

TITLE I—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

Sec. 101. Allocation of expenses and taxes on basis of repatriation of foreign income.

Sec. 102. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.

Sec. 103. Limitations on income shifting through intangible property transfers.

Sec. 104. Repeal of check-the-box rules for certain foreign entities and CFC look-thru rules.

Sec. 105. Restrictions on deduction for interest expense of members of financial reporting groups with excess domestic indebtedness.

Sec. 106. Treatment of foreign corporations managed and controlled in the United States as domestic corporations.

Sec. 107. Swap payments made from the United States to persons offshore.

Sec. 108. Modifications to rules relating to inverted corporations.

Sec. 109. Country-by-country reporting.

TITLE II—ADDITIONAL MEASURES TO COMBAT TAX EVASION

Sec. 201. Authorizing special measures against foreign jurisdictions, financial institutions, and others that significantly impede United States tax enforcement.

Sec. 202. Strengthening the Foreign Account Tax Compliance Act (FATCA).

Sec. 203. Reporting United States beneficial owners of foreign owned financial accounts.

Sec. 204. Penalty for failing to disclose offshore holdings.

Sec. 205. Deadline for anti-money laundering rule for investment advisers.

Sec. 206. Anti-money laundering requirements for formation agents.

Sec. 207. Strengthening John Doe summons proceedings.

Sec. 208. Improving enforcement of foreign financial account reporting.

3 **TITLE I—ENDING CORPORATE** 4 **OFFSHORE TAX AVOIDANCE**

5 **SEC. 101. ALLOCATION OF EXPENSES AND TAXES ON BASIS** 6 **OF REPATRIATION OF FOREIGN INCOME.**

7 (a) IN GENERAL.—Part III of subchapter N of chap-
 8 ter 1 is amended by inserting after subpart G the following
 9 new subpart:

1 **“Subpart H—Special Rules for Allocation of Foreign-**
 2 **Related Deductions and Foreign Tax Credits**

“Sec. 975. Deductions allocated to deferred foreign income may not offset
 United States source income.

“Sec. 976. Amount of foreign taxes computed on overall basis.

“Sec. 977. Application of subpart.

3 **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-**
 4 **EIGN INCOME MAY NOT OFFSET UNITED**
 5 **STATES SOURCE INCOME.**

6 “(a) CURRENT YEAR DEDUCTIONS.—For purposes
 7 of this chapter, foreign-related deductions for any taxable
 8 year—

9 “(1) shall be taken into account for such tax-
 10 able year only to the extent that such deductions are
 11 allocable to currently-taxed foreign income, and

12 “(2) to the extent not so allowed, shall be taken
 13 into account in subsequent taxable years as provided
 14 in subsection (b).

15 Foreign-related deductions shall be allocated to currently-
 16 taxed foreign income in the same proportion which cur-
 17 rently-taxed foreign income bears to the sum of currently-
 18 taxed foreign income and deferred foreign income.

19 “(b) DEDUCTIONS RELATED TO REPATRIATED DE-
 20 FERRED FOREIGN INCOME.—

21 “(1) IN GENERAL.—If there is repatriated for-
 22 eign income for a taxable year, the portion of the
 23 previously deferred deductions allocated to the repa-

1 triated foreign income shall be taken into account
 2 for the taxable year as a deduction allocated to in-
 3 come from sources outside the United States. Any
 4 such amount shall not be included in foreign-related
 5 deductions for purposes of applying subsection (a) to
 6 such taxable year.

7 “(2) PORTION OF PREVIOUSLY DEFERRED DE-
 8 DUTIONS.—For purposes of paragraph (1), the por-
 9 tion of the previously deferred deductions allocated
 10 to repatriated foreign income is—

11 “(A) the amount which bears the same
 12 proportion to such deductions, as

13 “(B) the repatriated income bears to the
 14 previously deferred foreign income.

15 “(c) DEFINITIONS AND SPECIAL RULE.—For pur-
 16 poses of this section—

17 “(1) FOREIGN-RELATED DEDUCTIONS.—The
 18 term ‘foreign-related deductions’ means the total
 19 amount of deductions and expenses which would be
 20 allocated or apportioned to gross income from
 21 sources without the United States for the taxable
 22 year if both the currently-taxed foreign income and
 23 deferred foreign income were taken into account.

24 “(2) CURRENTLY-TAXED FOREIGN INCOME.—
 25 The term ‘currently-taxed foreign income’ means the

1 amount of gross income from sources without the
2 United States for the taxable year (determined with-
3 out regard to repatriated foreign income for such
4 year).

5 “(3) DEFERRED FOREIGN INCOME.—The term
6 ‘deferred foreign income’ means the excess of—

7 “(A) the amount that would be includible
8 in gross income under subpart F of this part
9 for the taxable year if—

10 “(i) all controlled foreign corporations
11 were treated as one controlled foreign cor-
12 poration, and

13 “(ii) all earnings and profits of all
14 controlled foreign corporations were sub-
15 part F income (as defined in section 952),
16 over

17 “(B) the sum of—

18 “(i) all dividends received during the
19 taxable year from controlled foreign cor-
20 porations, plus

21 “(ii) amounts includible in gross in-
22 come under section 951(a).

23 “(4) PREVIOUSLY DEFERRED FOREIGN IN-
24 COME.—The term ‘previously deferred foreign in-
25 come’ means the aggregate amount of deferred for-

1 eign income for all prior taxable years to which this
 2 part applies, determined as of the beginning of the
 3 taxable year, reduced by the repatriated foreign in-
 4 come for all such prior taxable years.

5 “(5) REPATRIATED FOREIGN INCOME.—The
 6 term ‘repatriated foreign income’ means the amount
 7 included in gross income on account of distributions
 8 out of previously deferred foreign income.

9 “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—
 10 The term ‘previously deferred deductions’ means the
 11 aggregate amount of foreign-related deductions not
 12 taken into account under subsection (a) for all prior
 13 taxable years (determined as of the beginning of the
 14 taxable year), reduced by any amounts taken into
 15 account under subsection (b) for such prior taxable
 16 years.

17 “(7) TREATMENT OF CERTAIN FOREIGN
 18 TAXES.—

19 “(A) PAID BY CONTROLLED FOREIGN COR-
 20 PORATION.—Section 78 shall not apply for pur-
 21 poses of determining currently-taxed foreign in-
 22 come and deferred foreign income.

23 “(B) PAID BY TAXPAYER.—For purposes
 24 of determining currently-taxed foreign income,
 25 gross income from sources without the United

1 States shall be reduced by the aggregate
 2 amount of taxes described in the applicable
 3 paragraph of section 901(b) which are paid by
 4 the taxpayer (without regard to sections 902
 5 and 960) during the taxable year.

6 “(8) COORDINATION WITH SECTION 976.—In
 7 determining currently-taxed foreign income and de-
 8 ferred foreign income, the amount of deemed foreign
 9 tax credits shall be determined with regard to sec-
 10 tion 976.

11 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**
 12 **OVERALL BASIS.**

13 “(a) CURRENT YEAR ALLOWANCE.—For purposes of
 14 this chapter, the amount taken into account as foreign in-
 15 come taxes for any taxable year shall be an amount which
 16 bears the same ratio to the total foreign income taxes for
 17 that taxable year as—

18 “(1) the currently-taxed foreign income for such
 19 taxable year, bears to

20 “(2) the sum of the currently-taxed foreign in-
 21 come and deferred foreign income for such year.

22 The portion of the total foreign income taxes for any tax-
 23 able year not taken into account under the preceding sen-
 24 tence for a taxable year shall only be taken into account

1 as provided in subsection (b) (and shall not be taken into
2 account for purposes of applying sections 902 and 960).

3 “(b) ALLOWANCE RELATED TO REPATRIATED DE-
4 FERRED FOREIGN INCOME.—

5 “(1) IN GENERAL.—If there is repatriated for-
6 eign income for any taxable year, the portion of the
7 previously deferred foreign income taxes paid or ac-
8 crued during such taxable year shall be taken into
9 account for the taxable year as foreign taxes paid or
10 accrued. Any such taxes so taken into account shall
11 not be included in foreign income taxes for purposes
12 of applying subsection (a) to such taxable year.

13 “(2) PORTION OF PREVIOUSLY DEFERRED FOR-
14 EIGN INCOME TAXES.—For purposes of paragraph
15 (1), the portion of the previously deferred foreign in-
16 come taxes allocated to repatriated deferred foreign
17 income is—

18 “(A) the amount which bears the same
19 proportion to such taxes, as

20 “(B) the repatriated deferred income bears
21 to the previously deferred foreign income.

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

24 “(1) PREVIOUSLY DEFERRED FOREIGN INCOME
25 TAXES.—The term ‘previously deferred foreign in-

come taxes’ means the aggregate amount of total foreign income taxes not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

“(2) TOTAL FOREIGN INCOME TAXES.—The term ‘total foreign income taxes’ means the sum of foreign income taxes paid or accrued during the taxable year (determined without regard to section 904(c)) plus the increase in foreign income taxes that would be paid or accrued during the taxable year under sections 902 and 960 if—

“(A) all controlled foreign corporations were treated as one controlled foreign corporation, and

“(B) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952).

“(3) FOREIGN INCOME TAXES.—The term ‘foreign income taxes’ means any income, war profits, or excess profits taxes paid by the taxpayer to any foreign country or possession of the United States.

