

116TH CONGRESS
1ST SESSION

H. R. 1712

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 2019

Mr. DOGGETT (for himself, Mr. BLUMENAUER, Mr. CARTWRIGHT, Ms. JUDY CHU of California, Mr. COHEN, Mr. COURTNEY, Mr. DANNY K. DAVIS of Illinois, Mr. DEFazio, Ms. DELAURO, Mr. DEUTCH, Mr. GARAMENDI, Mr. GRIJALVA, Mr. HIGGINS of New York, Mr. HUFFMAN, Ms. JAYAPAL, Ms. JOHNSON of Texas, Mr. JOHNSON of Georgia, Ms. KAPTUR, Ms. KELLY of Illinois, Mr. LANGEVIN, Mr. LARSON of Connecticut, Ms. LEE of California, Mr. TED LIEU of California, Mr. LOEBSACK, Mr. LYNCH, Mr. MCGOVERN, Ms. MOORE, Mr. NADLER, Mrs. NAPOLITANO, Ms. NORTON, Ms. OCASIO-CORTEZ, Ms. PINGREE, Mr. RASKIN, Mr. RUSH, Mr. RYAN, Mr. SARBANES, Ms. SCHAKOWSKY, Mr. TAKANO, Ms. TLAIB, Mr. TONKO, Mrs. WATSON COLEMAN, Ms. WILD, Mr. YARMUTH, Mr. LEWIS, and Mr. GARCÍA of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

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

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

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

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

Sec. 1. Short title, etc.

TITLE I—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

- Sec. 101. Repeal of check-the-box rules for certain foreign entities and CFC look-thru rules.
- Sec. 102. Limitation on deduction of interest by domestic corporations which are members of an international financial reporting group.
- Sec. 103. Treatment of foreign corporations managed and controlled in the United States as domestic corporations.
- Sec. 104. Swap payments made from the United States to persons offshore.
- Sec. 105. Modifications to rules relating to inverted corporations.
- Sec. 106. Requirement to disclose total corporate taxes paid.
- Sec. 107. Penalty for election to pay tax on deferred foreign income in installments.

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.

1 **TITLE I—ENDING CORPORATE**
2 **OFFSHORE TAX AVOIDANCE**

3 **SEC. 101. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN**
4 **FOREIGN ENTITIES AND CFC LOOK-THRU**
5 **RULES.**

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

8 (1) by striking “and”, and

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

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

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

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

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

23 (c) EFFECTIVE DATE.—

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

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

7 **SEC. 102. LIMITATION ON DEDUCTION OF INTEREST BY DO-**
 8 **MESTIC CORPORATIONS WHICH ARE MEM-**
 9 **BERS OF AN INTERNATIONAL FINANCIAL RE-**
 10 **PORTING GROUP.**

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

14 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
 15 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
 16 CIAL REPORTING GROUPS.—

17 “(1) IN GENERAL.—In the case of any domestic
 18 corporation which is a member of any international
 19 financial reporting group, the deduction under this
 20 chapter for interest paid or accrued during the tax-
 21 able year shall not exceed the sum of—

22 “(A) the allowable percentage of 110 per-
 23 cent of the excess (if any) of—

24 “(i) the amount of such interest so
 25 paid or accrued, over

1 “(ii) the amount described in subpara-
2 graph (B), plus

3 “(B) the amount of interest includible in
4 gross income of such corporation for such tax-
5 able year.

6 “(2) INTERNATIONAL FINANCIAL REPORTING
7 GROUP.—

8 “(A) For purposes of this subsection, the
9 term ‘international financial reporting group’
10 means, with respect to any reporting year, any
11 group of entities which—

12 “(i) includes—

13 “(I) at least one foreign corpora-
14 tion engaged in a trade or business
15 within the United States, or

16 “(II) at least one domestic cor-
17 poration and one foreign corporation,

18 “(ii) prepares consolidated financial
19 statements with respect to such year, and

20 “(iii) reports in such statements aver-
21 age annual gross receipts (determined in
22 the aggregate with respect to all entities
23 which are part of such group) for the 3-re-
24 porting-year period ending with such re-
25 porting year in excess of \$100,000,000.

1 “(B) RULES RELATING TO DETERMINA-
2 TION OF AVERAGE GROSS RECEIPTS.—For pur-
3 poses of subparagraph (A)(iii), rules similar to
4 the rules of section 448(c)(3) shall apply.

5 “(3) ALLOWABLE PERCENTAGE.—For purposes
6 of this subsection—

7 “(A) IN GENERAL.—The term ‘allowable
8 percentage’ means, with respect to any domestic
9 corporation for any taxable year, the ratio (ex-
10 pressed as a percentage and not greater than
11 100 percent) of—

12 “(i) such corporation’s allocable share
13 of the international financial reporting
14 group’s reported net interest expense for
15 the reporting year of such group which
16 ends in or with such taxable year of such
17 corporation, over

18 “(ii) such corporation’s reported net
19 interest expense for such reporting year of
20 such group.

