

116TH CONGRESS
1ST SESSION

S. 779

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

IN THE SENATE OF THE UNITED STATES

MARCH 13, 2019

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

A BILL

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

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

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

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

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

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

Sec. 1. Short title, etc.

TITLE I—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

Sec. 101. 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.

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

5 **SEC. 101. REPEAL OF CHECK-THE-BOX RULES FOR CERTAIN** 6 **FOREIGN ENTITIES AND CFC LOOK-THRU** 7 **RULES.**

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

10 (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 (c) EFFECTIVE DATE.—

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

19 (2) The amendment made by subsection (b)
 20 shall apply to payments received after the date of
 21 the enactment of this Act.

1 **SEC. 102. LIMITATION ON DEDUCTION OF INTEREST BY DO-**
 2 **MESTIC CORPORATIONS WHICH ARE MEM-**
 3 **BERS OF AN INTERNATIONAL FINANCIAL RE-**
 4 **PORTING GROUP.**

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

8 “(n) LIMITATION ON DEDUCTION OF INTEREST BY
 9 DOMESTIC CORPORATIONS IN INTERNATIONAL FINAN-
 10 CIAL REPORTING GROUPS.—

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

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

18 “(i) the amount of such interest so
 19 paid or accrued, over

20 “(ii) the amount described in subpara-
 21 graph (B), plus

22 “(B) the amount of interest includible in
 23 gross income of such corporation for such tax-
 24 able year.

25 “(2) INTERNATIONAL FINANCIAL REPORTING
 26 GROUP.—

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

“(i) includes—

“(I) at least one foreign corporation engaged in a trade or business within the United States, or

“(II) at least one domestic corporation and one foreign corporation,

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

“(iii) reports in such statements average annual gross receipts (determined in the aggregate with respect to all entities which are part of such group) for the 3-reporting-year period ending with such reporting year in excess of \$100,000,000.

“(B) RULES RELATING TO DETERMINATION OF AVERAGE GROSS RECEIPTS.—For purposes of subparagraph (A)(iii), rules similar to the rules of section 448(c)(3) shall apply.

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

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

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

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

“(B) REPORTED NET INTEREST EXPENSE.—The term ‘reported net interest expense’ means—

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

“(I) the aggregate amount of interest expense reported in such group’s consolidated financial statements for such taxable year, over

1 “(II) the aggregate amount of in-
2 terest income reported in such group’s
3 consolidated financial statements for
4 such taxable year, and

5 “(ii) with respect to any domestic cor-
6 poration for any reporting year, the excess
7 of—

8 “(I) the amount of interest ex-
9 pense of such corporation reported in
10 the books and records of the inter-
11 national financial reporting group
12 which are used in preparing such
13 group’s consolidated financial state-
14 ments for such taxable year, over

15 “(II) the amount of interest in-
16 come of such corporation reported in
17 such books and records.

18 “(C) ALLOCABLE SHARE OF REPORTED
19 NET INTEREST EXPENSE.—With respect to any
20 domestic corporation which is a member of any
21 international financial reporting group, such
22 corporation’s allocable share of such group’s re-
23 ported net interest expense for any reporting
24 year is the portion of such expense which bears
25 the same ratio to such expense as—

1 “(i) the EBITDA of such corporation
2 for such reporting year, bears to

3 “(ii) the EBITDA of such group for
4 such reporting year.

5 “(D) EBITDA.—

6 “(i) IN GENERAL.—The term
7 ‘EBITDA’ means, with respect to any re-
8 porting year, earnings before interest,
9 taxes, depreciation, and amortization—

10 “(I) as determined in the inter-
11 national financial reporting group’s
12 consolidated financial statements for
13 such year, or

14 “(II) for purposes of subpara-
15 graph (A)(i), as determined in the
16 books and records of the international
17 financial reporting group which are
18 used in preparing such statements if
19 not determined in such statements.

20 “(ii) TREATMENT OF DISREGARDED
21 ENTITIES.—The EBITDA of any domestic
22 corporation shall not fail to include the
23 EBITDA of any entity which is dis-
24 regarded for purposes of this chapter.

