

113TH CONGRESS
1ST SESSION

S. 1533

To end offshore tax abuses, to preserve our national defense and protect American families and businesses from devastating cuts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2013

Mr. LEVIN (for himself, Mr. WHITEHOUSE, Mr. BEGICH, and Mrs. SHAHEEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To end offshore tax abuses, to preserve our national defense and protect American families and businesses from devastating cuts, 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

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

TITLE I—DETECTING THE USE OF TAX HAVENS FOR TAX EVASION

Sec. 101. Authorizing special measures against foreign jurisdictions, financial institutions, and others that significantly impede United States tax enforcement.

Sec. 102. Strengthening the Foreign Account Tax Compliance Act (FATCA).

Sec. 103. Treatment of foreign corporations managed and controlled in the United States as domestic corporations.

Sec. 104. Reporting United States beneficial owners of foreign owned financial accounts.

Sec. 105. Swap payments made from the United States to persons offshore.

TITLE II—OTHER MEASURES TO COMBAT TAX HAVEN ABUSES

Sec. 201. Country-by-country reporting.

Sec. 202. Penalty for failing to disclose offshore holdings.

Sec. 203. Deadline for anti-money laundering rule for investment advisers.

Sec. 204. Anti-money laundering requirements for formation agents.

Sec. 205. Strengthening John Doe summons proceedings.

Sec. 206. Improving enforcement of foreign financial account reporting.

TITLE III—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

Sec. 301. Allocation of expenses and taxes on basis of repatriation of foreign income.

Sec. 302. Excess income from transfers of intangibles to low-taxed affiliates treated as subpart F income.

Sec. 303. Limitations on income shifting through intangible property transfers.

Sec. 304. Repeal of check-the-box rules for certain foreign entities and CFC look-thru rules.

Sec. 305. Prohibition on offshore loan abuse.

1 **TITLE I—DETECTING THE USE**
 2 **OF TAX HAVENS FOR TAX**
 3 **EVASION**

4 **SEC. 101. AUTHORIZING SPECIAL MEASURES AGAINST FOR-**
 5 **EIGN JURISDICTIONS, FINANCIAL INSTITU-**
 6 **TIONS, AND OTHERS THAT SIGNIFICANTLY**
 7 **IMPEDE UNITED STATES TAX ENFORCEMENT.**

8 Section 5318A of title 31, United States Code, is
 9 amended—

10 (1) by striking the section heading and insert-
 11 ing the following:

12 **“§ 5318A. Special measures for jurisdictions, financial**
 13 **institutions, or international transactions**
 14 **that are of primary money laundering**
 15 **concern or significantly impede United**
 16 **States tax enforcement”;**

17 (2) in subsection (a), by striking the subsection
 18 heading and inserting the following:

19 **“(a) SPECIAL MEASURES TO COUNTER MONEY**
 20 **LAUNDERING AND EFFORTS TO SIGNIFICANTLY IMPEDE**
 21 **UNITED STATES TAX ENFORCEMENT.—”;**

22 (3) in subsection (c)—

23 (A) by striking the subsection heading and
 24 inserting the following:

1 “(c) CONSULTATIONS AND INFORMATION TO BE
 2 CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS,
 3 TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRI-
 4 MARY MONEY LAUNDERING CONCERN OR TO BE SIGNIFI-
 5 CANTLY IMPEDING UNITED STATES TAX ENFORCE-
 6 MENT.—”; and

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

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

18 (4) in subsection (a)(1), by inserting “or is sig-
 19 nificantly impeding United States tax enforcement”
 20 after “primary money laundering concern”;

21 (5) in subsection (a)(4)—

22 (A) in subparagraph (A)—

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

1 (ii) by striking “and” at the end;

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

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

6 “(B) in matters involving United States
7 tax enforcement, shall consult with the Commis-
8 sioner of the Internal Revenue, the Secretary of
9 State, the Attorney General of the United
10 States, and in the sole discretion of the Sec-
11 retary, such other agencies and interested par-
12 ties as the Secretary may find to be appro-
13 priate; and”;

14 (6) in each of paragraphs (1)(A), (2), (3), and
15 (4) of subsection (b), by inserting “or to be signifi-
16 cantly impeding United States tax enforcement”
17 after “primary money laundering concern” each
18 place that term appears;

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

21 “(5) PROHIBITIONS OR CONDITIONS ON OPEN-
22 ING OR MAINTAINING CERTAIN CORRESPONDENT OR
23 PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING
24 CERTAIN PAYMENT CARDS.—If the Secretary finds a
25 jurisdiction outside of the United States, 1 or more

1 financial institutions operating outside of the United
2 States, or 1 or more classes of transactions within
3 or involving a jurisdiction outside of the United
4 States to be of primary money laundering concern or
5 to be significantly impeding United States tax en-
6 forcement, the Secretary, in consultation with the
7 Secretary of State, the Attorney General of the
8 United States, and the Chairman of the Board of
9 Governors of the Federal Reserve System, may pro-
10 hibit, or impose conditions upon—

11 “(A) the opening or maintaining in the
12 United States of a correspondent account or
13 payable-through account; or

14 “(B) the authorization, approval, or use in
15 the United States of a credit card, charge card,
16 debit card, or similar credit or debit financial
17 instrument by any domestic financial institu-
18 tion, financial agency, or credit card company
19 or association, for or on behalf of a foreign
20 banking institution, if such correspondent ac-
21 count, payable-through account, credit card,
22 charge card, debit card, or similar credit or
23 debit financial instrument, involves any such ju-
24 risdiction or institution, or if any such trans-
25 action may be conducted through such cor-

1 respondent account, payable-through account,
2 credit card, charge card, debit card, or similar
3 credit or debit financial instrument.”; and

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

7 (9) in subsection (c)(2)(A)—

8 (A) in clause (ii), by striking “bank secrecy
9 or special regulatory advantages” and inserting
10 “bank, tax, corporate, trust, or financial secrecy
11 or regulatory advantages”;

12 (B) in clause (iii), by striking “supervisory
13 and counter-money” and inserting “supervisory,
14 international tax enforcement, and counter-
15 money”;

16 (C) in clause (v), by striking “banking or
17 secrecy” and inserting “banking, tax, or se-
18 crecy”; and

19 (D) in clause (vi), by inserting “, tax trea-
20 ty, or tax information exchange agreement”
21 after “treaty”;

22 (10) in subsection (c)(2)(B)—

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

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

3 (11) in subsection (d), by inserting “involving
 4 money laundering, and shall notify, in writing, the
 5 Committee on Finance of the Senate and the Com-
 6 mittee on Ways and Means of the House of Rep-
 7 resentatives of any such action involving United
 8 States tax enforcement” after “such action”.