21 “(B) REPORTED NET INTEREST EX-
22 PENSE.—The term ‘reported net interest ex-
23 pense’ means—

1 “(i) with respect to any international
2 financial reporting group for any reporting
3 year, the excess of—

4 “(I) the aggregate amount of in-
5 terest expense reported in such
6 group’s consolidated financial state-
7 ments for such taxable year, over

8 “(II) the aggregate amount of in-
9 terest income reported in such group’s
10 consolidated financial statements for
11 such taxable year, and

12 “(ii) with respect to any domestic cor-
13 poration for any reporting year, the excess
14 of—

15 “(I) the amount of interest ex-
16 pense of such corporation reported in
17 the books and records of the inter-
18 national financial reporting group
19 which are used in preparing such
20 group’s consolidated financial state-
21 ments for such taxable year, over

22 “(II) the amount of interest in-
23 come of such corporation reported in
24 such books and records.

1 “(C) ALLOCABLE SHARE OF REPORTED
2 NET INTEREST EXPENSE.—With respect to any
3 domestic corporation which is a member of any
4 international financial reporting group, such
5 corporation’s allocable share of such group’s re-
6 ported net interest expense for any reporting
7 year is the portion of such expense which bears
8 the same ratio to such expense as—

9 “(i) the EBITDA of such corporation
10 for such reporting year, bears to

11 “(ii) the EBITDA of such group for
12 such reporting year.

13 “(D) EBITDA.—

14 “(i) IN GENERAL.—The term
15 ‘EBITDA’ means, with respect to any re-
16 porting year, earnings before interest,
17 taxes, depreciation, and amortization—

18 “(I) as determined in the inter-
19 national financial reporting group’s
20 consolidated financial statements for
21 such year, or

22 “(II) for purposes of subpara-
23 graph (A)(i), as determined in the
24 books and records of the international
25 financial reporting group which are

1 used in preparing such statements if
 2 not determined in such statements.

3 “(ii) TREATMENT OF DISREGARDED
 4 ENTITIES.—The EBITDA of any domestic
 5 corporation shall not fail to include the
 6 EBITDA of any entity which is dis-
 7 regarded for purposes of this chapter.

8 “(iii) TREATMENT OF INTRA-GROUP
 9 DISTRIBUTIONS.—The EBITDA of any do-
 10 mestic corporation shall be determined
 11 without regard to any distribution received
 12 by such corporation from any other mem-
 13 ber of the international financial reporting
 14 group.

15 “(E) SPECIAL RULES FOR NON-POSITIVE
 16 EBITDA.—

17 “(i) NON-POSITIVE GROUP EBITDA.—
 18 In the case of any international financial
 19 reporting group the EBITDA of which is
 20 zero or less, paragraph (1) shall not apply
 21 to any member of such group the EBITDA
 22 of which is above zero.

23 “(ii) NON-POSITIVE ENTITY
 24 EBITDA.—In the case of any group mem-
 25 ber the EBITDA of which is zero or less,

1 paragraph (1) shall be applied without re-
2 gard to subparagraph (A) thereof.

3 “(4) CONSOLIDATED FINANCIAL STATEMENT.—

4 For purposes of this subsection, the term ‘consoli-
5 dated financial statement’ means any consolidated
6 financial statement described in paragraph (2)(A)(ii)
7 if such statement is—

8 “(A) a financial statement which is cer-
9 tified as being prepared in accordance with gen-
10 erally accepted accounting principles, inter-
11 national financial reporting standards, or any
12 other comparable method of accounting identi-
13 fied by the Secretary, and which is—

14 “(i) a 10-K (or successor form), or
15 annual statement to shareholders, required
16 to be filed with the United States Securi-
17 ties and Exchange Commission,

18 “(ii) an audited financial statement
19 which is used for—

20 “(I) credit purposes,

21 “(II) reporting to shareholders,
22 partners, or other proprietors, or to
23 beneficiaries, or

24 “(III) any other substantial
25 nontax purpose,

1 but only if there is no statement described
2 in clause (i), or

3 “(iii) filed with any other Federal or
4 State agency for nontax purposes, but only
5 if there is no statement described in clause
6 (i) or (ii), or

7 “(B) a financial statement which—

8 “(i) is used for a purpose described in
9 subclause (I), (II), or (III) of subpara-
10 graph (A)(ii), or

11 “(ii) filed with any regulatory or gov-
12 ernmental body (whether domestic or for-
13 eign) specified by the Secretary,

14 but only if there is no statement described in
15 subparagraph (A).

16 “(5) REPORTING YEAR.—For purposes of this
17 subsection, the term ‘reporting year’ means, with re-
18 spect to any international financial reporting group,
19 the year with respect to which the consolidated fi-
20 nancial statements are prepared.

21 “(6) APPLICATION TO CERTAIN ENTITIES.—

22 “(A) PARTNERSHIPS.—Except as other-
23 wise provided by the Secretary in paragraph
24 (7), this subsection and subsection (o) shall
25 apply to any partnership which is a member of

1 any international financial reporting group
 2 under rules similar to the rules of section
 3 163(j)(4).

4 “(B) FOREIGN CORPORATIONS ENGAGED
 5 IN TRADE OR BUSINESS WITHIN THE UNITED
 6 STATES.—Except as otherwise provided by the
 7 Secretary in paragraph (7), any deduction for
 8 interest paid or accrued by a foreign corpora-
 9 tion engaged in a trade or business within the
 10 United States shall be limited in a manner con-
 11 sistent with the principles of this subsection.

12 “(C) CONSOLIDATED GROUPS.—For pur-
 13 poses of this subsection, the members of any
 14 group that file (or are required to file) a con-
 15 solidated return with respect to the tax imposed
 16 by chapter 1 for a taxable year shall be treated
 17 as a single corporation.