“(4) CURRENTLY-TAXED FOREIGN INCOME AND DEFERRED FOREIGN INCOME.—The terms ‘cur-

1 rently-taxed foreign income’ and ‘deferred foreign in-
 2 come’ have the meanings given such terms by sec-
 3 tion 975(c).

4 **“SEC. 977. APPLICATION OF SUBPART.**

5 “‘This subpart—

6 “(1) shall be applied before subpart A, and

7 “(2) shall be applied separately with respect to
 8 the categories of income specified in section
 9 904(d)(1).”.

10 (b) CLERICAL AMENDMENT.—The table of subparts
 11 for part III of subpart N of chapter 1 is amended by in-
 12 serting after the item relating to subpart G the following
 13 new item:

“SUBPART H. SPECIAL RULES FOR ALLOCATION OF FOREIGN-RELATED
 DEDUCTIONS AND FOREIGN TAX CREDITS”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to taxable years beginning after
 16 the date of the enactment of this Act.

17 **SEC. 102. EXCESS INCOME FROM TRANSFERS OF INTANGI-**
 18 **BLES TO LOW-TAXED AFFILIATES TREATED**
 19 **AS SUBPART F INCOME.**

20 (a) IN GENERAL.—Subsection (a) of section 954 is
 21 amended by inserting after paragraph (3) the following
 22 new paragraph:

23 “(4) the foreign base company excess intangible
 24 income for the taxable year (determined under sub-

1 section (f) and reduced as provided in subsection
 2 (b)(5)), and”.

3 (b) FOREIGN BASE COMPANY EXCESS INTANGIBLE
 4 INCOME.—Section 954 is amended by inserting after sub-
 5 section (e) the following new subsection:

6 “(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE
 7 INCOME.—For purposes of subsection (a)(4) and this sub-
 8 section:

9 “(1) FOREIGN BASE COMPANY EXCESS INTAN-
 10 GIBLE INCOME DEFINED.—

11 “(A) IN GENERAL.—The term ‘foreign
 12 base company excess intangible income’ means,
 13 with respect to any covered intangible, the ex-
 14 cess of—

15 “(i) the sum of—

16 “(I) gross income from the sale,
 17 lease, license, or other disposition of
 18 property in which such covered intan-
 19 gible is used directly or indirectly, and

20 “(II) gross income from the pro-
 21 vision of services related to such cov-
 22 ered intangible or in connection with
 23 property in which such covered intan-
 24 gible is used directly or indirectly,
 25 over

1 “(ii) 150 percent of the costs properly
 2 allocated and apportioned to the gross in-
 3 come taken into account under clause (i)
 4 other than expenses for interest and taxes
 5 and any expenses which are not directly al-
 6 locable to such gross income.

7 “(B) SAME COUNTRY INCOME NOT TAKEN
 8 INTO ACCOUNT.—If—

9 “(i) the sale, lease, license, or other
 10 disposition of the property referred to in
 11 subparagraph (A)(i)(I) is for use, con-
 12 sumption, or disposition in the country
 13 under the laws of which the controlled for-
 14 eign corporation is created or organized, or

15 “(ii) the services referred to in sub-
 16 paragraph (A)(i)(II) are performed in such
 17 country,

18 the gross income from such sale, lease, license,
 19 or other disposition, or provision of services,
 20 shall not be taken into account under subpara-
 21 graph (A)(i).

22 “(2) EXCEPTION BASED ON EFFECTIVE FOR-
 23 EIGN INCOME TAX RATE.—

24 “(A) IN GENERAL.—Foreign base company
 25 excess intangible income shall not include the

1 applicable percentage of any item of income re-
 2 ceived by a controlled foreign corporation if the
 3 taxpayer establishes to the satisfaction of the
 4 Secretary that such income was subject to an
 5 effective rate of income tax imposed by a for-
 6 eign country in excess of 5 percent.

7 “(B) APPLICABLE PERCENTAGE.—For
 8 purposes of subparagraph (A), the term ‘appli-
 9 cable percentage’ means the ratio (expressed as
 10 a percentage), not greater than 100 percent,
 11 of—

12 “(i) the number of percentage points
 13 by which the effective rate of income tax
 14 referred to in subparagraph (A) exceeds 5
 15 percentage points, over

16 “(ii) 10 percentage points.

17 “(C) TREATMENT OF LOSSES IN DETER-
 18 MINING EFFECTIVE RATE OF FOREIGN INCOME
 19 TAX.—For purposes of determining the effective
 20 rate of income tax imposed by any foreign
 21 country—

22 “(i) such effective rate shall be deter-
 23 mined without regard to any losses carried
 24 to the relevant taxable year, and

1 “(ii) to the extent the income with re-
 2 spect to such intangible reduces losses in
 3 the relevant taxable year, such effective
 4 rate shall be treated as being the effective
 5 rate which would have been imposed on
 6 such income without regard to such losses.

7 “(3) COVERED INTANGIBLE.—The term ‘cov-
 8 ered intangible’ means, with respect to any con-
 9 trolled foreign corporation, any intangible property
 10 (as defined in section 936(h)(3)(B))—

11 “(A) which is sold, leased, licensed, or oth-
 12 erwise transferred (directly or indirectly) to
 13 such controlled foreign corporation from a re-
 14 lated person, or

15 “(B) with respect to which such controlled
 16 foreign corporation and one or more related
 17 persons has (directly or indirectly) entered into
 18 any shared risk or development agreement (in-
 19 cluding any cost sharing agreement).

20 “(4) RELATED PERSON.—The term ‘related
 21 person’ has the meaning given such term in sub-
 22 section (d)(3).”.

23 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-
 24 IT.—Subsection (d) of section 904 is amended by redesign-

1 nating paragraph (7) as paragraph (8) and by inserting
 2 after paragraph (6) the following new paragraph:

3 “(7) SEPARATE APPLICATION TO FOREIGN
 4 BASE COMPANY EXCESS INTANGIBLE INCOME.—

5 “(A) IN GENERAL.—Subsections (a), (b),
 6 and (c) of this section and sections 902, 907,
 7 and 960 shall be applied separately with respect
 8 to each item of income which is taken into ac-
 9 count under section 954(a)(4) as foreign base
 10 company excess intangible income.

11 “(B) REGULATIONS.—The Secretary may
 12 issue such regulations or other guidance as is
 13 necessary or appropriate to carry out the pur-
 14 poses of this subsection, including regulations
 15 or other guidance which provides that related
 16 items of income may be aggregated for pur-
 17 poses of this paragraph.”.

18 (d) CONFORMING AMENDMENTS.—

19 (1) Paragraph (4) of section 954(b) is amended
 20 by inserting “foreign base company excess intangible
 21 income described in subsection (a)(4) or” before
 22 “foreign base company oil-related income” in the
 23 last sentence thereof.

24 (2) Subsection (b) of section 954 is amended by
 25 adding at the end the following new paragraph:

1 “(7) FOREIGN BASE COMPANY EXCESS INTAN-
 2 GIBLE INCOME NOT TREATED AS ANOTHER KIND OF
 3 BASE COMPANY INCOME.—Income of a corporation
 4 which is foreign base company excess intangible in-
 5 come shall not be considered foreign base company
 6 income of such corporation under paragraph (2),
 7 (3), or (5) of subsection (a).”.

8 (e) EFFECTIVE DATE.—The amendments made by
 9 this section shall apply to taxable years beginning after
 10 the date of the enactment of this Act.

11 **SEC. 103. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**
 12 **TANGIBLE PROPERTY TRANSFERS.**

13 (a) CLARIFICATION OF DEFINITION OF INTANGIBLE
 14 ASSET.—Clause (vi) of section 936(h)(3)(B) is amended
 15 by inserting “(including any section 197 intangible de-
 16 scribed in subparagraph (A), (B), or (C)(i) of subsection
 17 (d)(1) of such section)” after “item”.

18 (b) CLARIFICATION OF ALLOWABLE VALUATION
 19 METHODS.—

20 (1) FOREIGN CORPORATIONS.—Paragraph (2)
 21 of section 367(d) is amended by adding at the end
 22 the following new subparagraph:

23 “(D) REGULATORY AUTHORITY.—For pur-
 24 poses of the last sentence of subparagraph (A),
 25 the Secretary may require—

1 “(i) the valuation of transfers of in-
 2 tangible property on an aggregate basis, or
 3 “(ii) the valuation of such a transfer
 4 on the basis of the realistic alternatives to
 5 such a transfer,
 6 in any case in which the Secretary determines
 7 that such basis is the most reliable means of
 8 valuation of such transfers.”.

9 (2) ALLOCATION AMONG TAXPAYERS.—Section
 10 482 is amended by adding at the end the following:
 11 “For purposes of the preceding sentence, the Sec-
 12 retary may require the valuation of transfers of in-
 13 tangible property on an aggregate basis or the valu-
 14 ation of such a transfer on the basis of the realistic
 15 alternatives to such a transfer, in any case in which
 16 the Secretary determines that such basis is the most
 17 reliable means of valuation of such transfers.”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
 20 this section shall apply to transfers in taxable years
 21 beginning after the date of the enactment of this
 22 Act.

23 (2) NO INFERENCE.—Nothing in the amend-
 24 ment made by subsection (a) shall be construed to
 25 create any inference with respect to the application

1 of section 936(h)(3) of the Internal Revenue Code of
 2 1986, or the authority of the Secretary of the Treas-
 3 ury to provide regulations for such application, on or
 4 before the date of the enactment of such amend-
 5 ment.