1 “(iii) TREATMENT OF INTRA-GROUP
 2 DISTRIBUTIONS.—The EBITDA of any do-
 3 mestic corporation shall be determined
 4 without regard to any distribution received
 5 by such corporation from any other mem-
 6 ber of the international financial reporting
 7 group.

8 “(E) SPECIAL RULES FOR NON-POSITIVE
 9 EBITDA.—

10 “(i) NON-POSITIVE GROUP EBITDA.—
 11 In the case of any international financial
 12 reporting group the EBITDA of which is
 13 zero or less, paragraph (1) shall not apply
 14 to any member of such group the EBITDA
 15 of which is above zero.

16 “(ii) NON-POSITIVE ENTITY
 17 EBITDA.—In the case of any group mem-
 18 ber the EBITDA of which is zero or less,
 19 paragraph (1) shall be applied without re-
 20 gard to subparagraph (A) thereof.

21 “(4) CONSOLIDATED FINANCIAL STATEMENT.—
 22 For purposes of this subsection, the term ‘consoli-
 23 dated financial statement’ means any consolidated
 24 financial statement described in paragraph (2)(A)(ii)
 25 if such statement is—

1 “(A) a financial statement which is cer-
2 tified as being prepared in accordance with gen-
3 erally accepted accounting principles, inter-
4 national financial reporting standards, or any
5 other comparable method of accounting identi-
6 fied by the Secretary, and which is—

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

11 “(ii) an audited financial statement
12 which is used for—

13 “(I) credit purposes,

14 “(II) reporting to shareholders,
15 partners, or other proprietors, or to
16 beneficiaries, or

17 “(III) any other substantial
18 nontax purpose,

19 but only if there is no statement described
20 in clause (i), or

21 “(iii) filed with any other Federal or
22 State agency for nontax purposes, but only
23 if there is no statement described in clause
24 (i) or (ii), or

25 “(B) a financial statement which—

1 “(i) is used for a purpose described in
2 subclause (I), (II), or (III) of subpara-
3 graph (A)(ii), or

4 “(ii) filed with any regulatory or gov-
5 ernmental body (whether domestic or for-
6 eign) specified by the Secretary,
7 but only if there is no statement described in
8 subparagraph (A).

9 “(5) REPORTING YEAR.—For purposes of this
10 subsection, the term ‘reporting year’ means, with re-
11 spect to any international financial reporting group,
12 the year with respect to which the consolidated fi-
13 nancial statements are prepared.

14 “(6) APPLICATION TO CERTAIN ENTITIES.—

15 “(A) PARTNERSHIPS.—Except as other-
16 wise provided by the Secretary in paragraph
17 (7), this subsection and subsection (o) shall
18 apply to any partnership which is a member of
19 any international financial reporting group
20 under rules similar to the rules of section
21 163(j)(4).

22 “(B) FOREIGN CORPORATIONS ENGAGED
23 IN TRADE OR BUSINESS WITHIN THE UNITED
24 STATES.—Except as otherwise provided by the
25 Secretary in paragraph (7), any deduction for

1 interest paid or accrued by a foreign corpora-
 2 tion engaged in a trade or business within the
 3 United States shall be limited in a manner con-
 4 sistent with the principles of this subsection.

5 “(C) CONSOLIDATED GROUPS.—For pur-
 6 poses of this subsection, the members of any
 7 group that file (or are required to file) a con-
 8 solidated return with respect to the tax imposed
 9 by chapter 1 for a taxable year shall be treated
 10 as a single corporation.

11 “(7) REGULATIONS.—The Secretary may issue
 12 such regulations or other guidance as are necessary
 13 or appropriate to carry out the purposes of this sub-
 14 section.”.

15 (b) CARRYFORWARD OF DISALLOWED INTEREST.—

16 (1) IN GENERAL.—Section 163 is amended by
 17 inserting after subsection (n), as added by sub-
 18 section (a), the following new subsection:

19 “(o) CARRYFORWARD OF CERTAIN DISALLOWED IN-
 20 TEREST.—The amount of any interest not allowed as a
 21 deduction for any taxable year by reason of subsection
 22 (j)(1) or (n)(1) (whichever imposes the lower limitation
 23 with respect to such taxable year) shall be treated as inter-
 24 est (and as business interest for purposes of subsection
 25 (j)(1)) paid or accrued in the succeeding taxable year. In-

1 terest paid or accrued in any taxable year (determined
 2 without regard to the preceding sentence) shall not be car-
 3 ried past the fifth taxable year following such taxable year,
 4 determined by treating interest as allowed as a deduction
 5 on a first-in, first-out basis.”.