18 “(7) REGULATIONS.—The Secretary may issue
 19 such regulations or other guidance as are necessary
 20 or appropriate to carry out the purposes of this sub-
 21 section.”.

22 (b) CARRYFORWARD OF DISALLOWED INTEREST.—
 23 (1) IN GENERAL.—Section 163 is amended by
 24 inserting after subsection (n), as added by sub-
 25 section (a), the following new subsection:

1 “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-
 2 TEREST.—The amount of any interest not allowed as a
 3 deduction for any taxable year by reason of subsection
 4 (j)(1) or (n)(1) (whichever imposes the lower limitation
 5 with respect to such taxable year) shall be treated as inter-
 6 est (and as business interest for purposes of subsection
 7 (j)(1)) paid or accrued in the succeeding taxable year. In-
 8 terest paid or accrued in any taxable year (determined
 9 without regard to the preceding sentence) shall not be car-
 10 ried past the fifth taxable year following such taxable year,
 11 determined by treating interest as allowed as a deduction
 12 on a first-in, first-out basis.”.

13 (2) CONFORMING AMENDMENTS.—

14 (A) Section 163(j)(2) is amended to read
 15 as follows:

16 “(2) CARRYFORWARD CROSS-REFERENCE.—For
 17 carryforward treatment, see subsection (o).”.

18 (B) Section 163(j)(4)(B)(i)(I) is amended
 19 by striking “paragraph (2)” and inserting “sub-
 20 section (o)”.

21 (C) Section 381(c)(20) is amended to read
 22 as follows:

23 “(20) CARRYFORWARD OF DISALLOWED INTER-
 24 EST.—The carryover of disallowed interest described

1 in section 163(o) to taxable years ending after the
 2 date of distribution or transfer.”.

3 (D) Section 382(d)(3) is amended to read
 4 as follows:

5 “(3) APPLICATION TO CARRYFORWARD OF DIS-
 6 ALLOWED INTEREST.—The term ‘pre-change loss’
 7 shall include any carryover of disallowed interest de-
 8 scribed in section 163(o) under rules similar to the
 9 rules of paragraph (1).”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2018.

13 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 14 **AGED AND CONTROLLED IN THE UNITED**
 15 **STATES AS DOMESTIC CORPORATIONS.**

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

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

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

1 “(A) the corporation would not otherwise
2 be treated as a domestic corporation for pur-
3 poses of this title, but

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

10 “(2) CORPORATION DESCRIBED.—

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

13 “(i) the stock of such corporation is
14 regularly traded on an established securi-
15 ties market, or

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

23 “(B) GENERAL EXCEPTION.—A corpora-
24 tion shall not be treated as described in this
25 paragraph if—

1 “(i) such corporation was treated as a
2 corporation described in this paragraph in
3 a preceding taxable year,

4 “(ii) such corporation—

5 “(I) is not regularly traded on an
6 established securities market, and

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

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

15 “(3) MANAGEMENT AND CONTROL.—

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

21 “(B) EXECUTIVE OFFICERS AND SENIOR
22 MANAGEMENT.—Such regulations shall provide
23 that—

24 “(i) the management and control of a
25 corporation shall be treated as occurring

1 primarily within the United States if sub-
2 stantially all of the executive officers and
3 senior management of the corporation who
4 exercise day-to-day responsibility for mak-
5 ing decisions involving strategic, financial,
6 and operational policies of the corporation
7 are located primarily within the United
8 States, and

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

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

24 “(i) the assets of such corporation (di-
25 rectly or indirectly) consist primarily of as-

1 sets being managed on behalf of investors,
 2 and
 3 “(ii) decisions about how to invest the
 4 assets are made in the United States.”.

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

11 **SEC. 104. SWAP PAYMENTS MADE FROM THE UNITED**
 12 **STATES TO PERSONS OFFSHORE.**

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

15 (1) by inserting “swap payments (as identified
 16 in section 1256(b)(2)(B)),” after “annuities,” in
 17 subparagraph (A), and

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

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

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

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

8 **SEC. 105. MODIFICATIONS TO RULES RELATING TO IN-**
9 **VERTED CORPORATIONS.**

10 (a) IN GENERAL.—Subsection (b) of section 7874 is
11 amended to read as follows:

12 “(b) INVERTED CORPORATIONS TREATED AS DO-
13 MESTIC CORPORATIONS.—

14 “(1) IN GENERAL.—Notwithstanding section
15 7701(a)(4), a foreign corporation shall be treated for
16 purposes of this title as a domestic corporation if—

17 “(A) such corporation would be a surro-
18 gate foreign corporation if subsection (a)(2)
19 were applied by substituting ‘80 percent’ for
20 ‘60 percent’, or

21 “(B) such corporation is an inverted do-
22 mestic corporation.

23 “(2) INVERTED DOMESTIC CORPORATION.—For
24 purposes of this subsection, a foreign corporation
25 shall be treated as an inverted domestic corporation

1 if, pursuant to a plan (or a series of related trans-
2 actions)—

3 “(A) the entity completes after December
4 22, 2017, the direct or indirect acquisition of—

5 “(i) substantially all of the properties
6 held directly or indirectly by a domestic
7 corporation, or

8 “(ii) substantially all of the assets of,
9 or substantially all of the properties consti-
10 tuting a trade or business of, a domestic
11 partnership, and

12 “(B) after the acquisition, either—

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

15 “(I) in the case of an acquisition
16 with respect to a domestic corpora-
17 tion, by former shareholders of the
18 domestic corporation by reason of
19 holding stock in the domestic corpora-
20 tion, or

21 “(II) in the case of an acquisition
22 with respect to a domestic partner-
23 ship, by former partners of the do-
24 mestic partnership by reason of hold-

1 ing a capital or profits interest in the
2 domestic partnership, or
3 “(ii) the management and control of
4 the expanded affiliated group which in-
5 cludes the entity occurs, directly or indi-
6 rectly, primarily within the United States,
7 and such expanded affiliated group has
8 significant domestic business activities.