6 **SEC. 104. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN**
 7 **FOREIGN ENTITIES AND CFC LOOK-THRU**
 8 **RULES.**

9 (a) CHECK-THE-BOX RULES.—Paragraph (3) of sec-
 10 tion 7701(a) is amended—

11 (1) by striking “and”, and

12 (2) by inserting after “insurance companies”
 13 the following: “, and any foreign business entity
 14 that—

15 “(A) has a single owner that does not have
 16 limited liability, or

17 “(B) has one or more members all of
 18 which have limited liability”.

19 (b) LOOK-THRU RULE.—Subparagraph (C) of sec-
 20 tion 954(c)(6) is amended to read as follows:

21 “(C) TERMINATION.—Subparagraph (A)
 22 shall not apply to dividends, interest, rents, and
 23 royalties received or accrued after the date of
 24 the enactment of the Stop Tax Haven Abuse
 25 Act.”.

1 (c) EFFECTIVE DATE.—

2 (1) The amendments made by subsection (a)
3 shall take effect on the date of the enactment of this
4 Act.

5 (2) The amendment made by subsection (b)
6 shall apply to payments received after the date of
7 the enactment of this Act.

8 **SEC. 105. RESTRICTIONS ON DEDUCTION FOR INTEREST**
9 **EXPENSE OF MEMBERS OF FINANCIAL RE-**
10 **PORTING GROUPS WITH EXCESS DOMESTIC**
11 **INDEBTEDNESS.**

12 (a) IN GENERAL.—Section 163 is amended by redes-
13 ignating subsection (n) as subsection (o) and by inserting
14 after subsection (m) the following new subsection:

15 “(n) RESTRICTION ON DEDUCTION FOR INTEREST
16 EXPENSE OF MEMBERS OF FINANCIAL REPORTING
17 GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.—

18 “(1) IN GENERAL.—In the case of any corpora-
19 tion which is a member of an applicable financial re-
20 porting group the common parent of which is a for-
21 eign corporation, the deduction allowed under this
22 chapter for interest paid or accrued by the corpora-
23 tion during the taxable year shall not exceed the ap-
24 plicable limitation for the taxable year.

1 “(2) CARRYFORWARD.—Any amount disallowed
2 under paragraph (1) for any taxable year shall be
3 treated as interest paid or accrued in the succeeding
4 taxable year.

5 “(3) APPLICABLE LIMITATION.—For purposes
6 of this subsection—

7 “(A) IN GENERAL.—The applicable limita-
8 tion with respect to a taxpayer for any taxable
9 year is the sum of—

10 “(i) the greater of—

11 “(I) the taxpayer’s allocable
12 share of the applicable financial re-
13 porting group’s net interest expense
14 for the taxable year, or

15 “(II) 10 percent of the taxpayer’s
16 adjusted taxable income for the tax-
17 able year, plus

18 “(ii) the excess limitation carryfor-
19 wards to the taxable year from any pre-
20 ceding taxable year.

21 “(B) LIMITATION NOT LESS THAN IN-
22 CLUDIBLE INTEREST.—The applicable limita-
23 tion under subparagraph (A) for any taxable
24 year shall not be less than the amount of inter-

est includible in the gross income of the taxpayer for the taxable year.

“(C) EXCESS LIMITATION CARRYFORWARD.—If the applicable limitation of a taxpayer for any taxable year (determined without regard to carryforwards under subparagraph (A)(ii)) exceeds the interest paid or accrued by the taxpayer during the taxable year, such excess shall be an excess limitation carryforward to the 1st succeeding taxable year and the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this paragraph.

“(4) ALLOCABLE SHARE OF NET INTEREST EXPENSE.—For purposes of this subsection—

“(A) IN GENERAL.—A taxpayer’s allocable share of an applicable financial reporting group’s net interest expense for any taxable year shall be the amount (not less than zero) which bears the same ratio to such net interest expense as—

“(i) the net earnings of the taxpayer, bears to

1 “(ii) the aggregate net earnings of all
2 members of the applicable financial report-
3 ing group.

4 “(B) NET EARNINGS.—The term ‘net
5 earnings’ means, with respect to any taxpayer,
6 the earnings of the taxpayer—

7 “(i) computed without regard to any
8 reduction allowable for—

9 “(I) net interest expense,

10 “(II) taxes, or

11 “(III) depreciation, amortization,
12 or depletion, and

13 “(ii) computed with such other adjust-
14 ments as the Secretary may by regulations
15 prescribe.

16 “(C) BURDEN ON TAXPAYER.—If a tax-
17 payer elects not to compute its allocable share,
18 or fails to establish to the satisfaction of the
19 Secretary the amount of its allocable share, for
20 any taxable year, the allocable share shall be
21 zero.

22 “(5) NET INTEREST EXPENSE AND NET EARN-
23 INGS DETERMINATIONS.—For purposes of this sub-
24 section—

1 “(A) NET INTEREST EXPENSE.—Any de-
 2 termination of net interest expense for any tax-
 3 able year shall be made—

4 “(i) on the basis of the applicable fi-
 5 nancial statement of the applicable finan-
 6 cial reporting group for the last financial
 7 reporting year ending with or within the
 8 taxable year, and

9 “(ii) under United States tax prin-
 10 ciples.

11 “(B) NET EARNINGS.—Any determination
 12 of net earnings for any taxable year shall be
 13 made on the basis of the applicable financial
 14 statement of the applicable financial reporting
 15 group for the last financial reporting year end-
 16 ing with or within the taxable year.

17 “(C) APPLICABLE FINANCIAL STATE-
 18 MENT.—The term ‘applicable financial state-
 19 ment’ means a statement for financial reporting
 20 purposes which is made on the basis of—

21 “(i) generally accepted accounting
 22 principles,

23 “(ii) international financial reporting
 24 standards, or

1 “(iii) any other method specified by
2 the Secretary in regulations.

3 A statement under clause (ii) or (iii) may be
4 used as an applicable financial statement by a
5 group only if there is no statement of the group
6 under any preceding clause.

7 “(6) APPLICABLE FINANCIAL REPORTING
8 GROUP.—For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘applicable
10 financial reporting group’ means, with respect
11 to any corporation, a group of which such cor-
12 poration is a member and which files an appli-
13 cable financial statement.

14 “(B) EXCEPTION FOR GROUPS WITH MINI-
15 MAL DOMESTIC NET INTEREST EXPENSE.—
16 Such term shall not include a group if the ag-
17 gregate net interest expense for which a deduc-
18 tion is allowable to all members of the group
19 under this chapter (determined without regard
20 to this subsection or any other limitation on de-
21 ductibility of interest under this chapter) is less
22 than \$5,000,000.

23 “(C) EXCEPTION FOR CERTAIN FINANCIAL
24 ENTITIES.—A corporation which is described in
25 section 864(f)(4)(B), or is treated as described

1 in section 864(f)(4)(B) by reason of paragraph
 2 (4)(C) or (5)(A) of section 864(f) (without re-
 3 gard to whether an election is made under such
 4 paragraph (5)(A)), shall not be treated as a
 5 member of an applicable financial reporting
 6 group of which it is otherwise a member and
 7 this subsection shall not apply to such corpora-
 8 tion.

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

11 “(A) ADJUSTED TAXABLE INCOME.—The
 12 term ‘adjusted taxable income’ has the meaning
 13 given such term by subsection (j)(6)(A).

14 “(B) NET INTEREST EXPENSE.—The term
 15 ‘net interest expense’ has the meaning given
 16 such term by subsection (j)(6)(B).

17 “(C) TREATMENT OF AFFILIATED
 18 GROUP.—All members of the same affiliated
 19 group (within the meaning of section 1504(a))
 20 shall be treated as 1 taxpayer.

21 “(8) REGULATIONS.—The Secretary shall pre-
 22 scribe such regulations as may be necessary to carry
 23 out the purposes of this section, including regula-
 24 tions providing—

1 “(A) for the coordination of the application
2 of this subsection and other provisions of this
3 chapter relating to the deductibility of interest,

4 “(B) for the waiver of certain adjustments
5 required under United States tax principles in
6 appropriate cases for purposes of applying this
7 subsection,

8 “(C) for the determination of which finan-
9 cial institutions are eligible for the exception
10 from membership in an applicable financial re-
11 porting group under paragraph (6)(C) and the
12 application of this subsection to the other mem-
13 bers of the group which are not so excepted,
14 and

15 “(D) for the application of this subsection
16 in the case of pass thru entities and for the
17 treatment of pass thru entities as corporations
18 in cases where necessary to prevent the avoid-
19 ance of the purposes of this subsection.”.

20 (b) COORDINATION WITH LIMITATION ON RELATED
21 PARTY INDEBTEDNESS.—Paragraph (2) of section 163(j)
22 of the Internal Revenue Code of 1986 is amended by add-
23 ing at the end the following new subparagraph:

24 “(D) COORDINATION WITH LIMITATION ON
25 EXCESS DOMESTIC INDEBTEDNESS.—This sub-

1 section shall not apply to any corporation for
 2 any taxable year to which subsection (n) applies
 3 to such corporation.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to taxable years beginning after
 6 December 31, 2016.