6 (2) CONFORMING AMENDMENTS.—

7 (A) Section 163(j)(2) is amended to read
 8 as follows:

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

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

14 (C) Section 381(c)(20) is amended to read
 15 as follows:

16 “(20) CARRYFORWARD OF DISALLOWED INTER-
 17 EST.—The carryover of disallowed interest described
 18 in section 163(o) to taxable years ending after the
 19 date of distribution or transfer.”.

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

22 “(3) APPLICATION TO CARRYFORWARD OF DIS-
 23 ALLOWED INTEREST.—The term ‘pre-change loss’
 24 shall include any carryover of disallowed interest de-

1 scribed in section 163(o) under rules similar to the
 2 rules of paragraph (1).”.

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

6 **SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MAN-**
 7 **AGED AND CONTROLLED IN THE UNITED**
 8 **STATES AS DOMESTIC CORPORATIONS.**

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

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

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

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

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

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

4 “(2) CORPORATION DESCRIBED.—

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

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

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

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

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

23 “(ii) such corporation—

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

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

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

9 “(3) MANAGEMENT AND CONTROL.—

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

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

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

1 are located primarily within the United
2 States, and

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

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

18 “(i) the assets of such corporation (di-
19 rectly or indirectly) consist primarily of as-
20 sets being managed on behalf of investors,
21 and

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

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

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

5 **SEC. 104. SWAP PAYMENTS MADE FROM THE UNITED**
 6 **STATES TO PERSONS OFFSHORE.**

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

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

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

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

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

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

1 **SEC. 105. MODIFICATIONS TO RULES RELATING TO IN-**
 2 **VERTED CORPORATIONS.**

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

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

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

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

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

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

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

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

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

5 “(B) after the acquisition, either—

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

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

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

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

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

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

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

1 treated as occurring, directly or indirectly, pri-
2 marily within the United States. The regula-
3 tions prescribed under the preceding sentence
4 shall apply to periods after December 22, 2017.

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

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

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

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

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

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

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

22 (b) CONFORMING AMENDMENTS.—

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

1 serting “after March 4, 2003, and before December
2 23, 2017,”.

3 (2) Subsection (c) of section 7874 is amend-
4 ed—

5 (A) in paragraph (2)—

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

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

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

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

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

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

1 **SEC. 106. REQUIREMENT TO DISCLOSE TOTAL CORPORATE**
 2 **TAXES PAID.**

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

6 “(s) DISCLOSURE OF TOTAL CORPORATE TAXES
 7 PAID.—

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

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

14 “(B) the total amount paid by the issuer
 15 in State taxes during the period covered by the
 16 report;

17 “(C) the total amount paid by the issuer in
 18 Federal taxes during the period covered by the
 19 report; and

20 “(D) the total amount paid by the issuer
 21 in foreign taxes during the period covered by
 22 the report.

23 “(2) DISCLOSURE OF COUNTRY-BY-COUNTRY
 24 REPORTING INFORMATION.—Each issuer required to
 25 file an annual or quarterly report under subsection
 26 (a) shall disclose in that report, for each of its sub-

1 subsidiaries and aggregated on a country-by-country
2 basis—

3 “(A) revenues generated from transactions
4 with other constituent entities;

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

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

8 “(D) total income tax paid on a cash basis
9 to all tax jurisdictions, and any taxes withheld
10 on payments received by the constituent enti-
11 ties;

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

17 “(F) stated capital, except that the stated
18 capital of a permanent establishment must be
19 reported in the tax jurisdiction of residence of
20 the legal entity of which it is a permanent es-
21 tablishment unless there is a defined capital re-
22 quirement in the permanent establishment tax
23 jurisdiction for regulatory purposes;

24 “(G) total accumulated earnings, except
25 that accumulated earnings of a permanent es-

1 tablishment must be reported by the legal entity
2 of which it is a permanent establishment;

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

5 “(I) net book value of tangible assets,
6 which, for purposes of this section, does not in-
7 clude cash or cash equivalents, intangibles, or
8 financial assets.