9 “(3) EXCEPTION FOR CORPORATIONS WITH
10 SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN
11 COUNTRY OF ORGANIZATION.—A foreign corporation
12 described in paragraph (2) shall not be treated as an
13 inverted domestic corporation if after the acquisition
14 the expanded affiliated group which includes the en-
15 tity has substantial business activities in the foreign
16 country in which or under the law of which the enti-
17 ty is created or organized when compared to the
18 total business activities of such expanded affiliated
19 group. For purposes of subsection (a)(2)(B)(iii) and
20 the preceding sentence, the term ‘substantial busi-
21 ness activities’ shall have the meaning given such
22 term under regulations in effect on December 22,
23 2017, except that the Secretary may issue regula-
24 tions increasing the threshold percent in any of the
25 tests under such regulations for determining if busi-

1 ness activities constitute substantial business activi-
2 ties for purposes of this paragraph.

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

5 “(A) IN GENERAL.—The Secretary shall
6 prescribe regulations for purposes of deter-
7 mining cases in which the management and
8 control of an expanded affiliated group is to be
9 treated as occurring, directly or indirectly, pri-
10 marily within the United States. The regula-
11 tions prescribed under the preceding sentence
12 shall apply to periods after December 22, 2017.

13 “(B) EXECUTIVE OFFICERS AND SENIOR
14 MANAGEMENT.—Such regulations shall provide
15 that the management and control of an ex-
16 panded affiliated group shall be treated as oc-
17 curring, directly or indirectly, primarily within
18 the United States if substantially all of the ex-
19 ecutive officers and senior management of the
20 expanded affiliated group who exercise day-to-
21 day responsibility for making decisions involving
22 strategic, financial, and operational policies of
23 the expanded affiliated group are based or pri-
24 marily located within the United States. Indi-
25 viduals who in fact exercise such day-to-day re-

1 sponsibilities shall be treated as executive offi-
2 cers and senior management regardless of their
3 title.

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

8 “(A) the employees of the group are based
9 in the United States,

10 “(B) the employee compensation incurred
11 by the group is incurred with respect to employ-
12 ees based in the United States,

13 “(C) the assets of the group are located in
14 the United States, or

15 “(D) the income of the group is derived in
16 the United States,

17 determined in the same manner as such determina-
18 tions are made for purposes of determining substan-
19 tial business activities under regulations referred to
20 in paragraph (3) as in effect on December 22, 2017,
21 but applied by treating all references in such regula-
22 tions to ‘foreign country’ and ‘relevant foreign coun-
23 try’ as references to ‘the United States’. The Sec-
24 retary may issue regulations decreasing the thresh-
25 old percent in any of the tests under such regula-

tions for determining if business activities constitute significant domestic business activities for purposes of this paragraph.”.

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 7874(a)(2)(B) is amended by striking “after March 4, 2003,” and inserting “after March 4, 2003, and before December 23, 2017,”.

(2) Subsection (c) of section 7874 is amended—

(A) in paragraph (2)—

(i) by striking “subsection (a)(2)(B)(ii)” and inserting “subsections (a)(2)(B)(ii) and (b)(2)(B)(i)”;

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

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

(C) in paragraph (5), by striking “subsection (a)(2)(B)(ii)” and inserting “subsections (a)(2)(B)(ii) and (b)(2)(B)(i)”;

(D) in paragraph (6), by inserting “or inverted domestic corporation, as the case may be,” after “surrogate foreign corporation”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after De-
3 cember 22, 2017.

4 **SEC. 106. REQUIREMENT TO DISCLOSE TOTAL CORPORATE**
5 **TAXES PAID.**

6 (a) IN GENERAL.—Section 13 of the Securities Ex-
7 change Act of 1934 (15 U.S.C. 78m) is amended by add-
8 ing at the end the following new subsection:

9 “(s) DISCLOSURE OF TOTAL CORPORATE TAXES
10 PAID.—

11 “(1) ISSUER DISCLOSURE REQUIREMENT.—
12 Each issuer required to file an annual or quarterly
13 report under subsection (a) shall disclose in that re-
14 port—

15 “(A) the total pre-tax profit of the issuer
16 during the period covered by the report;

17 “(B) the total amount paid by the issuer
18 in State taxes during the period covered by the
19 report;

20 “(C) the total amount paid by the issuer in
21 Federal taxes during the period covered by the
22 report; and

23 “(D) the total amount paid by the issuer
24 in foreign taxes during the period covered by
25 the report.