7 **SEC. 106. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 8 **AGED AND CONTROLLED IN THE UNITED**
 9 **STATES AS DOMESTIC CORPORATIONS.**

10 (a) IN GENERAL.—Section 7701 is amended by re-
 11 designating subsection (p) as subsection (q) and by insert-
 12 ing after subsection (o) the following new subsection:

13 “(p) CERTAIN CORPORATIONS MANAGED AND CON-
 14 TROLLED IN THE UNITED STATES TREATED AS DOMES-
 15 TIC FOR INCOME TAX.—

16 “(1) IN GENERAL.—Notwithstanding subsection
 17 (a)(4), in the case of a corporation described in
 18 paragraph (2) if—

19 “(A) the corporation would not otherwise
 20 be treated as a domestic corporation for pur-
 21 poses of this title, but

22 “(B) the management and control of the
 23 corporation occurs, directly or indirectly, pri-
 24 marily within the United States,

1 then, solely for purposes of chapter 1 (and any other
 2 provision of this title relating to chapter 1), the cor-
 3 poration shall be treated as a domestic corporation.

4 “(2) CORPORATION DESCRIBED.—

5 “(A) IN GENERAL.—A corporation is de-
 6 scribed in this paragraph if—

7 “(i) the stock of such corporation is
 8 regularly traded on an established securi-
 9 ties market, or

10 “(ii) the aggregate gross assets of
 11 such corporation (or any predecessor there-
 12 of), including assets under management
 13 for investors, whether held directly or indi-
 14 rectly, at any time during the taxable year
 15 or any preceding taxable year is
 16 \$50,000,000 or more.

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

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

23 “(ii) such corporation—

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

1 “(II) has, and is reasonably ex-
2 pected to continue to have, aggregate
3 gross assets (including assets under
4 management for investors, whether
5 held directly or indirectly) of less than
6 \$50,000,000, and

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

9 “(3) MANAGEMENT AND CONTROL.—

10 “(A) IN GENERAL.—The Secretary shall
11 prescribe regulations for purposes of deter-
12 mining cases in which the management and
13 control of a corporation is to be treated as oc-
14 ccurring primarily within the United States.

15 “(B) EXECUTIVE OFFICERS AND SENIOR
16 MANAGEMENT.—Such regulations shall provide
17 that—

18 “(i) the management and control of a
19 corporation shall be treated as occurring
20 primarily within the United States if sub-
21 stantially all of the executive officers and
22 senior management of the corporation who
23 exercise day-to-day responsibility for mak-
24 ing decisions involving strategic, financial,
25 and operational policies of the corporation

are located primarily within the United States, and

“(ii) individuals who are not executive officers and senior management of the corporation (including individuals who are officers or employees of other corporations in the same chain of corporations as the corporation) shall be treated as executive officers and senior management if such individuals exercise the day-to-day responsibilities of the corporation described in clause (i).

“(C) CORPORATIONS PRIMARILY HOLDING INVESTMENT ASSETS.—Such regulations shall also provide that the management and control of a corporation shall be treated as occurring primarily within the United States if—

“(i) the assets of such corporation (directly or indirectly) consist primarily of assets being managed on behalf of investors, and

“(ii) decisions about how to invest the assets are made in the United States.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or

1 after the date which is 2 years after the date of the enact-
 2 ment of this Act, whether or not regulations are issued
 3 under section 7701(p)(3) of the Internal Revenue Code
 4 of 1986, as added by this section.

5 **SEC. 107. SWAP PAYMENTS MADE FROM THE UNITED**
 6 **STATES TO PERSONS OFFSHORE.**

7 (a) TAX ON SWAP PAYMENTS RECEIVED BY FOR-
 8 EIGN PERSONS.—Section 871(a)(1) is amended—

9 (1) by inserting “swap payments (as identified
 10 in section 1256(b)(2)(B)),” after “annuities,” in
 11 subparagraph (A), and

12 (2) by adding at the end the following new sen-
 13 tence: “In the case of swap payments, the source of
 14 a swap payment is determined by reference to the lo-
 15 cation of the payor.”.

16 (b) TAX ON SWAP PAYMENTS RECEIVED BY FOR-
 17 EIGN CORPORATIONS.—Section 881(a) is amended—

18 (1) by inserting “swap payments (as identified
 19 in section 1256(b)(2)(B)),” after “annuities,” in
 20 paragraph (1), and

21 (2) by adding at the end the following new sen-
 22 tence: “In the case of swap payments, the source of
 23 a swap payment is determined by reference to the lo-
 24 cation of the payor.”.

1 **SEC. 108. MODIFICATIONS TO RULES RELATING TO IN-**
 2 **VERTED CORPORATIONS.**

3 (a) IN GENERAL.—Subsection (b) of section 7874 of
 4 the Internal Revenue Code of 1986 is amended to read
 5 as follows:

6 “(b) INVERTED CORPORATIONS TREATED AS DO-
 7 MESTIC CORPORATIONS.—

8 “(1) IN GENERAL.—Notwithstanding section
 9 7701(a)(4), a foreign corporation shall be treated for
 10 purposes of this title as a domestic corporation if—

11 “(A) such corporation would be a surro-
 12 gate foreign corporation if subsection (a)(2)
 13 were applied by substituting ‘80 percent’ for
 14 ‘60 percent’, or

15 “(B) such corporation is an inverted do-
 16 mestic corporation.

17 “(2) INVERTED DOMESTIC CORPORATION.—For
 18 purposes of this subsection, a foreign corporation
 19 shall be treated as an inverted domestic corporation
 20 if, pursuant to a plan (or a series of related trans-
 21 actions)—

22 “(A) the entity completes after May 8,
 23 2014, the direct or indirect acquisition of—

24 “(i) substantially all of the properties
 25 held directly or indirectly by a domestic
 26 corporation, or

1 “(ii) substantially all of the assets of,
2 or substantially all of the properties consti-
3 tuting a trade or business of, a domestic
4 partnership, and

5 “(B) after the acquisition, either—

6 “(i) more than 50 percent of the stock
7 (by vote or value) of the entity is held—

8 “(I) in the case of an acquisition
9 with respect to a domestic corpora-
10 tion, by former shareholders of the
11 domestic corporation by reason of
12 holding stock in the domestic corpora-
13 tion, or

14 “(II) in the case of an acquisition
15 with respect to a domestic partner-
16 ship, by former partners of the do-
17 mestic partnership by reason of hold-
18 ing a capital or profits interest in the
19 domestic partnership, or

20 “(ii) the management and control of
21 the expanded affiliated group which in-
22 cludes the entity occurs, directly or indi-
23 rectly, primarily within the United States,
24 and such expanded affiliated group has
25 significant domestic business activities.

1 “(3) EXCEPTION FOR CORPORATIONS WITH
 2 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
 3 COUNTRY OF ORGANIZATION.—A foreign corporation
 4 described in paragraph (2) shall not be treated as an
 5 inverted domestic corporation if after the acquisition
 6 the expanded affiliated group which includes the en-
 7 tity has substantial business activities in the foreign
 8 country in which or under the law of which the enti-
 9 ty is created or organized when compared to the
 10 total business activities of such expanded affiliated
 11 group. For purposes of subsection (a)(2)(B)(iii) and
 12 the preceding sentence, the term ‘substantial busi-
 13 ness activities’ shall have the meaning given such
 14 term under regulations in effect on May 8, 2014, ex-
 15 cept that the Secretary may issue regulations in-
 16 creasing the threshold percent in any of the tests
 17 under such regulations for determining if business
 18 activities constitute substantial business activities for
 19 purposes of this paragraph.

20 “(4) MANAGEMENT AND CONTROL.—For pur-
 21 poses of paragraph (2)(B)(ii)—

22 “(A) IN GENERAL.—The Secretary shall
 23 prescribe regulations for purposes of deter-
 24 mining cases in which the management and
 25 control of an expanded affiliated group is to be

1 treated as occurring, directly or indirectly, pri-
2 marily within the United States. The regula-
3 tions prescribed under the preceding sentence
4 shall apply to periods after May 8, 2014.

5 “(B) EXECUTIVE OFFICERS AND SENIOR
6 MANAGEMENT.—Such regulations shall provide
7 that the management and control of an ex-
8 panded affiliated group shall be treated as oc-
9 ccurring, directly or indirectly, primarily within
10 the United States if substantially all of the ex-
11 ecutive officers and senior management of the
12 expanded affiliated group who exercise day-to-
13 day responsibility for making decisions involving
14 strategic, financial, and operational policies of
15 the expanded affiliated group are based or pri-
16 marily located within the United States. Indi-
17 viduals who in fact exercise such day-to-day re-
18 sponsibilities shall be treated as executive offi-
19 cers and senior management regardless of their
20 title.

21 “(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVI-
22 TIES.—For purposes of paragraph (2)(B)(ii), an ex-
23 panded affiliated group has significant domestic
24 business activities if at least 25 percent of—

1 “(A) the employees of the group are based
2 in the United States,

3 “(B) the employee compensation incurred
4 by the group is incurred with respect to employ-
5 ees based in the United States,

6 “(C) the assets of the group are located in
7 the United States, or

8 “(D) the income of the group is derived in
9 the United States,

10 determined in the same manner as such determina-
11 tions are made for purposes of determining substan-
12 tial business activities under regulations referred to
13 in paragraph (3) as in effect on May 8, 2014, but
14 applied by treating all references in such regulations
15 to ‘foreign country’ and ‘relevant foreign country’ as
16 references to ‘the United States’. The Secretary may
17 issue regulations decreasing the threshold percent in
18 any of the tests under such regulations for deter-
19 mining if business activities constitute significant
20 domestic business activities for purposes of this
21 paragraph.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Clause (i) of section 7874(a)(2)(B) of such
24 Code is amended by striking “after March 4, 2003,”

1 and inserting “after March 4, 2003, and before May
2 9, 2014,”.