9 **SEC. 102. STRENGTHENING THE FOREIGN ACCOUNT TAX**
 10 **COMPLIANCE ACT (FATCA).**

11 (a) REPORTING ACTIVITIES WITH RESPECT TO PAS-
 12 SIVE FOREIGN INVESTMENT COMPANIES.—Section
 13 1298(f) is amended by inserting “, or who directly or indi-
 14 rectly forms, transfers assets to, is a beneficiary of, has
 15 a beneficial interest in, or receives money or property or
 16 the use thereof from,” after “shareholder of”.

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

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

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

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

3 (1) by inserting “as a result of any customer
4 identification, anti-money laundering, anti-corruption,
5 tion, or similar obligation to identify account hold-
6 ers,” after “reason to know,” in subsection (b)(2),
7 and

8 (2) by inserting “as posing a low risk of tax
9 evasion” after “this subsection” in subsection
10 (c)(1)(G).

11 (d) DEFINITIONS.—Clauses (i) and (ii) of section
12 1473(2)(A) are each amended by inserting “or as a bene-
13 ficial owner” after “indirectly”.

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

15 (1) by inserting “, except that information pro-
16 vided under sections 1471(c) or 1472(b) may be dis-
17 closed to any Federal law enforcement agency, upon
18 request or upon the initiation of the Secretary, to in-
19 vestigate or address a possible violation of United
20 States law” after “shall apply” in paragraph (1),
21 and

22 (2) by inserting “, or has had an agreement
23 terminated under such section,” after “section
24 1471(b)” in paragraph (2).

1 (f) INFORMATION WITH RESPECT TO FOREIGN FI-
 2 NANCIAL ASSETS.—Section 6038D(a) is amended by in-
 3 serting “ownership or beneficial ownership” after “holds
 4 any”.

5 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES
 6 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-
 7 TIONS.—

8 (1) PRESUMPTIONS FOR TAX PURPOSES.—

9 (A) IN GENERAL.—Chapter 76 is amended
 10 by inserting after section 7491 the following
 11 new subchapter:

12 **“Subchapter F—Presumptions for Certain**
 13 **Legal Proceedings**

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

14 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
 15 **TRANSACTIONS INVOLVING NON-FATCA IN-**
 16 **STITUTIONS.**

17 “(a) CONTROL.—For purposes of any United States
 18 civil judicial or administrative proceeding to determine or
 19 collect tax, there shall be a rebuttable presumption that
 20 a United States person who, directly or indirectly, formed,
 21 transferred assets to, was a beneficiary of, had a beneficial
 22 interest in, or received money or property or the use there-
 23 of from an entity, including a trust, corporation, limited
 24 liability company, partnership, or foundation, that holds

1 an account, or in any other manner has assets, in a non-
2 FATCA institution, exercised control over such entity. The
3 presumption of control created by this subsection shall not
4 be applied to prevent the Secretary from determining or
5 arguing the absence of control.

6 “(b) TRANSFERS OF INCOME.—For purposes of any
7 United States civil judicial or administrative proceeding
8 to determine or collect tax, there shall be a rebuttable pre-
9 sumption that any amount or thing of value received by
10 a United States person directly or indirectly from an ac-
11 count or from an entity that holds an account, or in any
12 other manner has assets, in a non-FATCA institution,
13 constitutes income of such person taxable in the year of
14 receipt; and any amount or thing of value paid or trans-
15 ferred by or on behalf of a United States person directly
16 or indirectly to an account, or entity that holds an ac-
17 count, or in any other manner has assets, in a non-
18 FATCA institution, represents previously unreported in-
19 come of such person taxable in the year of the transfer.

20 “(c) REBUTTING THE PRESUMPTIONS.—The pre-
21 sumptions established in this section may be rebutted only
22 by clear and convincing evidence, including detailed docu-
23 mentary, testimonial, and transactional evidence, estab-
24 lishing that—

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

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

7 Any court having jurisdiction of a civil proceeding in which
8 control of such an offshore account or offshore entity or
9 the income character of such receipts or amounts trans-
10 ferred is an issue shall prohibit the introduction by the
11 taxpayer of any foreign based document that is not au-
12 thenticated in open court by a person with knowledge of
13 such document, or any other evidence supplied by a person
14 outside the jurisdiction of a United States court, unless
15 such person appears before the court.”.

16 (B) The table of subchapters for chapter
17 76 is amended by inserting after the item relat-
18 ing to subchapter E the following new item:

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

22 “(51) NON-FATCA INSTITUTION.—The term
23 ‘non-FATCA institution’ means any financial insti-
24 tution that does not meet the reporting requirements
25 of section 1471(b).”.

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

5 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND
6 BENEFICIAL OWNERSHIP.—

7 “(1) CONTROL.—For purposes of any civil judi-
8 cial or administrative proceeding under this title,
9 there shall be a rebuttable presumption that a
10 United States person who, directly or indirectly,
11 formed, transferred assets to, was a beneficiary of,
12 had a beneficial interest in, or received money or
13 property or the use thereof from an entity, including
14 a trust, corporation, limited liability company, part-
15 nership, or foundation, that holds an account, or in
16 any other manner has assets, in a non-FATCA insti-
17 tution (as defined in section 7701(a)(51) of the In-
18 ternal Revenue Code of 1986), exercised control over
19 such entity. The presumption of control created by
20 this paragraph shall not be applied to prevent the
21 Commission from determining or arguing the ab-
22 sence of control.

23 “(2) BENEFICIAL OWNERSHIP.—For purposes
24 of any civil judicial or administrative proceeding
25 under this title, there shall be a rebuttable presump-

1 tion that securities that are nominally owned by an
 2 entity, including a trust, corporation, limited liability
 3 company, partnership, or foundation, and that are
 4 held in a non-FATCA institution (as so defined), are
 5 beneficially owned by any United States person who
 6 directly or indirectly exercised control over such enti-
 7 ty. The presumption of beneficial ownership created
 8 by this paragraph shall not be applied to prevent the
 9 Commission from determining or arguing the ab-
 10 sence of beneficial ownership.”.