1 “(2) DISCLOSURE OF COUNTRY-BY-COUNTRY
2 REPORTING INFORMATION.—Each issuer required to
3 file an annual or quarterly report under subsection
4 (a) shall disclose in that report, for each of its sub-
5 sidiaries and aggregated on a country-by-country
6 basis—

7 “(A) revenues generated from transactions
8 with other constituent entities;

9 “(B) revenues not generated from trans-
10 actions with other constituent entities;

11 “(C) profit or loss before income tax;

12 “(D) total income tax paid on a cash basis
13 to all tax jurisdictions, and any taxes withheld
14 on payments received by the constituent enti-
15 ties;

16 “(E) total accrued tax expense recorded on
17 taxable profits or losses, reflecting only oper-
18 ations in the relevant annual period and exclud-
19 ing deferred taxes or provisions for uncertain
20 tax liabilities;

21 “(F) stated capital, except that the stated
22 capital of a permanent establishment must be
23 reported in the tax jurisdiction of residence of
24 the legal entity of which it is a permanent es-
25 tablishment unless there is a defined capital re-

1 quirement in the permanent establishment tax
2 jurisdiction for regulatory purposes;

3 “(G) total accumulated earnings, except
4 that accumulated earnings of a permanent es-
5 tablishment must be reported by the legal entity
6 of which it is a permanent establishment;

7 “(H) total number of employees on a full-
8 time equivalent basis; and

9 “(I) net book value of tangible assets,
10 which, for purposes of this section, does not in-
11 clude cash or cash equivalents, intangibles, or
12 financial assets.

13 “(3) AVAILABILITY OF INFORMATION.—The
14 Commission shall make the information filed with
15 the Commission pursuant to this subsection publicly
16 available through the Commission website in a man-
17 ner that is searchable, sortable, and downloadable.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to disclosures made after the date
20 of the enactment of this Act.

21 **SEC. 107. PENALTY FOR ELECTION TO PAY TAX ON DE-**
22 **FERRED FOREIGN INCOME IN INSTALL-**
23 **MENTS.**

24 (a) IN GENERAL.—Section 965(h) is amended by
25 adding at the end the following new paragraph:

1 “(7) PENALTY.—Interest on installments under
 2 this subsection shall be payable as determined under
 3 section 6601 by treating the last date prescribed for
 4 payment for any installment as the date for payment
 5 of the first installment under this subsection.”.

6 (b) EFFECTIVE DATE.—The amendment made by
 7 subsection (a) shall take effect as if included in section
 8 14103 of Public Law 115–97.

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

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

16 (a) IN GENERAL.—Section 5318A of title 31, United
 17 States Code, is amended—

18 (1) by striking the section heading and insert-
 19 ing the following: “**Special measures for juris-**
 20 **dictions, financial institutions, or inter-**
 21 **national transactions that are of primary**
 22 **money laundering concern or signifi-**
 23 **cantly impede United States tax enforce-**
 24 **ment**”;

1 (2) in subsection (a), by striking the subsection
2 heading and inserting the following: “SPECIAL
3 MEASURES TO COUNTER MONEY LAUNDERING AND
4 EFFORTS TO SIGNIFICANTLY IMPEDE UNITED
5 STATES TAX ENFORCEMENT”;

6 (3) in subsection (c)—

7 (A) by striking the subsection heading and
8 inserting the following: “CONSULTATIONS AND
9 INFORMATION TO BE CONSIDERED IN FINDING
10 JURISDICTIONS, INSTITUTIONS, TYPES OF AC-
11 COUNTS, OR TRANSACTIONS TO BE OF PRI-
12 MARY MONEY LAUNDERING CONCERN OR TO
13 BE SIGNIFICANTLY IMPEDING UNITED STATES
14 TAX ENFORCEMENT”; and

15 (B) in paragraph (2), by adding at the end
16 the following:

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

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

4 (5) in subsection (a)(4)—

5 (A) in subparagraph (A)—

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

9 (ii) by striking “and” at the end;

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

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

14 “(B) in matters involving United States
15 tax enforcement, shall consult with the Commis-
16 sioner of Internal Revenue, the Secretary of
17 State, the Attorney General of the United
18 States, and in the sole discretion of the Sec-
19 retary, such other agencies and interested par-
20 ties as the Secretary may find to be appro-
21 priate; and”;

22 (6) in each of paragraphs (1)(A), (2), (3), and
23 (4) of subsection (b), by inserting “or to be signifi-
24 cantly 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 by any domestic finan-
23 cial institution or domestic financial agency for
24 or on behalf of a foreign banking institution, if
25 such correspondent account or payable-through

1 account involves any such jurisdiction or insti-
2 tution, or if any such transaction may be con-
3 ducted through such correspondent account or
4 payable-through account; or

5 “(B) the authorization, approval, or use in
6 the United States of a credit card, charge card,
7 debit card, or similar credit or debit financial
8 instrument by any domestic financial institu-
9 tion, domestic financial agency, or credit card
10 company or association for or on behalf of a
11 foreign banking institution, if such credit card,
12 charge card, debit card, or similar credit or
13 debit financial instrument involves any such ju-
14 risdiction or institution, or if any such trans-
15 action may be conducted through such credit
16 card, charge card, debit card, or similar credit
17 or debit financial instrument.”;

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

21 (9) in subsection (c)(2)(A)—

22 (A) in clause (ii), by striking “bank secrecy
23 or special regulatory advantages” and inserting
24 “bank, tax, corporate, trust, or financial secrecy
25 or regulatory advantages”;

1 (B) in clause (iii), by striking “supervisory
2 and counter-money” and inserting “supervisory,
3 international tax enforcement, and counter-
4 money”;

5 (C) in clause (v), by striking “banking or
6 secrecy” and inserting “banking, tax, or se-
7 crecy”; and

8 (D) in clause (vi), by inserting “, tax trea-
9 ty, or tax information exchange agreement”
10 after “treaty”;

11 (10) in subsection (c)(2)(B)—

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

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

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

22 (b) CLERICAL AMENDMENT.—The table of contents
23 for chapter 53 of title 31, United States Code, is amended
24 by striking the item relating to section 5318A and insert-
25 ing the following:

“5318A. Special measures for jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or significantly impede United States tax enforcement.”.