3 (2) Subsection (c) of section 7874 of such Code
4 is amended—

5 (A) in paragraph (2)—

6 (i) by striking “subsection
7 (a)(2)(B)(ii)” and inserting “subsections
8 (a)(2)(B)(ii) and (b)(2)(B)(i)”, and

9 (ii) by inserting “or (b)(2)(A)” after
10 “(a)(2)(B)(i)” in subparagraph (B),

11 (B) in paragraph (3), by inserting “or
12 (b)(2)(B)(i), as the case may be,” after
13 “(a)(2)(B)(ii)”,

14 (C) in paragraph (5), by striking “sub-
15 section (a)(2)(B)(ii)” and inserting “sub-
16 sections (a)(2)(B)(ii) and (b)(2)(B)(i)”, and

17 (D) in paragraph (6), by inserting “or in-
18 verted domestic corporation, as the case may
19 be,” after “surrogate foreign corporation”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years ending after May
22 8, 2014.

23 **SEC. 109. COUNTRY-BY-COUNTRY REPORTING.**

24 (a) COUNTRY-BY-COUNTRY REPORTING.—Section 13
25 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)

1 is amended by adding at the end the following new sub-
 2 section:

3 “(s) DISCLOSURE OF FINANCIAL PERFORMANCE ON
 4 A COUNTRY-BY-COUNTRY BASIS.—

5 “(1) RULES REQUIRED.—The Commission shall
 6 issue rules that require each issuer to include in an
 7 annual report filed by the issuer with the Commis-
 8 sion information on a country-by-country basis dur-
 9 ing the covered period for each tax jurisdiction, ag-
 10 gregated from all subsidiaries residing in that juris-
 11 diction, consisting of—

12 “(A) revenues from unrelated parties, re-
 13 lated parties, and in total,

14 “(B) profit or loss before taxes,

15 “(C) income tax accrued for the current
 16 year,

17 “(D) income tax paid (on a cash basis),

18 “(E) stated capital,

19 “(F) accumulated earnings,

20 “(G) number of employees,

21 “(H) tangible assets other than cash or
 22 cash equivalents, and

23 “(I) such other financial information as
 24 the Commission may determine is necessary or

1 appropriate in the public interest or for the pro-
 2 tection of investors.

3 “(2) RULES RELATING TO FOREIGN SUB-
 4 SIDIARY.—For each foreign subsidiary, the report
 5 required by paragraph (1) shall be grouped by resi-
 6 dent jurisdiction (including a group for subsidiaries
 7 resident nowhere), the tax jurisdiction (if different),
 8 and main business activity.”.

9 (b) RULEMAKING.—

10 (1) DEADLINES.—The Securities and Exchange
 11 Commission (in this section referred to as the “Com-
 12 mission”) shall—

13 (A) not later than 270 days after the date
 14 of enactment of this Act, issue a proposed rule
 15 to carry out this section and the amendment
 16 made by this section; and

17 (B) not later than 1 year after the date of
 18 enactment of this Act, issue a final rule to
 19 carry out this section and the amendment made
 20 by this section.

21 (2) DATA FORMAT.—The information required
 22 to be provided by this section shall be provided by
 23 the issuer in a report in a format prescribed by the
 24 Commission, and such report shall be made available

1 to the public online, in such format as the Commis-
 2 sion shall prescribe.

3 (3) EFFECTIVE DATE.—Subsection (s) of sec-
 4 tion 13 of the Securities Exchange Act of 1934, as
 5 added by this section, shall become effective 1 year
 6 after the date on which the Commission issues a
 7 final rule under this section.

8 **TITLE II—ADDITIONAL MEAS-**
 9 **URES TO COMBAT TAX EVA-**
 10 **SION**

11 **SEC. 201. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**
 12 **EIGN JURISDICTIONS, FINANCIAL INSTITU-**
 13 **TIONS, AND OTHERS THAT SIGNIFICANTLY**
 14 **IMPEDE UNITED STATES TAX ENFORCEMENT.**

15 Section 5318A of title 31, United States Code, is
 16 amended—

17 (1) by striking the section heading and insert-
 18 ing the following:

19 **“§ 5318A. Special measures for jurisdictions, financial**
 20 **institutions, or international transactions**
 21 **that are of primary money laundering**
 22 **concern or significantly impede United**
 23 **States tax enforcement”;**

24 (2) in subsection (a), by striking the subsection
 25 heading and inserting the following:

1 “(a) SPECIAL MEASURES TO COUNTER MONEY
2 LAUNDERING AND EFFORTS TO SIGNIFICANTLY IMPEDE
3 UNITED STATES TAX ENFORCEMENT.—”;

4 (3) in subsection (c)—

5 (A) by striking the subsection heading and
6 inserting the following:

7 “(c) CONSULTATIONS AND INFORMATION TO BE
8 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,
9 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-
10 MARY MONEY LAUNDERING CONCERN OR TO BE SIGNIFI-
11 CANTLY IMPEDING UNITED STATES TAX ENFORCE-
12 MENT.—”; and

13 (B) by inserting at the end of paragraph
14 (2) thereof the following new subparagraph:

15 “(C) OTHER CONSIDERATIONS.—The fact
16 that a jurisdiction or financial institution is co-
17 operating with the United States on imple-
18 menting the requirements specified in chapter 4
19 of the Internal Revenue Code of 1986 may be
20 favorably considered in evaluating whether such
21 jurisdiction or financial institution is signifi-
22 cantly impeding United States tax enforce-
23 ment.”;

(4) in subsection (a)(1), by inserting “or is significantly impeding United States tax enforcement” after “primary money laundering concern”;

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by inserting “in matters involving money laundering,” before “shall consult”; and

(ii) by striking “and” at the end;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

“(B) in matters involving United States tax enforcement, shall consult with the Commissioner of Internal Revenue, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and”;

(6) in each of paragraphs (1)(A), (2), (3), and (4) of subsection (b), by inserting “or to be significantly impeding United States tax enforcement”

1 after “primary money laundering concern” each
 2 place that term appears;

3 (7) in subsection (b), by striking paragraph (5)
 4 and inserting the following:

5 “(5) PROHIBITIONS OR CONDITIONS ON OPEN-
 6 ING OR MAINTAINING CERTAIN CORRESPONDENT OR
 7 PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING
 8 CERTAIN PAYMENT CARDS.—If the Secretary finds a
 9 jurisdiction outside of the United States, 1 or more
 10 financial institutions operating outside of the United
 11 States, or 1 or more classes of transactions within
 12 or involving a jurisdiction outside of the United
 13 States to be of primary money laundering concern or
 14 to be significantly impeding United States tax en-
 15 forcement, the Secretary, in consultation with the
 16 Secretary of State, the Attorney General of the
 17 United States, and the Chairman of the Board of
 18 Governors of the Federal Reserve System, may pro-
 19 hibit, or impose conditions upon—

20 “(A) the opening or maintaining in the
 21 United States of a correspondent account or
 22 payable-through account; or

23 “(B) the authorization, approval, or use in
 24 the United States of a credit card, charge card,
 25 debit card, or similar credit or debit financial

1 instrument by any domestic financial institu-
 2 tion, financial agency, or credit card company
 3 or association, for or on behalf of a foreign
 4 banking institution, if such correspondent ac-
 5 count, payable-through account, credit card,
 6 charge card, debit card, or similar credit or
 7 debit financial instrument, involves any such ju-
 8 risdiction or institution, or if any such trans-
 9 action may be conducted through such cor-
 10 respondent account, payable-through account,
 11 credit card, charge card, debit card, or similar
 12 credit or debit financial instrument.”;

13 (8) in subsection (c)(1), by inserting “or is sig-
 14 nificantly impeding United States tax enforcement”
 15 after “primary money laundering concern”;

16 (9) in subsection (c)(2)(A)—

17 (A) in clause (ii), by striking “bank secrecy
 18 or special regulatory advantages” and inserting
 19 “bank, tax, corporate, trust, or financial secrecy
 20 or regulatory advantages”;

21 (B) in clause (iii), by striking “supervisory
 22 and counter-money” and inserting “supervisory,
 23 international tax enforcement, and counter-
 24 money”;

1 (C) in clause (v), by striking “banking or
 2 secrecy” and inserting “banking, tax, or se-
 3 crecy”; and

4 (D) in clause (vi), by inserting “, tax trea-
 5 ty, or tax information exchange agreement”
 6 after “treaty”;

7 (10) in subsection (c)(2)(B)—

8 (A) in clause (i), by inserting “or tax eva-
 9 sion” after “money laundering”; and

10 (B) in clause (iii), by inserting “, tax eva-
 11 sion,” after “money laundering”; and

12 (11) in subsection (d), by inserting “involving
 13 money laundering, and shall notify, in writing, the
 14 Committee on Finance of the Senate and the Com-
 15 mittee on Ways and Means of the House of Rep-
 16 resentatives of any such action involving United
 17 States tax enforcement” after “such action”.

18 **SEC. 202. STRENGTHENING THE FOREIGN ACCOUNT TAX**

19 **COMPLIANCE ACT (FATCA).**

20 (a) **REPORTING ACTIVITIES WITH RESPECT TO PAS-**
 21 **SIVE FOREIGN INVESTMENT COMPANIES.**—Section
 22 1298(f) is amended by inserting “, or who directly or indi-
 23 rectly forms, transfers assets to, is a beneficiary of, has
 24 a beneficial interest in, or receives money or property or
 25 the use thereof from,” after “shareholder of”.