11 (4) PRESUMPTION FOR REPORTING PURPOSES
 12 RELATING TO FOREIGN FINANCIAL ACCOUNTS.—Sec-
 13 tion 5314 of title 31, United States Code, is amend-
 14 ed by adding at the end the following new sub-
 15 section:

16 “(d) REBUTTABLE PRESUMPTION.—For purposes of
 17 this section, there shall be a rebuttable presumption that
 18 any account with a non-FATCA institution (as defined in
 19 section 7701(a)(51) of the Internal Revenue Code of
 20 1986) contains funds in an amount that is at least suffi-
 21 cient to require a report prescribed by regulations under
 22 this section.”.

23 (5) REGULATORY AUTHORITY.—Not later than
 24 180 days after the date of enactment of this Act, the
 25 Secretary of the Treasury and the Chairman of the

1 Securities and Exchange Commission shall each
 2 adopt regulations or other guidance necessary to im-
 3 plement the amendments made by this subsection.
 4 The Secretary and the Chairman may, by regulation
 5 or guidance, provide that the presumption of control
 6 shall not extend to particular classes of transactions,
 7 such as corporate reorganizations or transactions
 8 below a specified dollar threshold, if either deter-
 9 mines that applying such amendments to such trans-
 10 actions is not necessary to carry out the purposes of
 11 such amendments.

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

16 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 17 **AGED AND CONTROLLED IN THE UNITED**
 18 **STATES AS DOMESTIC CORPORATIONS.**

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

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

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

4 “(A) the corporation would not otherwise
5 be treated as a domestic corporation for pur-
6 poses of this title, but

7 “(B) the management and control of the
8 corporation occurs, directly or indirectly, pri-
9 marily within the United States,
10 then, solely for purposes of chapter 1 (and any other
11 provision of this title relating to chapter 1), the cor-
12 poration shall be treated as a domestic corporation.

13 “(2) CORPORATION DESCRIBED.—

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

16 “(i) the stock of such corporation is
17 regularly traded on an established securi-
18 ties market, or

19 “(ii) the aggregate gross assets of
20 such corporation (or any predecessor there-
21 of), including assets under management
22 for investors, whether held directly or indi-
23 rectly, at any time during the taxable year
24 or any preceding taxable year is
25 \$50,000,000 or more.

1 “(B) GENERAL EXCEPTION.—A corpora-
2 tion shall not be treated as described in this
3 paragraph if—

4 “(i) such corporation was treated as a
5 corporation described in this paragraph in
6 a preceding taxable year,

7 “(ii) such corporation—

8 “(I) is not regularly traded on an
9 established securities market, and

10 “(II) has, and is reasonably ex-
11 pected to continue to have, aggregate
12 gross assets (including assets under
13 management for investors, whether
14 held directly or indirectly) of less than
15 \$50,000,000, and

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

18 “(3) MANAGEMENT AND CONTROL.—

19 “(A) IN GENERAL.—The Secretary shall
20 prescribe regulations for purposes of deter-
21 mining cases in which the management and
22 control of a corporation is to be treated as oc-
23 curring primarily within the United States.

1 “(B) EXECUTIVE OFFICERS AND SENIOR
2 MANAGEMENT.—Such regulations shall provide
3 that—

4 “(i) the management and control of a
5 corporation shall be treated as occurring
6 primarily within the United States if sub-
7 stantially all of the executive officers and
8 senior management of the corporation who
9 exercise day-to-day responsibility for mak-
10 ing decisions involving strategic, financial,
11 and operational policies of the corporation
12 are located primarily within the United
13 States, and

14 “(ii) individuals who are not executive
15 officers and senior management of the cor-
16 poration (including individuals who are of-
17 ficers or employees of other corporations in
18 the same chain of corporations as the cor-
19 poration) shall be treated as executive offi-
20 cers and senior management if such indi-
21 viduals exercise the day-to-day responsibil-
22 ities of the corporation described in clause
23 (i).

24 “(C) CORPORATIONS PRIMARILY HOLDING
25 INVESTMENT ASSETS.—Such regulations shall

1 also provide that the management and control
 2 of a corporation shall be treated as occurring
 3 primarily within the United States if—

4 “(i) the assets of such corporation (di-
 5 rectly or indirectly) consist primarily of as-
 6 sets being managed on behalf of investors,
 7 and

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

10 (b) **EFFECTIVE DATE.**—The amendments made by
 11 this section shall apply to taxable years beginning on or
 12 after the date which is 2 years after the date of the enact-
 13 ment of this Act, whether or not regulations are issued
 14 under section 7701(p)(3) of the Internal Revenue Code
 15 of 1986, as added by this section.

16 **SEC. 104. REPORTING UNITED STATES BENEFICIAL OWN-**
 17 **ERS OF FOREIGN OWNED FINANCIAL AC-**
 18 **COUNTS.**

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

1 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**
2 **FICIAL OWNERS OF FINANCIAL ACCOUNTS**
3 **LOCATED IN THE UNITED STATES AND HELD**
4 **IN THE NAME OF A FOREIGN ENTITY.**

5 “(a) REQUIREMENT OF RETURN.—If—

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

14 “(2) such withholding agent determines for pur-
15 poses of titles 14, 18, or 31 of the United States
16 Code that a United States person has any beneficial
17 interest in the foreign entity or in the account in
18 such entity’s name (hereafter in this section referred
19 to as ‘United States beneficial owner’),

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

22 “(b) REQUIRED INFORMATION.—For purposes of
23 subsection (a) the information required to be included on
24 the return shall include—

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

4 “(2) the known facts pertaining to the relation-
5 ship of such United States beneficial owner to the
6 foreign entity and the account,

7 “(3) the gross amount of income from sources
8 within the United States (including gross proceeds
9 from brokerage transactions), and

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

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

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

22 “(2) the information required to be shown on
23 such return with respect to such United States bene-
24 ficial owner.

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

9 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**
 10 **GARDING ESTABLISHMENT OF ACCOUNTS IN**
 11 **NON-FATCA INSTITUTIONS.**

12 “(a) REQUIREMENT OF RETURN.—Any financial in-
 13 stitution directly or indirectly opening a bank, brokerage,
 14 or other financial account for or on behalf of an offshore
 15 entity, including a trust, corporation, limited liability com-
 16 pany, partnership, or foundation (other than an entity
 17 with shares regularly traded on an established securities
 18 market), in a non-FATCA institution (as defined in sec-
 19 tion 7701(a)(51)) at the direction of, on behalf of, or for
 20 the benefit of a United States person shall make a return
 21 according to the forms or regulations prescribed by the
 22 Secretary.