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

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to disclosures made after the date
16 of the enactment of this Act.

17 **SEC. 107. PENALTY FOR ELECTION TO PAY TAX ON DE-**
18 **FERRED FOREIGN INCOME IN INSTALL-**
19 **MENTS.**

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

22 “(7) PENALTY.—Interest on installments under
23 this subsection shall be payable as determined under
24 section 6601 by treating the last date prescribed for

1 payment for any installment as the date for payment
 2 of the first installment under this subsection.”.

3 (b) EFFECTIVE DATE.—The amendment made by
 4 subsection (a) shall take effect as if included in section
 5 14103 of Public Law 115–97.

6 **TITLE II—ADDITIONAL MEAS-** 7 **URES TO COMBAT TAX EVA-** 8 **SION**

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

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

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

22 (2) in subsection (a), by striking the subsection
 23 heading and inserting the following: “SPECIAL
 24 MEASURES TO COUNTER MONEY LAUNDERING AND

1 EFFORTS TO SIGNIFICANTLY IMPEDE UNITED
2 STATES TAX ENFORCEMENT”;

3 (3) in subsection (c)—

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

12 (B) in paragraph (2), by adding at the end
13 the following:

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

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

1 (5) in subsection (a)(4)—

2 (A) in subparagraph (A)—

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

6 (ii) by striking “and” at the end;

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

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

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

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

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

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

16 “(A) the opening or maintaining in the
17 United States of a correspondent account or
18 payable-through account by any domestic finan-
19 cial institution or domestic financial agency for
20 or on behalf of a foreign banking institution, if
21 such correspondent account or payable-through
22 account involves any such jurisdiction or insti-
23 tution, or if any such transaction may be con-
24 ducted through such correspondent account or
25 payable-through account; or

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

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

17 (9) in subsection (c)(2)(A)—

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

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

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

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

7 (10) in subsection (c)(2)(B)—

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

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

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

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

“5318A. Special measures for jurisdictions, financial institutions, or inter-
 national transactions that are of primary money laundering
 concern or significantly impede United States tax enforce-
 ment.”.

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-
 23 ers,” after “reason to know,” in subsection (b)(2),
 24 and

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

4 (d) DEFINITIONS.—Clauses (i) and (ii) of section
5 1473(2)(A) are each amended by inserting “or as a bene-
6 ficial owner” after “indirectly”.

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

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

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

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

22 (g) ESTABLISHING PRESUMPTIONS FOR ENTITIES
23 AND TRANSACTIONS INVOLVING NON-FATCA INSTITU-
24 TIONS.—

25 (1) PRESUMPTIONS FOR TAX PURPOSES.—

1 (A) IN GENERAL.—Chapter 76 is amended
 2 by inserting after section 7491 the following
 3 new subchapter:

4 **“Subchapter F—Presumptions for Certain**
 5 **Legal Proceedings**

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

6 **“SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND**
 7 **TRANSACTIONS INVOLVING NON-FATCA IN-**
 8 **STITUTIONS.**

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

22 “(b) TRANSFERS OF INCOME.—For purposes of any
 23 United States civil judicial or administrative proceeding
 24 to determine or collect tax, there shall be a rebuttable pre-

1 sumption that any amount or thing of value received by
 2 a United States person directly or indirectly from an ac-
 3 count or from an entity that holds an account, or in any
 4 other manner has assets, in a non-FATCA institution,
 5 constitutes income of such person taxable in the year of
 6 receipt; and any amount or thing of value paid or trans-
 7 ferred by or on behalf of a United States person directly
 8 or indirectly to an account, or entity that holds an ac-
 9 count, or in any other manner has assets, in a non-
 10 FATCA institution, represents previously unreported in-
 11 come of such person taxable in the year of the transfer.