1 (b) WITHHOLDABLE PAYMENTS TO FOREIGN FINAN-
 2 CIAL INSTITUTIONS.—Section 1471(d) is amended—

3 (1) by inserting “or transaction” after “any de-
 4 pository” in paragraph (2)(A), and

5 (2) by striking “or any interest” and all that
 6 follows in paragraph (5)(C) and inserting “deriva-
 7 tives, or any interest (including a futures or forward
 8 contract, swap, or option) in such securities, part-
 9 nership interests, commodities, or derivatives.”.

10 (c) WITHHOLDABLE PAYMENTS TO OTHER FOREIGN
 11 FINANCIAL INSTITUTIONS.—Section 1472 is amended—

12 (1) by inserting “as a result of any customer
 13 identification, anti-money laundering, anti-corrup-
 14 tion, or similar obligation to identify account hold-
 15 ers,” after “reason to know,” in subsection (b)(2),
 16 and

17 (2) by inserting “as posing a low risk of tax
 18 evasion” after “this subsection” in subsection
 19 (c)(1)(G).

20 (d) DEFINITIONS.—Clauses (i) and (ii) of section
 21 1473(2)(A) are each amended by inserting “or as a bene-
 22 ficial owner” after “indirectly”.

23 (e) SPECIAL RULES.—Section 1474(c) is amended—

24 (1) by inserting “, except that information pro-
 25 vided under section 1471(c) or 1472(b) may be dis-

1 closed to any Federal law enforcement agency, upon
 2 request or upon the initiation of the Secretary, to in-
 3 vestigate or address a possible violation of United
 4 States law” after “shall apply” in paragraph (1),
 5 and

6 (2) by inserting “, or has had an agreement
 7 terminated under such section,” after “section
 8 1471(b)” in paragraph (2).

9 (f) INFORMATION WITH RESPECT TO FOREIGN FI-
 10 NANCIAL ASSETS.—Section 6038D(a) is amended by in-
 11 serting “ownership or beneficial ownership” after “holds
 12 any”.

13 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES
 14 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-
 15 TIONS.—

16 (1) PRESUMPTIONS FOR TAX PURPOSES.—

17 (A) IN GENERAL.—Chapter 76 is amended
 18 by inserting after section 7491 the following
 19 new subchapter:

20 **“Subchapter F—Presumptions for Certain**
 21 **Legal Proceedings**

“Sec. 7492. Presumptions pertaining to entities and transactions involving non-
 FATCA institutions.

1 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
2 **TRANSACTIONS INVOLVING NON-FATCA IN-**
3 **STITUTIONS.**

4 “(a) CONTROL.—For purposes of any United States
5 civil judicial or administrative proceeding to determine or
6 collect tax, there shall be a rebuttable presumption that
7 a United States person who, directly or indirectly, formed,
8 transferred assets to, was a beneficiary of, had a beneficial
9 interest in, or received money or property or the use there-
10 of from an entity, including a trust, corporation, limited
11 liability company, partnership, or foundation, that holds
12 an account, or in any other manner has assets, in a non-
13 FATCA institution, exercised control over such entity. The
14 presumption of control created by this subsection shall not
15 be applied to prevent the Secretary from determining or
16 arguing the absence of control.

17 “(b) TRANSFERS OF INCOME.—For purposes of any
18 United States civil judicial or administrative proceeding
19 to determine or collect tax, there shall be a rebuttable pre-
20 sumption that any amount or thing of value received by
21 a United States person directly or indirectly from an ac-
22 count or from an entity that holds an account, or in any
23 other manner has assets, in a non-FATCA institution,
24 constitutes income of such person taxable in the year of
25 receipt; and any amount or thing of value paid or trans-
26 ferred by or on behalf of a United States person directly

1 or indirectly to an account, or entity that holds an ac-
 2 count, or in any other manner has assets, in a non-
 3 FATCA institution, represents previously unreported in-
 4 come of such person taxable in the year of the transfer.

5 “(c) REBUTTING THE PRESUMPTIONS.—The pre-
 6 sumptions established in this section may be rebutted only
 7 by clear and convincing evidence, including detailed docu-
 8 mentary, testimonial, and transactional evidence, estab-
 9 lishing that—

10 “(1) in subsection (a), such taxpayer exercised
 11 no control, directly or indirectly, over account or en-
 12 tity at the time in question, and

13 “(2) in subsection (b), such amounts or things
 14 of value did not represent income related to such
 15 United States person.

16 Any court having jurisdiction of a civil proceeding in which
 17 control of such an offshore account or offshore entity or
 18 the income character of such receipts or amounts trans-
 19 ferred is an issue shall prohibit the introduction by the
 20 taxpayer of any foreign based document that is not au-
 21 thenticated in open court by a person with knowledge of
 22 such document, or any other evidence supplied by a person
 23 outside the jurisdiction of a United States court, unless
 24 such person appears before the court.”.

1 (B) The table of subchapters for chapter
 2 76 is amended by inserting after the item relat-
 3 ing to subchapter E the following new item:

“SUBCHAPTER F. PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

4 (2) DEFINITION OF NON-FATCA INSTITUTION.—
 5 Section 7701(a) is amended by adding at the end
 6 the following new paragraph:

7 “(51) NON-FATCA INSTITUTION.—The term
 8 ‘non-FATCA institution’ means any foreign financial
 9 institution that does not meet the reporting require-
 10 ments of section 1471(b).”.

11 (3) PRESUMPTIONS FOR SECURITIES LAW PUR-
 12 POSES.—Section 21 of the Securities Exchange Act
 13 of 1934 (15 U.S.C. 78u) is amended by adding at
 14 the end the following new subsection:

15 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND
 16 BENEFICIAL OWNERSHIP.—

17 “(1) CONTROL.—For purposes of any civil judi-
 18 cial or administrative proceeding under this title,
 19 there shall be a rebuttable presumption that a
 20 United States person who, directly or indirectly,
 21 formed, transferred assets to, was a beneficiary of,
 22 had a beneficial interest in, or received money or
 23 property or the use thereof from an entity, including
 24 a trust, corporation, limited liability company, part-
 25 nership, or foundation, that holds an account, or in

1 any other manner has assets, in a non-FATCA insti-
2 tution (as defined in section 7701(a)(51) of the In-
3 ternal Revenue Code of 1986), exercised control over
4 such entity. The presumption of control created by
5 this paragraph shall not be applied to prevent the
6 Commission from determining or arguing the ab-
7 sence of control.

8 “(2) BENEFICIAL OWNERSHIP.—For purposes
9 of any civil judicial or administrative proceeding
10 under this title, there shall be a rebuttable presump-
11 tion that securities that are nominally owned by an
12 entity, including a trust, corporation, limited liability
13 company, partnership, or foundation, and that are
14 held in a non-FATCA institution (as so defined), are
15 beneficially owned by any United States person who
16 directly or indirectly exercised control over such enti-
17 ty. The presumption of beneficial ownership created
18 by this paragraph shall not be applied to prevent the
19 Commission from determining or arguing the ab-
20 sence of beneficial ownership.”.

21 (4) PRESUMPTION FOR REPORTING PURPOSES
22 RELATING TO FOREIGN FINANCIAL ACCOUNTS.—Sec-
23 tion 5314 of title 31, United States Code, is amend-
24 ed by adding at the end the following new sub-
25 section:

1 “(d) REBUTTABLE PRESUMPTION.—For purposes of
2 this section, there shall be a rebuttable presumption that
3 any account with a non-FATCA institution (as defined in
4 section 7701(a)(51) of the Internal Revenue Code of
5 1986) contains funds in an amount that is at least suffi-
6 cient to require a report prescribed by regulations under
7 this section.”.

8 (5) REGULATORY AUTHORITY.—Not later than
9 180 days after the date of enactment of this Act, the
10 Secretary of the Treasury and the Chairman of the
11 Securities and Exchange Commission shall each
12 adopt regulations or other guidance necessary to im-
13 plement the amendments made by this subsection.
14 The Secretary and the Chairman may, by regulation
15 or guidance, provide that the presumption of control
16 shall not extend to particular classes of transactions,
17 such as corporate reorganizations or transactions
18 below a specified dollar threshold, if either deter-
19 mines that applying such amendments to such trans-
20 actions is not necessary to carry out the purposes of
21 such amendments.

22 (h) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect on the date which is 180 days
24 after the date of enactment of this Act, whether or not
25 regulations are issued under subsection (g)(5).

1 **SEC. 203. REPORTING UNITED STATES BENEFICIAL OWN-**
 2 **ERS OF FOREIGN OWNED FINANCIAL AC-**
 3 **COUNTS.**

4 (a) IN GENERAL.—Subpart B of part III of sub-
 5 chapter A of chapter 61 is amended by inserting after sec-
 6 tion 6045B the following new sections:

7 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**
 8 **FICIAL OWNERS OF FINANCIAL ACCOUNTS**
 9 **LOCATED IN THE UNITED STATES AND HELD**
 10 **IN THE NAME OF A FOREIGN ENTITY.**

11 “(a) REQUIREMENT OF RETURN.—If—

12 “(1) any withholding agent under sections 1441
 13 and 1442 has the control, receipt, custody, disposal,
 14 or payment of any amount constituting gross income
 15 from sources within the United States of any foreign
 16 entity, including a trust, corporation, limited liability
 17 company, partnership, or foundation (other than an
 18 entity with shares regularly traded on an established
 19 securities market), and

20 “(2) such withholding agent determines for pur-
 21 poses of title 14, 18, or 31 of the United States
 22 Code that a United States person has any beneficial
 23 interest in the foreign entity or in the account in
 24 such entity’s name (hereafter in this section referred
 25 to as ‘United States beneficial owner’),

1 then the withholding agent shall make a return according
2 to the forms or regulations prescribed by the Secretary.