23 “(b) REQUIRED INFORMATION.—For purposes of
 24 subsection (a) the information required to be included on
 25 the return shall include—

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

3 “(2) the name and address of the financial in-
4 stitution at which a financial account is opened, the
5 type of account, the account number, the name
6 under which the account was opened, and the
7 amount of the initial deposit,

8 “(3) if the account is held in the name of an
9 entity, the name and address of such entity, the type
10 of entity, and the name and address of any company
11 formation agent or other professional employed to
12 form or acquire the entity, and

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

15 “(c) STATEMENTS TO BE FURNISHED TO UNITED
16 STATES PERSONS WITH RESPECT TO WHOM INFORMA-
17 TION IS REQUIRED TO BE REPORTED.—A financial insti-
18 tution required to make a return under subsection (a)
19 shall furnish to each United States person whose name
20 is required to be set forth in such return a statement
21 showing—

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

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

4 The written statement required under the preceding sen-
 5 tence shall be furnished to such United States person on
 6 or before January 31 of the year following the calendar
 7 year for which the return under subsection (a) was re-
 8 quired to be made.

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

15 (b) PENALTIES.—

16 (1) RETURNS.—Section 6724(d)(1)(B) is
 17 amended by striking “or” at the end of clause
 18 (xxiv), by striking “and” at the end of clause (xxv),
 19 and by adding after clause (xxv) the following new
 20 clauses:

21 “(xxvi) section 6045C(a) (relating to
 22 returns regarding United States beneficial
 23 owners of financial accounts located in the
 24 United States and held in the name of a
 25 foreign entity), or

1 “(xxvii) section 6045D(a) (relating to
 2 returns by financial institutions regarding
 3 establishment of accounts at non-FATCA
 4 institutions), and”.

5 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
 6 is amended by striking “or” at the end of subpara-
 7 graph (GG), by striking the period at the end of
 8 subparagraph (HH), and by inserting after subpara-
 9 graph (HH) the following new subparagraphs:

10 “(II) section 6045C(c) (relating to returns
 11 regarding United States beneficial owners of fi-
 12 nancial accounts located in the United States
 13 and held in the name of a foreign entity),

14 “(JJ) section 6045D(c) (relating to re-
 15 turns by financial institutions regarding estab-
 16 lishment of accounts at non-FATCA institu-
 17 tions).”.

18 (c) CLERICAL AMENDMENT.—The table of sections
 19 for subpart B of part III of subchapter A of chapter 61
 20 is amended by inserting after the item relating to section
 21 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.”.

22 (d) ADDITIONAL PENALTIES.—

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

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

13 (e) REGULATORY AUTHORITY AND EFFECTIVE
 14 DATE.—

15 (1) REGULATORY AUTHORITY.—Not later than
 16 180 days after the date of the enactment of this Act,
 17 the Secretary of the Treasury shall adopt regula-
 18 tions, forms, or other guidance necessary to imple-
 19 ment this section.

20 (2) EFFECTIVE DATE.—Section 6045C of the
 21 Internal Revenue Code of 1986 (as added by this
 22 section) and the amendment made by subsection
 23 (d)(1) shall take effect with respect to amounts paid
 24 into foreign owned accounts located in the United
 25 States after December 31 of the year of the date of

1 the enactment of this Act. Section 6045D of such
 2 Code (as so added) and the amendment made by
 3 subsection (d)(2) shall take effect with respect to ac-
 4 counts opened after December 31 of the year of the
 5 date of the enactment of this Act.

6 **SEC. 105. SWAP PAYMENTS MADE FROM THE UNITED**
 7 **STATES TO PERSONS OFFSHORE.**

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

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

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

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

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

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

1 **TITLE II—OTHER MEASURES TO**
 2 **COMBAT TAX HAVEN ABUSES**

3 **SEC. 201. COUNTRY-BY-COUNTRY REPORTING.**

4 (a) COUNTRY-BY-COUNTRY REPORTING.—Section 13
 5 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)
 6 is amended by adding at the end the following new sub-
 7 section:

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

10 “(1) DEFINITIONS.—In this subsection—

11 “(A) the term ‘issuer group’ means the
 12 issuer, each subsidiary of the issuer, and each
 13 entity under the control of the issuer; and

14 “(B) the term ‘country of operation’ means
 15 each country in which a member of the issuer
 16 group is incorporated, organized, maintains em-
 17 ployees, or conducts significant business activi-
 18 ties.

19 “(2) RULES REQUIRED.—The Commission shall
 20 issue rules that require each issuer to include in an
 21 annual report filed by the issuer with the Commis-
 22 sion information on a country-by-country basis dur-
 23 ing the covered period, consisting of—

1 “(A) a list of each country of operation
2 and the name of each entity of the issuer group
3 domiciled in each country of operation;

4 “(B) the number of employees physically
5 working in each country of operation;

6 “(C) the total pre-tax gross revenues of
7 each member of the issuer group in each coun-
8 try of operation;

9 “(D) the total amount of payments made
10 to governments by each member of the issuer
11 group in each country of operation, without ex-
12 ception, including, and set forth according to—

13 “(i) total Federal, regional, local, and
14 other tax assessed against each member of
15 the issuer group with respect to each coun-
16 try of operation during the covered period;
17 and

18 “(ii) after any tax deductions, tax
19 credits, tax forgiveness, or other tax bene-
20 fits or waivers, the total amount of tax
21 paid from the treasury of each member of
22 the issuer group to the government of each
23 country of operation during the covered pe-
24 riod; and

1 “(E) such other financial information as
 2 the Commission may determine is necessary or
 3 appropriate in the public interest or for the pro-
 4 tection of investors.”.

5 (b) RULEMAKING.—

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

9 (A) not later than 270 days after the date
 10 of enactment of this Act, issue a proposed rule
 11 to carry out this section and the amendment
 12 made by this section; and

13 (B) not later than 1 year after the date of
 14 enactment of this Act, issue a final rule to
 15 carry out this section and the amendment made
 16 by this section.

17 (2) DATA FORMAT.—The information required
 18 to be provided by this section shall be provided by
 19 the issuer in a report in a format prescribed by the
 20 Commission, and such report shall be made available
 21 to the public online, in such format as the Commis-
 22 sion shall prescribe.

23 (3) EFFECTIVE DATE.—Subsection (s) of sec-
 24 tion 13 of the Securities Exchange Act of 1934, as
 25 added by this section, shall become effective 1 year

1 after the date on which the Commission issues a
2 final rule under this section.