1 **SEC. 202. STRENGTHENING THE FOREIGN ACCOUNT TAX**
 2 **COMPLIANCE ACT (FATCA).**

3 (a) REPORTING ACTIVITIES WITH RESPECT TO PAS-
 4 SIVE FOREIGN INVESTMENT COMPANIES.—Section
 5 1298(f) is amended by inserting “, or who directly or indi-
 6 rectly forms, transfers assets to, is a beneficiary of, has
 7 a beneficial interest in, or receives money or property or
 8 the use thereof from,” after “shareholder of”.

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

11 (1) in paragraph (2)(A), by inserting “or trans-
 12 action” after “any depository”, and

13 (2) in paragraph (5)(C), by striking “or any in-
 14 terest” and all that follows and inserting “deriva-
 15 tives, or any interest (including a futures or forward
 16 contract, swap, or option) in such securities, part-
 17 nership interests, commodities, or derivatives.”.

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

20 (1) by inserting “as a result of any customer
 21 identification, anti-money laundering, anti-corrup-
 22 tion, or similar obligation to identify account hold-

1 ers,” after “reason to know,” in subsection (b)(2),
2 and

3 (2) by inserting “as posing a low risk of tax
4 evasion” after “this subsection” in subsection
5 (c)(1)(G).

6 (d) DEFINITIONS.—Clauses (i) and (ii) of section
7 1473(2)(A) are each amended by inserting “or as a bene-
8 ficial owner” after “indirectly”.

9 (e) SPECIAL RULES.—Section 1474(c) is amended—
10 (1) by inserting “, except that information pro-
11 vided under section 1471(c) or 1472(b) may be dis-
12 closed to any Federal law enforcement agency, upon
13 request or upon the initiation of the Secretary, to in-
14 vestigate or address a possible violation of United
15 States law” after “shall apply” in paragraph (1),
16 and

17 (2) by inserting “, or has had an agreement
18 terminated under such section,” after “section
19 1471(b)” in paragraph (2).

20 (f) INFORMATION WITH RESPECT TO FOREIGN FI-
21 NANCIAL ASSETS.—Section 6038D(a) is amended by in-
22 serting “ownership or beneficial ownership” after “holds
23 any”.

1 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES
 2 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-
 3 TIONS.—

4 (1) PRESUMPTIONS FOR TAX PURPOSES.—

5 (A) IN GENERAL.—Chapter 76 is amended
 6 by inserting after section 7491 the following
 7 new subchapter:

8 **“Subchapter F—Presumptions for Certain**
 9 **Legal Proceedings**

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

10 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
 11 **TRANSACTIONS INVOLVING NON-FATCA IN-**
 12 **STITUTIONS.**

13 “(a) CONTROL.—For purposes of any United States
 14 civil judicial or administrative proceeding to determine or
 15 collect tax, there shall be a rebuttable presumption that
 16 a United States person who, directly or indirectly, formed,
 17 transferred assets to, was a beneficiary of, had a beneficial
 18 interest in, or received money or property or the use there-
 19 of from an entity, including a trust, corporation, limited
 20 liability company, partnership, or foundation, that holds
 21 an account, or in any other manner has assets, in a non-
 22 FATCA institution, exercised control over such entity. The
 23 presumption of control created by this subsection shall not

1 be applied to prevent the Secretary from determining or
2 arguing the absence of control.

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

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

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

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

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

13 (B) The table of subchapters for chapter
14 76 is amended by inserting after the item relat-
15 ing to subchapter E the following new item:

“SUBCHAPTER F. PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

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

23 (3) PRESUMPTIONS FOR SECURITIES LAW PUR-
24 POSES.—Section 21 of the Securities Exchange Act

1 of 1934 (15 U.S.C. 78u) is amended by adding at
2 the end the following new subsection:

3 “(j) PRESUMPTIONS PERTAINING TO CONTROL AND
4 BENEFICIAL OWNERSHIP.—

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

21 “(2) BENEFICIAL OWNERSHIP.—For purposes
22 of any civil judicial or administrative proceeding
23 under this title, there shall be a rebuttable presump-
24 tion that securities that are nominally owned by an
25 entity, including a trust, corporation, limited liability

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

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

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

21 (5) REGULATORY AUTHORITY.—Not later than
22 180 days after the date of enactment of this Act, the
23 Secretary of the Treasury and the Chairman of the
24 Securities and Exchange Commission shall each
25 adopt regulations or other guidance necessary to im-

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

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

14 **SEC. 203. REPORTING UNITED STATES BENEFICIAL OWN-**
 15 **ERS OF FOREIGN OWNED FINANCIAL AC-**
 16 **COUNTS.**

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

20 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**
 21 **FICIAL OWNERS OF FINANCIAL ACCOUNTS**
 22 **LOCATED IN THE UNITED STATES AND HELD**
 23 **IN THE NAME OF A FOREIGN ENTITY.**

24 “(a) REQUIREMENT OF RETURN.—If—

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

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

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

17 “(b) REQUIRED INFORMATION.—For purposes of
18 subsection (a) the information required to be included on
19 the return shall include—

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

23 “(2) the known facts pertaining to the relation-
24 ship of such United States beneficial owner to the
25 foreign entity and the account,

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

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

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

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

16 “(2) the information required to be shown on
17 such return with respect to such United States bene-
18 ficial owner.