3 “(b) REQUIRED INFORMATION.—For purposes of
4 subsection (a) the information required to be included on
5 the return shall include—

6 “(1) the name, address, and, if known, the tax-
7 payer identification number of the United States
8 beneficial owner,

9 “(2) the known facts pertaining to the relation-
10 ship of such United States beneficial owner to the
11 foreign entity and the account,

12 “(3) the gross amount of income from sources
13 within the United States (including gross proceeds
14 from brokerage transactions), and

15 “(4) such other information as the Secretary
16 may by forms or regulations provide.

17 “(c) STATEMENTS TO BE FURNISHED TO BENE-
18 FICIAL OWNERS WITH RESPECT TO WHOM INFORMATION
19 IS REQUIRED TO BE REPORTED.—A withholding agent
20 required to make a return under subsection (a) shall fur-
21 nish to each United States beneficial owner whose name
22 is required to be set forth in such return a statement
23 showing—

1 “(1) the name, address, and telephone number
 2 of the information contact of the person required to
 3 make such return, and

4 “(2) the information required to be shown on
 5 such return with respect to such United States bene-
 6 ficial owner.

7 The written statement required under the preceding sen-
 8 tence shall be furnished to the United States beneficial
 9 owner on or before January 31 of the year following the
 10 calendar year for which the return under subsection (a)
 11 was required to be made. In the event the person filing
 12 such return does not have a current address for the United
 13 States beneficial owner, such written statement may be
 14 mailed to the address of the foreign entity.

15 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**
 16 **GARDING ESTABLISHMENT OF ACCOUNTS IN**
 17 **NON-FATCA INSTITUTIONS.**

18 “(a) REQUIREMENT OF RETURN.—Any financial in-
 19 stitution directly or indirectly opening a bank, brokerage,
 20 or other financial account for or on behalf of an offshore
 21 entity, including a trust, corporation, limited liability com-
 22 pany, partnership, or foundation (other than an entity
 23 with shares regularly traded on an established securities
 24 market), in a non-FATCA institution (as defined in sec-
 25 tion 7701(a)(51)) at the direction of, on behalf of, or for

1 the benefit of a United States person shall make a return
 2 according to the forms or regulations prescribed by the
 3 Secretary.

4 “(b) REQUIRED INFORMATION.—For purposes of
 5 subsection (a) the information required to be included on
 6 the return shall include—

7 “(1) the name, address, and taxpayer identifica-
 8 tion number of such United States person,

9 “(2) the name and address of the financial in-
 10 stitution at which a financial account is opened, the
 11 type of account, the account number, the name
 12 under which the account was opened, and the
 13 amount of the initial deposit,

14 “(3) if the account is held in the name of an
 15 entity, the name and address of such entity, the type
 16 of entity, and the name and address of any company
 17 formation agent or other professional employed to
 18 form or acquire the entity, and

19 “(4) such other information as the Secretary
 20 may by forms or regulations provide.

21 “(c) STATEMENTS TO BE FURNISHED TO UNITED
 22 STATES PERSONS WITH RESPECT TO WHOM INFORMA-
 23 TION IS REQUIRED TO BE REPORTED.—A financial insti-
 24 tution required to make a return under subsection (a)
 25 shall furnish to each United States person whose name

1 is required to be set forth in such return a statement
 2 showing—

3 “(1) the name, address, and telephone number
 4 of the information contact of the person required to
 5 make such return, and

6 “(2) the information required to be shown on
 7 such return with respect to such United States per-
 8 son.

9 The written statement required under the preceding sen-
 10 tence shall be furnished to such United States person on
 11 or before January 31 of the year following the calendar
 12 year for which the return under subsection (a) was re-
 13 quired to be made.

14 “(d) EXEMPTION.—The Secretary may by regula-
 15 tions exempt any class of United States persons or any
 16 class of accounts or entities from the requirements of this
 17 section if the Secretary determines that applying this sec-
 18 tion to such persons, accounts, or entities is not necessary
 19 to carry out the purposes of this section.”.

20 (b) PENALTIES.—

21 (1) RETURNS.—Section 6724(d)(1)(B) is
 22 amended by striking “or” at the end of clause
 23 (xxiv), by striking “and” at the end of clause (xxv),
 24 and by adding after clause (xxv) the following new
 25 clauses:

1 “(xxvi) section 6045C(a) (relating to
 2 returns regarding United States beneficial
 3 owners of financial accounts located in the
 4 United States and held in the name of a
 5 foreign entity), or

6 “(xxvii) section 6045D(a) (relating to
 7 returns by financial institutions regarding
 8 establishment of accounts at non-FATCA
 9 institutions), and”.

10 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
 11 is amended by striking “or” at the end of subpara-
 12 graph (HH), by striking the period at the end of
 13 subparagraph (II), and by inserting after subpara-
 14 graph (II) the following new subparagraphs:

15 “(JJ) section 6045C(c) (relating to returns
 16 regarding United States beneficial owners of fi-
 17 nancial accounts located in the United States
 18 and held in the name of a foreign entity), or

19 “(KK) section 6045D(c) (relating to re-
 20 turns by financial institutions regarding estab-
 21 lishment of accounts at non-FATCA institu-
 22 tions).”.

23 (c) CLERICAL AMENDMENT.—The table of sections
 24 for subpart B of part III of subchapter A of chapter 61

1 is amended by inserting after the item relating to section
 2 6045B the following new items:

“Sec. 6045C. Returns regarding United States beneficial owners of financial
 accounts located in the United States and held in the name of
 a foreign entity.

“Sec. 6045D. Returns by financial institutions regarding establishment of ac-
 counts at non-FATCA institutions.”.

3 (d) ADDITIONAL PENALTIES.—

4 (1) ADDITIONAL PENALTIES ON BANKS.—Sec-
 5 tion 5239(b)(1) of the Revised Statutes of the
 6 United States (12 U.S.C. 93(b)(1)) is amended by
 7 inserting “or any of the provisions of section 6045D
 8 of the Internal Revenue Code of 1986,” after “any
 9 regulation issued pursuant to,”.

10 (2) ADDITIONAL PENALTIES ON SECURITIES
 11 FIRMS.—Section 21(d)(3)(A) of the Securities Ex-
 12 change Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is
 13 amended by inserting “any of the provisions of sec-
 14 tion 6045D of the Internal Revenue Code of 1986,”
 15 after “the rules or regulations thereunder,”.

16 (e) REGULATORY AUTHORITY AND EFFECTIVE
 17 DATE.—

18 (1) REGULATORY AUTHORITY.—Not later than
 19 180 days after the date of the enactment of this Act,
 20 the Secretary of the Treasury shall adopt regula-
 21 tions, forms, or other guidance necessary to imple-
 22 ment this section.

1 (2) EFFECTIVE DATE.—Section 6045C of the
 2 Internal Revenue Code of 1986 (as added by this
 3 section) and the amendment made by subsection
 4 (d)(1) shall take effect with respect to amounts paid
 5 into foreign owned accounts located in the United
 6 States after December 31 of the year of the date of
 7 the enactment of this Act. Section 6045D of such
 8 Code (as so added) and the amendment made by
 9 subsection (d)(2) shall take effect with respect to ac-
 10 counts opened after December 31 of the year of the
 11 date of the enactment of this Act.

12 **SEC. 204. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
 13 **HOLDINGS.**

14 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
 15 21(d)(3)(B) of the Securities Exchange Act of 1934 (15
 16 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
 17 the following:

18 “(iv) FOURTH TIER.—Notwith-
 19 standing clauses (i), (ii), and (iii), for each
 20 violation, the amount of the penalty shall
 21 not exceed \$1,000,000 for any natural per-
 22 son or \$10,000,000 for any other person,
 23 if—

24 “(I) such person directly or indi-
 25 rectly controlled any foreign entity, in-

1 including any trust, corporation, limited
 2 liability company, partnership, or
 3 foundation through which an issuer
 4 purchased, sold, or held equity or debt
 5 instruments;

6 “(II) such person knowingly or
 7 recklessly failed to disclose any such
 8 holding, purchase, or sale by the
 9 issuer; and

10 “(III) the holding, purchase, or
 11 sale would have been otherwise sub-
 12 ject to disclosure by the issuer or such
 13 person under this title.”.

14 (b) SECURITIES ACT OF 1933.—Section 20(d)(2) of
 15 the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is
 16 amended by adding at the end the following:

17 “(D) FOURTH TIER.—Notwithstanding
 18 subparagraphs (A), (B), and (C), for each viola-
 19 tion, the amount of the penalty shall not exceed
 20 \$1,000,000 for any natural person or
 21 \$10,000,000 for any other person, if—

22 “(i) such person directly or indirectly
 23 controlled any foreign entity, including any
 24 trust, corporation, limited liability com-
 25 pany, partnership, or foundation through

1 which an issuer purchased, sold, or held
2 equity or debt instruments;

3 “(ii) such person knowingly or reck-
4 lessly failed to disclose any such holding,
5 purchase, or sale by the issuer; and

6 “(iii) the holding, purchase, or sale
7 would have been otherwise subject to dis-
8 closure by the issuer or such person under
9 this title.”.