3 **SEC. 202. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
4 **HOLDINGS.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
6 21(d)(3)(B) of the Securities Exchange Act of 1934 (15
7 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
8 the following:

9 “(iv) FOURTH TIER.—Notwith-
10 standing clauses (i), (ii), and (iii), for each
11 violation, the amount of the penalty shall
12 not exceed \$1,000,000 for any natural per-
13 son or \$10,000,000 for any other person,
14 if—

15 “(I) such person directly or indi-
16 rectly controlled any foreign entity, in-
17 cluding any trust, corporation, limited
18 liability company, partnership, or
19 foundation through which an issuer
20 purchased, sold, or held equity or debt
21 instruments;

22 “(II) such person knowingly or
23 recklessly failed to disclose any such
24 holding, purchase, or sale by the
25 issuer; and

1 “(III) the holding, purchase, or
 2 sale would have been otherwise sub-
 3 ject to disclosure by the issuer or such
 4 person under this title.”.

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

8 “(D) FOURTH TIER.—Notwithstanding
 9 subparagraphs (A), (B), and (C), for each viola-
 10 tion, the amount of the penalty shall not exceed
 11 \$1,000,000 for any natural person or
 12 \$10,000,000 for any other person, if—

13 “(i) such person directly or indirectly
 14 controlled any foreign entity, including any
 15 trust, corporation, limited liability com-
 16 pany, partnership, or foundation through
 17 which an issuer purchased, sold, or held
 18 equity or debt instruments;

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

22 “(iii) the holding, purchase, or sale
 23 would have been otherwise subject to dis-
 24 closure by the issuer or such person under
 25 this title.”.

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

5 “(D) FOURTH TIER.—Notwithstanding
6 subparagraphs (A), (B), and (C), for each viola-
7 tion, the amount of the penalty shall not exceed
8 \$1,000,000 for any natural person or
9 \$10,000,000 for any other person, if—

10 “(i) such person directly or indirectly
11 controlled any foreign entity, including any
12 trust, corporation, limited liability com-
13 pany, partnership, or foundation through
14 which an issuer purchased, sold, or held
15 equity or debt instruments;

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

19 “(iii) the holding, purchase, or sale
20 would have been otherwise subject to dis-
21 closure by the issuer or such person under
22 this title.”.

1 **SEC. 203. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
 2 **FOR INVESTMENT ADVISERS.**

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

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

8 (2) by redesignating subparagraph (Z) as sub-
 9 paragraph (BB); and

10 (3) by inserting after subparagraph (Y) the fol-
 11 lowing:

12 “(Z) an investment adviser;”.

13 (b) RULES REQUIRED.—The Secretary of the Treas-
 14 ury shall—

15 (1) in consultation with the Chairman of the
 16 Securities and Exchange Commission and the Chair-
 17 man of the Commodity Futures Trading Commis-
 18 sion, not later than 270 days after the date of enact-
 19 ment of this Act, publish a proposed rule in the Fed-
 20 eral Register to carry out the amendments made by
 21 this section; and

22 (2) not later than 180 days after the date of
 23 enactment of this Act, publish a final rule in the
 24 Federal Register on the matter described in para-
 25 graph (1).

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

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

11 (2) to comply with—

12 (A) the customer identification program
 13 requirements under section 5318(l) of title 31,
 14 United States Code; and

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

17 **SEC. 204. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**
 18 **FORMATION AGENTS.**

19 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR
 20 FORMATION AGENTS.—Section 5312(a)(2) of title 31,
 21 United States Code, as amended by section 203 of this
 22 Act, is amended by inserting after subparagraph (Z) the
 23 following:

24 “(AA) any person engaged in the business
 25 of forming new corporations, limited liability

1 companies, partnerships, trusts, or other legal
2 entities; or”.

3 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
4 RULE FOR FORMATION AGENTS.—

5 (1) PROPOSED RULE.—The Secretary of the
6 Treasury, in consultation with the Attorney General
7 of the United States, the Secretary of Homeland Se-
8 curity, and the Commissioner of Internal Revenue,
9 shall—

10 (A) not later than 120 days after the date
11 of enactment of this Act, publish a proposed
12 rule in the Federal Register requiring persons
13 described in section 5312(a)(2)(AA) of title 31,
14 United States Code, as added by this section, to
15 establish anti-money laundering programs
16 under section 5318(h) of that title; and

17 (B) not later than 270 days after the date
18 of enactment of this Act, publish a final rule in
19 the Federal Register on the matter described in
20 subparagraph (A).

21 (2) EXCLUSIONS.—The rule promulgated under
22 this subsection shall exclude from the category of
23 persons engaged in the business of forming new cor-
24 porations or other entities—

25 (A) any government agency; and

1 (B) any attorney or law firm that uses a
 2 paid formation agent operating within the
 3 United States to form such corporations or
 4 other entities.

5 **SEC. 205. STRENGTHENING JOHN DOE SUMMONS PRO-**
 6 **CEEDINGS.**

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

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

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

16 “(A) the summons relates to the investiga-
 17 tion of a particular person or ascertainable
 18 group or class of persons,

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

23 “(C) the information sought to be obtained
 24 from the examination of the records or testi-
 25 mony (and the identity of the person or persons

1 with respect to whose liability the summons is
2 issued) is not readily available from other
3 sources.

4 “(2) EXCEPTION.—Paragraph (1) shall not
5 apply to any summons which specifies that it is lim-
6 ited to information regarding a United States cor-
7 respondent account (as defined in section
8 5318A(e)(1)(B) of title 31, United States Code) or
9 a United States payable-through account (as defined
10 in section 5318A(e)(1)(C) of such title) of a finan-
11 cial institution that is held at a non-FATCA institu-
12 tion (as defined in section 7701(a)(51)).

13 “(3) PRESUMPTION IN CASES INVOLVING NON-
14 FATCA INSTITUTIONS.—For purposes of this section,
15 in any case in which the particular person or ascer-
16 tainable group or class of persons have financial ac-
17 counts in or transactions related to a non-FATCA
18 institution (as defined in section 7701(a)(51)), there
19 shall be a presumption that there is a reasonable
20 basis for believing that such person or group or class
21 of persons may fail or may have failed to comply
22 with provisions of internal revenue law.