19 The written statement required under the preceding sen-
20 tence shall be furnished to the United States beneficial
21 owner on or before January 31 of the year following the
22 calendar year for which the return under subsection (a)
23 was required to be made. In the event the person filing
24 such return does not have a current address for the United

1 States beneficial owner, such written statement may be
 2 mailed to the address of the foreign entity.

3 **“SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS RE-**
 4 **GARDING ESTABLISHMENT OF ACCOUNTS IN**
 5 **NON-FATCA INSTITUTIONS.**

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

17 “(b) REQUIRED INFORMATION.—For purposes of
 18 subsection (a) the information required to be included on
 19 the return shall include—

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

22 “(2) the name and address of the financial in-
 23 stitution at which a financial account is opened, the
 24 type of account, the account number, the name

1 under which the account was opened, and the
2 amount of the initial deposit,

3 “(3) if the account is held in the name of an
4 entity, the name and address of such entity, the type
5 of entity, and the name and address of any company
6 formation agent or other professional employed to
7 form or acquire the entity, and

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

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

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

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

23 The written statement required under the preceding sen-
24 tence shall be furnished to such United States person on
25 or before January 31 of the year following the calendar

1 year for which the return under subsection (a) was re-
2 quired to be made.

3 “(d) EXEMPTION.—The Secretary may by regula-
4 tions exempt any class of United States persons or any
5 class of accounts or entities from the requirements of this
6 section if the Secretary determines that applying this sec-
7 tion to such persons, accounts, or entities is not necessary
8 to carry out the purposes of this section.”.

9 (b) PENALTIES.—

10 (1) RETURNS.—Section 6724(d)(1)(B) is
11 amended by striking “or” at the end of clause (xxv),
12 by striking “and” at the end of clause (xxvi), and
13 by adding after clause (xxvi) the following new
14 clauses:

15 “(xxvii) section 6045C(a) (relating to
16 returns regarding United States beneficial
17 owners of financial accounts located in the
18 United States and held in the name of a
19 foreign entity), or

20 “(xxviii) section 6045D(a) (relating to
21 returns by financial institutions regarding
22 establishment of accounts at non-FATCA
23 institutions), and”.

24 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
25 is amended by redesignating the second subpara-

1 graph (JJ) as (KK), by striking “or” at the end of
 2 subparagraph (JJ), by striking the period at the end
 3 of subparagraph (KK), and by inserting after sub-
 4 paragraph (KK) the following new subparagraphs:

5 “(LL) section 6045C(c) (relating to re-
 6 turns regarding United States beneficial owners
 7 of financial accounts located in the United
 8 States and held in the name of a foreign enti-
 9 ty), or

10 “(MM) section 6045D(c) (relating to re-
 11 turns by financial institutions regarding estab-
 12 lishment of accounts at non-FATCA institu-
 13 tions).”.

14 (c) CLERICAL AMENDMENT.—The table of sections
 15 for subpart B of part III of subchapter A of chapter 61
 16 is amended by inserting after the item relating to section
 17 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.”.

18 (d) ADDITIONAL PENALTIES.—

19 (1) ADDITIONAL PENALTIES ON BANKS.—Sec-
 20 tion 5239(b)(1) of the Revised Statutes of the
 21 United States (12 U.S.C. 93(b)(1)) is amended by
 22 inserting “or any of the provisions of section 6045D

1 of the Internal Revenue Code of 1986,” after “any
2 regulation issued pursuant to,”.

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

9 (e) REGULATORY AUTHORITY AND EFFECTIVE
10 DATE.—

11 (1) REGULATORY AUTHORITY.—Not later than
12 180 days after the date of the enactment of this Act,
13 the Secretary of the Treasury shall adopt regula-
14 tions, forms, or other guidance necessary to imple-
15 ment this section.

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

1 date of the enactment of this Act. Section 6045D of
 2 such Code (as so added) and the amendment made
 3 by subsection (d)(2) shall take effect with respect to
 4 accounts opened after December 31 of the year of
 5 the date of the enactment of this act, whether or not
 6 regulations are issued under Section 6045D.

7 **SEC. 204. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
 8 **HOLDINGS.**

9 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
 10 21(d)(3)(B) of the Securities Exchange Act of 1934 (15
 11 U.S.C. 78u(d)(3)(B)) is amended by adding at the end
 12 the following:

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

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

1 “(II) such person knowingly or
2 recklessly failed to disclose any such
3 holding, purchase, or sale by the
4 issuer; and

5 “(III) the holding, purchase, or
6 sale would have been otherwise sub-
7 ject to disclosure by the issuer or such
8 person under this title.”.