10 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
11 203(i)(2) of the Investment Advisers Act of 1940 (15
12 U.S.C. 80b–3(i)(2)) is amended by adding at the end the
13 following:

14 “(D) FOURTH TIER.—Notwithstanding
15 subparagraphs (A), (B), and (C), for each viola-
16 tion, the amount of the penalty shall not exceed
17 \$1,000,000 for any natural person or
18 \$10,000,000 for any other person, if—

19 “(i) such person directly or indirectly
20 controlled any foreign entity, including any
21 trust, corporation, limited liability com-
22 pany, partnership, or foundation through
23 which an issuer purchased, sold, or held
24 equity or debt instruments;

1 “(ii) such person knowingly or reck-
 2 lessly failed to disclose any such holding,
 3 purchase, or sale by the issuer; and

4 “(iii) the holding, purchase, or sale
 5 would have been otherwise subject to dis-
 6 closure by the issuer or such person under
 7 this title.”.

8 **SEC. 205. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
 9 **FOR INVESTMENT ADVISERS.**

10 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR
 11 INVESTMENT ADVISERS.—Section 5312(a)(2) of title 31,
 12 United States Code, is amended—

13 (1) in subparagraph (Y), by striking “or” at
 14 the end;

15 (2) by redesignating subparagraph (Z) as sub-
 16 paragraph (BB); and

17 (3) by inserting after subparagraph (Y) the fol-
 18 lowing:

19 “(Z) an investment adviser;”.

20 (b) RULES REQUIRED.—The Secretary of the Treas-
 21 ury shall—

22 (1) in consultation with the Chairman of the
 23 Securities and Exchange Commission and the Chair-
 24 man of the Commodity Futures Trading Commis-
 25 sion, not later than 180 days after the date of enact-

1 ment of this Act, publish a proposed rule in the Fed-
2 eral Register to carry out the amendments made by
3 this section; and

4 (2) not later than 270 days after the date of
5 enactment of this Act, publish a final rule in the
6 Federal Register on the matter described in para-
7 graph (1).

8 (c) CONTENTS.—The final rule published under this
9 section shall require, at a minimum, each investment ad-
10 viser (as defined in section 202(a)(11) of the Investment
11 Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))) reg-
12 istered with the Securities and Exchange Commission pur-
13 suant to section 203 of that Act (15 U.S.C. 80b–3)—

14 (1) to submit suspicious activity reports and es-
15 tablish an anti-money laundering program under
16 subsections (g) and (h), respectively, of section 5318
17 of title 31, United States Code; and

18 (2) to comply with—

19 (A) the customer identification program
20 requirements under section 5318(l) of title 31,
21 United States Code; and

22 (B) the due diligence requirements under
23 section 5318(i) of title 31, United States Code.

1 **SEC. 206. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**
2 **FORMATION AGENTS.**

3 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR
4 FORMATION AGENTS.—Section 5312(a)(2) of title 31,
5 United States Code, as amended by section 203 of this
6 Act, is amended by inserting after subparagraph (Z) the
7 following:

8 “(AA) any person engaged in the business
9 of forming new corporations, limited liability
10 companies, partnerships, trusts, or other legal
11 entities; or”.

12 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
13 RULE FOR FORMATION AGENTS.—

14 (1) PROPOSED RULE.—The Secretary of the
15 Treasury, in consultation with the Attorney General
16 of the United States, the Secretary of Homeland Se-
17 curity, and the Commissioner of Internal Revenue,
18 shall—

19 (A) not later than 120 days after the date
20 of enactment of this Act, publish a proposed
21 rule in the Federal Register requiring persons
22 described in section 5312(a)(2)(AA) of title 31,
23 United States Code, as added by this section, to
24 establish anti-money laundering programs
25 under section 5318(h) of that title; and

1 (B) not later than 270 days after the date
 2 of enactment of this Act, publish a final rule in
 3 the Federal Register on the matter described in
 4 subparagraph (A).

5 (2) EXCLUSIONS.—The rule promulgated under
 6 this subsection shall exclude from the category of
 7 persons engaged in the business of forming new cor-
 8 porations or other entities—

9 (A) any government agency; and

10 (B) any attorney or law firm that uses a
 11 paid formation agent operating within the
 12 United States to form such corporations or
 13 other entities.

14 **SEC. 207. STRENGTHENING JOHN DOE SUMMONS PRO-**
 15 **CEEDINGS.**

16 (a) IN GENERAL.—Subsection (f) of section 7609 is
 17 amended to read as follows:

18 “(f) ADDITIONAL REQUIREMENT IN THE CASE OF A
 19 JOHN DOE SUMMONS.—

20 “(1) GENERAL RULE.—Any summons described
 21 in subsection (c)(1) which does not identify the per-
 22 son with respect to whose liability the summons is
 23 issued may be served only after a court proceeding
 24 in which the Secretary establishes that—

1 “(A) the summons relates to the investiga-
2 tion of a particular person or ascertainable
3 group or class of persons,

4 “(B) there is a reasonable basis for believ-
5 ing that such person or group or class of per-
6 sons may fail or may have failed to comply with
7 any provision of any internal revenue law, and

8 “(C) the information sought to be obtained
9 from the examination of the records or testi-
10 mony (and the identity of the person or persons
11 with respect to whose liability the summons is
12 issued) is not readily available from other
13 sources.

14 “(2) EXCEPTION.—Paragraph (1) shall not
15 apply to any summons which specifies that it is lim-
16 ited to information regarding a United States cor-
17 respondent account (as defined in section
18 5318A(e)(1)(B) of title 31, United States Code) or
19 a United States payable-through account (as defined
20 in section 5318A(e)(1)(C) of such title) of a finan-
21 cial institution that is held at a non-FATCA institu-
22 tion (as defined in section 7701(a)(51)).

23 “(3) PRESUMPTION IN CASES INVOLVING NON-
24 FATCA INSTITUTIONS.—For purposes of this section,
25 in any case in which the particular person or ascer-

tainable group or class of persons have financial accounts in or transactions related to a non-FATCA institution (as defined in section 7701(a)(51)), there shall be a presumption that there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with provisions of internal revenue law.

“(4) PROJECT JOHN DOE SUMMONSES.—

“(A) IN GENERAL.—Notwithstanding the requirements of paragraph (1), the Secretary may issue a summons described in paragraph (1) if the summons—

“(i) relates to a project which is approved under subparagraph (B),

“(ii) is issued to a person who is a member of the group or class established under subparagraph (B)(i), and

“(iii) is issued within 3 years of the date on which such project was approved under subparagraph (B).

“(B) APPROVAL OF PROJECTS.—A project may only be approved under this subparagraph after a court proceeding in which the Secretary establishes that—

1 “(i) any summons issued with respect
2 to the project will be issued to a member
3 of an ascertainable group or class of per-
4 sons, and

5 “(ii) any summons issued with respect
6 to such project will meet the requirements
7 of paragraph (1).

8 “(C) EXTENSION.—Upon application of
9 the Secretary, the court may extend the time
10 for issuing such summonses under subpara-
11 graph (A)(i) for additional 3-year periods, but
12 only if the court continues to exercise oversight
13 of such project under subparagraph (D).

14 “(D) ONGOING COURT OVERSIGHT.—Dur-
15 ing any period in which the Secretary is author-
16 ized to issue summonses in relation to a project
17 approved under subparagraph (B) (including
18 during any extension under subparagraph (C)),
19 the Secretary shall report annually to the court
20 on the use of such authority, provide copies of
21 all summonses with such report, and comply
22 with the court’s direction with respect to the
23 issuance of any John Doe summons under such
24 project.”.

25 (b) JURISDICTION OF COURT.—

1 (1) IN GENERAL.—Paragraph (1) of section
 2 7609(h) is amended by inserting after the first sen-
 3 tence the following new sentence: “Any United
 4 States district court in which a member of the group
 5 or class to which a summons may be issued resides
 6 or is found shall have jurisdiction to hear and deter-
 7 mine the approval of a project under subsection
 8 (f)(4)(B).”.

9 (2) CONFORMING AMENDMENT.—The first sen-
 10 tence of section 7609(h)(1) is amended by striking
 11 “(f)” and inserting “(f)(1)”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to summonses issued after the date
 14 of the enactment of this Act.

15 **SEC. 208. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
 16 **CIAL ACCOUNT REPORTING.**

17 (a) CLARIFYING THE CONNECTION OF FOREIGN FI-
 18 NANCIAL ACCOUNT REPORTING TO TAX ADMINISTRA-
 19 TION.—Paragraph (4) of section 6103(b) is amended by
 20 adding at the end the following new sentence:

21 “For purposes of subparagraph (A)(i), section 5314
 22 of title 31, United States Code, and sections 5321
 23 and 5322 of such title (as such sections pertain to
 24 such section 5314), shall be considered related stat-
 25 utes.”.

1 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
2 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
3 5321(a)(5)(D)(ii) of title 31, United States Code, is
4 amended by striking “the balance in the account at the
5 time of the violation” and inserting “the highest balance
6 in the account during the reporting period to which the
7 violation relates”.

8 (c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY
9 REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL
10 TAX LAW ENFORCEMENT.—Section 5319 of title 31,
11 United States Code, is amended by inserting “the civil and
12 criminal enforcement divisions of the Internal Revenue
13 Service,” after “including”.

○