23 “(4) PROJECT JOHN DOE SUMMONSES.—

24 “(A) IN GENERAL.—Notwithstanding the
25 requirements of paragraph (1), the Secretary

1 may issue a summons described in paragraph
2 (1) if the summons—

3 “(i) relates to a project which is ap-
4 proved under subparagraph (B),

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

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

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

15 “(i) any summons issued with respect
16 to the project will be issued to a member
17 of an ascertainable group or class of per-
18 sons, and

19 “(ii) any summons issued with respect
20 to such project will meet the requirements
21 of paragraph (1).

22 “(C) EXTENSION.—Upon application of
23 the Secretary, the court may extend the time
24 for issuing such summonses under subpara-
25 graph (A)(i) for additional 3-year periods, but

only if the court continues to exercise oversight of such project under subparagraph (D).

“(D) ONGOING COURT OVERSIGHT.—During any period in which the Secretary is authorized to issue summonses in relation to a project approved under subparagraph (B) (including during any extension under subparagraph (C)), the Secretary shall report annually to the court on the use of such authority, provide copies of all summonses with such report, and comply with the court’s direction with respect to the issuance of any John Doe summons under such project.”.

(b) JURISDICTION OF COURT.—

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

(2) CONFORMING AMENDMENT.—The first sentence of section 7609(h)(1) is amended by striking “(f)” and inserting “(f)(1)”.

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

4 **SEC. 206. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
5 **CIAL ACCOUNT REPORTING.**

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

10 “For purposes of subparagraph (A)(i), section 5314
11 of title 31, United States Code, and sections 5321
12 and 5322 of such title (as such sections pertain to
13 such section 5314), shall be considered related stat-
14 utes.”.

15 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
16 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
17 5321(a)(5)(D)(ii) of title 31, United States Code, is
18 amended by striking “the balance in the account at the
19 time of the violation” and inserting “the highest balance
20 in the account during the reporting period to which the
21 violation relates”.

22 (c) CLARIFYING THE USE OF SUSPICIOUS ACTIVITY
23 REPORTS UNDER THE BANK SECRECY ACT FOR CIVIL
24 TAX LAW ENFORCEMENT.—Section 5319 of title 31,
25 United States Code, is amended by inserting “the civil and

1 criminal enforcement divisions of the Internal Revenue
2 Service,” after “including”.

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

5 **SEC. 301. 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:

10 **“Subpart H—Special Rules for Allocation of Foreign-** 11 **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.

12 **“SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOR-** 13 **EIGN INCOME MAY NOT OFFSET UNITED** 14 **STATES SOURCE INCOME.**

15 “(a) CURRENT YEAR DEDUCTIONS.—For purposes
16 of this chapter, foreign-related deductions for any taxable
17 year—

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

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

1 Foreign-related deductions shall be allocated to currently
 2 taxed foreign income in the same proportion which cur-
 3 rently taxed foreign income bears to the sum of currently
 4 taxed foreign income and deferred foreign income.

5 “(b) DEDUCTIONS RELATED TO REPATRIATED DE-
 6 FERRED FOREIGN INCOME.—

7 “(1) IN GENERAL.—If there is repatriated for-
 8 eign income for a taxable year, the portion of the
 9 previously deferred deductions allocated to the repa-
 10 triated foreign income shall be taken into account
 11 for the taxable year as a deduction allocated to in-
 12 come from sources outside the United States. Any
 13 such amount shall not be included in foreign-related
 14 deductions for purposes of applying subsection (a) to
 15 such taxable year.

16 “(2) PORTION OF PREVIOUSLY DEFERRED DE-
 17 Ductions.—For purposes of paragraph (1), the por-
 18 tion of the previously deferred deductions allocated
 19 to repatriated foreign income is—

20 “(A) the amount which bears the same
 21 proportion to such deductions, as

22 “(B) the repatriated income bears to the
 23 previously deferred foreign income.

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

1 “(1) FOREIGN-RELATED DEDUCTIONS.—The
 2 term ‘foreign-related deductions’ means the total
 3 amount of deductions and expenses which would be
 4 allocated or apportioned to gross income from
 5 sources without the United States for the taxable
 6 year if both the currently-taxed foreign income and
 7 deferred foreign income were taken into account.

8 “(2) CURRENTLY-TAXED FOREIGN INCOME.—
 9 The term ‘currently-taxed foreign income’ means the
 10 amount of gross income from sources without the
 11 United States for the taxable year (determined with-
 12 out regard to repatriated foreign income for such
 13 year).

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

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

19 “(i) all controlled foreign corporations
 20 were treated as one controlled foreign cor-
 21 poration, and

22 “(ii) all earnings and profits of all
 23 controlled foreign corporations were sub-
 24 part F income (as defined in section 952),
 25 over

1 “(B) the sum of—

2 “(i) all dividends received during the
3 taxable year from controlled foreign cor-
4 porations, plus

5 “(ii) amounts includible in gross in-
6 come under section 951(a).

7 “(4) PREVIOUSLY DEFERRED FOREIGN IN-
8 COME.—The term ‘previously deferred foreign in-
9 come’ means the aggregate amount of deferred for-
10 eign income for all prior taxable years to which this
11 part applies, determined as of the beginning of the
12 taxable year, reduced by the repatriated foreign in-
13 come for all such prior taxable years.

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

18 “(6) PREVIOUSLY DEFERRED DEDUCTIONS.—
19 The term ‘previously deferred deductions’ means the
20 aggregate amount of foreign-related deductions not
21 taken into account under subsection (a) for all prior
22 taxable years (determined as of the beginning of the
23 taxable year), reduced by any amounts taken into
24 account under subsection (b) for such prior taxable
25 years.

1 “(7) TREATMENT OF CERTAIN FOREIGN
2 TAXES.—

3 “(A) PAID BY CONTROLLED FOREIGN COR-
4 PORATION.—Section 78 shall not apply for pur-
5 poses of determining currently-taxed foreign in-
6 come and deferred foreign income.

7 “(B) PAID BY TAXPAYER.—For purposes
8 of determining currently-taxed foreign income,
9 gross income from sources without the United
10 States shall be reduced by the aggregate
11 amount of taxes described in the applicable
12 paragraph of section 901(b) which are paid by
13 the taxpayer (without regard to sections 902
14 and 960) during the taxable year.

15 “(8) COORDINATION WITH SECTION 976.—In
16 determining currently-taxed foreign income and de-
17 ferred foreign income, the amount of deemed foreign
18 tax credits shall be determined with regard to sec-
19 tion 976.