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

12 “(D) FOURTH TIER.—Notwithstanding
13 subparagraphs (A), (B), and (C), for each such
14 violation, the amount of penalty shall not ex-
15 ceed \$1,000,000 for any natural person or
16 \$10,000,000 for any other person, if—

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

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

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

5 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
6 203(i)(2) of the Investment Advisers Act of 1940 (15
7 U.S.C. 80b–3(i)(2)) is amended by adding at the end the
8 following:

9 “(D) FOURTH TIER.—Notwithstanding
10 subparagraphs (A), (B), and (C), for each such
11 violation, the amount of penalty shall not ex-
12 ceed \$1,000,000 for any natural person or
13 \$10,000,000 for any other person, if—

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

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

23 “(iii) the holding, purchase, or sale
24 would have been otherwise subject to dis-

1 closure by the issuer or such person under
2 this title.”.

3 **SEC. 205. DEADLINE FOR ANTI-MONEY LAUNDERING RULE**
4 **FOR INVESTMENT ADVISERS.**

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

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

10 (2) by redesignating subparagraph (Z) as sub-
11 paragraph (BB); and

12 (3) by inserting after subparagraph (Y) the fol-
13 lowing:

14 “(Z) an investment adviser (as defined in
15 section 202(a) of the Investment Advisers Act
16 of 1940);”.

17 (b) RULES REQUIRED.—The Secretary of the Treas-
18 ury shall—

19 (1) in consultation with the Securities and Ex-
20 change Commission and the Commodity Futures
21 Trading Commission, not later than 180 days after
22 the date of enactment of this Act, publish a pro-
23 posed rule in the Federal Register to carry out the
24 amendments made by this section; and

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

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

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

15 (2) to comply with—

16 (A) the customer identification program
 17 requirements under section 5318(l) of title 31,
 18 United States Code; and

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

21 **SEC. 206. ANTI-MONEY LAUNDERING REQUIREMENTS FOR**
 22 **FORMATION AGENTS.**

23 (a) ANTI-MONEY LAUNDERING OBLIGATIONS FOR
 24 FORMATION AGENTS.—Section 5312(a)(2) of title 31,
 25 United States Code, as amended by section 205 of this

1 Act, is amended by inserting after subparagraph (Z) the
2 following:

3 “(AA) any person engaged in the business
4 of forming new corporations, limited liability
5 companies, partnerships, trusts, or other legal
6 entities; or”.

7 (b) DEADLINE FOR ANTI-MONEY LAUNDERING
8 RULE FOR FORMATION AGENTS.—

9 (1) PROPOSED RULE.—The Secretary of the
10 Treasury, in consultation with the Attorney General
11 of the United States, the Secretary of Homeland Se-
12 curity, and the Commissioner of Internal Revenue,
13 shall—

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

21 (B) not later than 270 days after the date
22 of enactment of this Act, publish a final rule in
23 the Federal Register on the matter described in
24 subparagraph (A).

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

5 (A) any government agency; and

6 (B) any attorney or law firm that uses a
 7 paid formation agent operating within the
 8 United States to form such corporations or
 9 other entities.

10 **SEC. 207. STRENGTHENING JOHN DOE SUMMONS PRO-**
 11 **CEEDINGS.**

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

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

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

21 “(A) the summons relates to the investiga-
 22 tion of a particular person or ascertainable
 23 group or class of persons,

24 “(B) there is a reasonable basis for believ-
 25 ing that such person or group or class of per-

1 sons may fail or may have failed to comply with
2 any provision of any internal revenue law, and
3 “(C) the information sought to be obtained
4 from the examination of the records or testi-
5 mony (and the identity of the person or persons
6 with respect to whose liability the summons is
7 issued) is not readily available from other
8 sources.

9 “(2) EXCEPTION.—Paragraph (1) shall not
10 apply to any summons which specifies that it is lim-
11 ited to information regarding a United States cor-
12 respondent account (as defined in section
13 5318A(e)(1)(B) of title 31, United States Code) or
14 a United States payable-through account (as defined
15 in section 5318A(e)(1)(C) of such title) of a finan-
16 cial institution that is held at a non-FATCA institu-
17 tion (as defined in section 7701(a)(51)).

18 “(3) PRESUMPTION IN CASES INVOLVING NON-
19 FATCA INSTITUTIONS.—For purposes of this section,
20 in any case in which the particular person or ascer-
21 tainable group or class of persons have financial ac-
22 counts in or transactions related to a non-FATCA
23 institution (as defined in section 7701(a)(51)), there
24 shall be a presumption that there is a reasonable
25 basis for believing that such person or group or class

1 of persons may fail or may have failed to comply
2 with provisions of internal revenue law.

3 “(4) PROJECT JOHN DOE SUMMONSES.—

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

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

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

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

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

20 “(i) any summons issued with respect
21 to the project will be issued to a member
22 of an ascertainable group or class of per-
23 sons, and

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

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

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

21 (b) JURISDICTION OF COURT.—

22 (1) IN GENERAL.—Paragraph (1) of section
23 7609(h) is amended by inserting after the first sen-
24 tence the following new sentence: “Any United
25 States district court in which a member of the group

1 or class to which a summons may be issued resides
 2 or is found shall have jurisdiction to hear and deter-
 3 mine the approval of a project under subsection
 4 (f)(4)(B).”.

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

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

11 **SEC. 208. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**
 12 **CIAL ACCOUNT REPORTING.**

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

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

22 (b) SIMPLIFYING THE CALCULATION OF FOREIGN
 23 FINANCIAL ACCOUNT REPORTING PENALTIES.—Section
 24 5321(a)(5)(D)(ii) of title 31, United States Code, is
 25 amended by striking “the balance in the account at the

1 time of the violation” and inserting “the highest balance
2 in the account during the reporting period to which the
3 violation relates”.

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

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