20 **“SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON**
21 **OVERALL BASIS.**

22 “(a) CURRENT YEAR ALLOWANCE.—For purposes of
23 this chapter, the amount taken into account as foreign in-
24 come taxes for any taxable year shall be an amount which

1 bears the same ratio to the total foreign income taxes for
 2 that taxable year as—

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

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

7 The portion of the total foreign income taxes for any tax-
 8 able year not taken into account under the preceding sen-
 9 tence for a taxable year shall only be taken into account
 10 as provided in subsection (b) (and shall not be taken into
 11 account for purposes of applying sections 902 and 960).

12 “(b) ALLOWANCE RELATED TO REPATRIATED DE-
 13 FERRED FOREIGN INCOME.—

14 “(1) IN GENERAL.—If there is repatriated for-
 15 eign income for any taxable year, the portion of the
 16 previously deferred foreign income taxes paid or ac-
 17 crued during such taxable year shall be taken into
 18 account for the taxable year as foreign taxes paid or
 19 accrued. Any such taxes so taken into account shall
 20 not be included in foreign income taxes for purposes
 21 of applying subsection (a) to such taxable year.

22 “(2) PORTION OF PREVIOUSLY DEFERRED FOR-
 23 EIGN INCOME TAXES.—For purposes of paragraph
 24 (1), the portion of the previously deferred foreign in-

1 come taxes allocated to repatriated deferred foreign
2 income is—

3 “(A) the amount which bears the same
4 proportion to such taxes, as

5 “(B) the repatriated deferred income bears
6 to the previously deferred foreign income.

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

9 “(1) PREVIOUSLY DEFERRED FOREIGN INCOME
10 TAXES.—The term ‘previously deferred foreign in-
11 come taxes’ means the aggregate amount of total
12 foreign income taxes not taken into account under
13 subsection (a) for all prior taxable years (determined
14 as of the beginning of the taxable year), reduced by
15 any amounts taken into account under subsection
16 (b) for such prior taxable years.

17 “(2) TOTAL FOREIGN INCOME TAXES.—The
18 term ‘total foreign income taxes’ means the sum of
19 foreign income taxes paid or accrued during the tax-
20 able year (determined without regard to section
21 904(c)) plus the increase in foreign income taxes
22 that would be paid or accrued during the taxable
23 year under sections 902 and 960 if—

1 “(A) all controlled foreign corporations
2 were treated as one controlled foreign corpora-
3 tion, and

4 “(B) all earnings and profits of all con-
5 trolled foreign corporations were subpart F in-
6 come (as defined in section 952).

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

11 “(4) CURRENTLY-TAXED FOREIGN INCOME AND
12 DEFERRED FOREIGN INCOME.—The terms ‘cur-
13 rently-taxed foreign income’ and ‘deferred foreign in-
14 come’ have the meanings given such terms by sec-
15 tion 975(c)).

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

17 “‘This subpart—

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

19 “(2) shall be applied separately with respect to
20 the categories of income specified in section
21 904(d)(1).”.

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

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

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

4 **SEC. 302. EXCESS INCOME FROM TRANSFERS OF INTANGI-**
5 **BLES TO LOW-TAXED AFFILIATES TREATED**
6 **AS SUBPART F INCOME.**

7 (a) IN GENERAL.—Subsection (a) of section 954 is
8 amended by inserting after paragraph (3) the following
9 new paragraph:

10 “(4) the foreign base company excess intangible
11 income for the taxable year (determined under sub-
12 section (f) and reduced as provided in subsection
13 (b)(5)), and”.

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

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

20 “(1) FOREIGN BASE COMPANY EXCESS INTAN-
21 GIBLE INCOME DEFINED.—

22 “(A) IN GENERAL.—The term ‘foreign
23 base company excess intangible income’ means,

1 with respect to any covered intangible, the ex-
 2 cess of—

3 “(i) the sum of—

4 “(I) gross income from the sale,
 5 lease, license, or other disposition of
 6 property in which such covered intan-
 7 gible is used directly or indirectly, and

8 “(II) gross income from the pro-
 9 vision of services related to such cov-
 10 ered intangible or in connection with
 11 property in which such covered intan-
 12 gible is used directly or indirectly,
 13 over

14 “(ii) 150 percent of the costs properly
 15 allocated and apportioned to the gross in-
 16 come taken into account under clause (i)
 17 other than expenses for interest and taxes
 18 and any expenses which are not directly al-
 19 locable to such gross income.

20 “(B) SAME COUNTRY INCOME NOT TAKEN
 21 INTO ACCOUNT.—If—

22 “(i) the sale, lease, license, or other
 23 disposition of the property referred to in
 24 subparagraph (A)(i)(I) is for use, con-
 25 sumption, or disposition in the country

1 under the laws of which the controlled for-
 2 eign corporation is created or organized, or
 3 “(ii) the services referred to in sub-
 4 paragraph (A)(i)(II) are performed in such
 5 country,
 6 the gross income from such sale, lease, license,
 7 or other disposition, or provision of services,
 8 shall not be taken into account under subpara-
 9 graph (A)(i).

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

12 “(A) IN GENERAL.—Foreign base company
 13 excess intangible income shall not include the
 14 applicable percentage of any item of income re-
 15 ceived by a controlled foreign corporation if the
 16 taxpayer establishes to the satisfaction of the
 17 Secretary that such income was subject to an
 18 effective rate of income tax imposed by a for-
 19 eign country in excess of 5 percent.

20 “(B) APPLICABLE PERCENTAGE.—For
 21 purposes of subparagraph (A), the term ‘appli-
 22 cable percentage’ means the ratio (expressed as
 23 a percentage), not greater than 100 percent,
 24 of—

1 “(i) the number of percentage points
 2 by which the effective rate of income tax
 3 referred to in subparagraph (A) exceeds 5
 4 percentage points, over

5 “(ii) 10 percentage points.

6 “(C) TREATMENT OF LOSSES IN DETER-
 7 MINING EFFECTIVE RATE OF FOREIGN INCOME
 8 TAX.—For purposes of determining the effective
 9 rate of income tax imposed by any foreign
 10 country—

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

14 “(ii) to the extent the income with re-
 15 spect to such intangible reduces losses in
 16 the relevant taxable year, such effective
 17 rate shall be treated as being the effective
 18 rate which would have been imposed on
 19 such income without regard to such losses.

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

24 “(A) which is sold, leased, licensed, or oth-
 25 erwise transferred (directly or indirectly) to

1 such controlled foreign corporation from a re-
 2 lated person, or

3 “(B) with respect to which such controlled
 4 foreign corporation and one or more related
 5 persons has (directly or indirectly) entered into
 6 any shared risk or development agreement (in-
 7 cluding any cost sharing agreement).

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

11 (c) SEPARATE BASKET FOR FOREIGN TAX CRED-
 12 IT.—Subsection (d) of section 904 is amended by redesign-
 13 ing paragraph (7) as paragraph (8) and by inserting
 14 after paragraph (6) the following new paragraph:

15 “(7) SEPARATE APPLICATION TO FOREIGN
 16 BASE COMPANY EXCESS INTANGIBLE INCOME.—

17 “(A) IN GENERAL.—Subsections (a), (b),
 18 and (c) of this section and sections 902, 907,
 19 and 960 shall be applied separately with respect
 20 to each item of income which is taken into ac-
 21 count under section 954(a)(4) as foreign base
 22 company excess intangible income.

23 “(B) REGULATIONS.—The Secretary may
 24 issue such regulations or other guidance as is
 25 necessary or appropriate to carry out the pur-

1 poses of this subsection, including regulations
 2 or other guidance which provides that related
 3 items of income may be aggregated for pur-
 4 poses of this paragraph.”.

5 (d) CONFORMING AMENDMENTS.—

6 (1) Paragraph (4) of section 954(b) is amended
 7 by inserting “foreign base company excess intangible
 8 income described in subsection (a)(4) or” before
 9 “foreign base company oil-related income” in the
 10 last sentence thereof.

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

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

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

1 **SEC. 303. LIMITATIONS ON INCOME SHIFTING THROUGH IN-**
 2 **TANGIBLE PROPERTY TRANSFERS.**

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

8 (b) CLARIFICATION OF ALLOWABLE VALUATION
 9 METHODS.—

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

13 “(D) REGULATORY AUTHORITY.—For pur-
 14 poses of the last sentence of subparagraph (A),
 15 the Secretary may require—

16 “(i) the valuation of transfers of in-
 17 tangible property on an aggregate basis, or

18 “(ii) the valuation of such a transfer
 19 on the basis of the realistic alternatives to
 20 such a transfer,

21 in any case in which the Secretary determines
 22 that such basis is the most reliable means of
 23 valuation of such transfers.”.

24 (2) ALLOCATION AMONG TAXPAYERS.—Section
 25 482 is amended by adding at the end the following:
 26 “For purposes of the preceding sentence, the Sec-

retary may require the valuation of transfers of intangible property on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.”.

(c) EFFECTIVE DATE.—

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

(2) NO INFERENCE.—Nothing in the amendment made by subsection (a) shall be construed to create any inference with respect to the application of section 936(h)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treasury to provide regulations for such application, on or before the date of the enactment of such amendment.

SEC. 304. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN FOREIGN ENTITIES AND CFC LOOK-THRU RULES.

(a) CHECK-THE-BOX RULES.—Paragraph (3) of section 7701(a) is amended—

(1) by striking “and”, and

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

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

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

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

10 “(C) TERMINATION.—Subparagraph (A)
 11 shall not apply to dividends, interest, rents, and
 12 royalties received or accrued after the date of
 13 the enactment of the Stop Tax Haven Abuse
 14 Act.”.

15 **SEC. 305. PROHIBITION ON OFFSHORE LOAN ABUSE.**

16 (a) IN GENERAL.—Subpart F of part III of sub-
 17 chapter N of chapter 1 is amended by adding at the end
 18 the following new section:

19 **“SEC. 966. INCOME INCLUSION FOR LOANS TO UNITED**
 20 **STATES SHAREHOLDERS FROM CONTROLLED**
 21 **FOREIGN CORPORATIONS.**

22 “(a) IN GENERAL.—In the case of a United States
 23 shareholder, there shall be included in income for the tax-
 24 able year an amount equal to the disqualified CFC loan
 25 amount.

1 “(b) DISQUALIFIED CFC LOAN AMOUNT.—

2 “(1) IN GENERAL.—For purposes of this sec-
3 tion, the disqualified CFC loan amount for any tax-
4 able year is an amount equal to the lesser of—

5 “(A) the aggregate amount of obligations
6 of the United States shareholder which origi-
7 nated in such taxable year and are held (di-
8 rectly or indirectly) by controlled foreign cor-
9 porations, or

10 “(B) the foreign group earnings amount.

11 “(2) EXCEPTION.—In determining the amount
12 of obligations under subparagraph (A), there shall
13 be excluded any obligation described in section
14 956(c)(2)(C).

15 “(3) CARRYFORWARD OF CERTAIN AMOUNTS.—
16 If, for any taxable year, the amount under subpara-
17 graph (A) exceeds the amount under subparagraph
18 (B), such excess shall be taken into account as an
19 obligation to which subparagraph (A) applies for the
20 succeeding taxable year.

21 “(4) FOREIGN GROUP EARNINGS AMOUNT.—
22 For purposes of this section, the term ‘foreign group
23 earnings amount’ means the aggregate earnings and
24 profits of all controlled foreign corporations in the
25 worldwide affiliated group (as defined in section

1 864(f)(1)(C)) of the United States shareholder, de-
2 termined—

3 “(A) as of the last day of the taxable year
4 of the United States shareholder, and

5 “(B) without regard to any distributions
6 made during such taxable year.

7 “(c) DENIAL OF INTEREST DEDUCTION.—No deduc-
8 tion shall be allowed for interest paid or accrued with re-
9 spect to obligations taken into account under subsection
10 (b).

11 “(d) TREATMENT OF INCOME SOURCE.—Any
12 amount included in income under subsection (a) shall be
13 treated as income from sources within the United States.”.

14 (b) COORDINATION WITH SECTION 956.—Paragraph
15 (2) of section 956(c) is amended by striking “and” at the
16 end of subparagraph (K), by striking the period at the
17 end of subparagraph (L)(ii) and inserting “; and”, and
18 by inserting after subparagraph (L) the following new sub-
19 paragraph:

20 “(M) any obligation which is taken into ac-
21 count in determining the disqualified CFC loan
22 amount under section 966.”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for subpart F of part III of subchapter N of chapter 1
25 is amended by adding at the end the following new item:

“Sec. 966. Income inclusion for loans to certain United States shareholders from controlled foreign corporations.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations originated after the
3 date of the enactment of this Act.