12 “(c) REBUTTING THE PRESUMPTIONS.—The pre-
 13 sumptions established in this section may be rebutted only
 14 by clear and convincing evidence, including detailed docu-
 15 mentary, testimonial, and transactional evidence, estab-
 16 lishing that—

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

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

23 Any court having jurisdiction of a civil proceeding in which
 24 control of such an offshore account or offshore entity or
 25 the income character of such receipts or amounts trans-

ferred is an issue shall prohibit the introduction by the taxpayer of any foreign based document that is not authenticated in open court by a person with knowledge of such document, or any other evidence supplied by a person outside the jurisdiction of a United States court, unless such person appears before the court.”.

(B) The table of subchapters for chapter 76 is amended by inserting after the item relating to subchapter E the following new item:

“SUBCHAPTER F. PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

(2) DEFINITION OF NON-FATCA INSTITUTION.—

Section 7701(a) is amended by adding at the end the following new paragraph:

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

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

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

“(1) CONTROL.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that a

1 United States person who, directly or indirectly,
2 formed, transferred assets to, was a beneficiary of,
3 had a beneficial interest in, or received money or
4 property or the use thereof from an entity, including
5 a trust, corporation, limited liability company, part-
6 nership, or foundation, that holds an account, or in
7 any other manner has assets, in a non-FATCA insti-
8 tution (as defined in section 7701(a)(51) of the In-
9 ternal Revenue Code of 1986), exercised control over
10 such entity. The presumption of control created by
11 this paragraph shall not be applied to prevent the
12 Commission from determining or arguing the ab-
13 sence of control.

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

1 Commission from determining or arguing the ab-
2 sence of beneficial ownership.”.

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

8 “(d) REBUTTABLE PRESUMPTION.—For purposes of
9 this section, there shall be a rebuttable presumption that
10 any account with a non-FATCA institution (as defined in
11 section 7701(a)(51) of the Internal Revenue Code of
12 1986) contains funds in an amount that is at least suffi-
13 cient to require a report prescribed by regulations under
14 this section.”.

15 (5) REGULATORY AUTHORITY.—Not later than
16 180 days after the date of enactment of this Act, the
17 Secretary of the Treasury and the Chairman of the
18 Securities and Exchange Commission shall each
19 adopt regulations or other guidance necessary to im-
20 plement the amendments made by this subsection.
21 The Secretary and the Chairman may, by regulation
22 or guidance, provide that the presumption of control
23 shall not extend to particular classes of transactions,
24 such as corporate reorganizations or transactions
25 below a specified dollar threshold, if either deter-

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

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6045B the following new sections:

18 “(a) REQUIREMENT OF RETURN.—If—

“(1) any withholding agent under sections 1441 and 1442 has the control, receipt, custody, disposal, or payment of any amount constituting gross income from sources within the United States of any foreign entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an

1 entity with shares regularly traded on an established
2 securities market), and

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

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

11 “(b) REQUIRED INFORMATION.—For purposes of
12 subsection (a) the information required to be included on
13 the return shall include—

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

17 “(2) the known facts pertaining to the relation-
18 ship of such United States beneficial owner to the
19 foreign entity and the account,

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

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

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

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

11 “(2) the information required to be shown on
12 such return with respect to such United States bene-
13 ficial owner.

14 The written statement required under the preceding sen-
15 tence shall be furnished to the United States beneficial
16 owner on or before January 31 of the year following the
17 calendar year for which the return under subsection (a)
18 was required to be made. In the event the person filing
19 such return does not have a current address for the United
20 States beneficial owner, such written statement may be
21 mailed to the address of the foreign entity.

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

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

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

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

20 “(2) the name and address of the financial in-
21 stitution at which a financial account is opened, the
22 type of account, the account number, the name
23 under which the account was opened, and the
24 amount of the initial deposit,

25 “(3) if the account is held in the name of an
26 entity, the name and address of such entity, the type

1 of entity, and the name and address of any company
 2 formation agent or other professional employed to
 3 form or acquire the entity, and

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

6 “(c) STATEMENTS TO BE FURNISHED TO UNITED
 7 STATES PERSONS WITH RESPECT TO WHOM INFORMA-
 8 TION IS REQUIRED TO BE REPORTED.—A financial insti-
 9 tution required to make a return under subsection (a)
 10 shall furnish to each United States person 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 per-
 18 son.

19 The written statement required under the preceding sen-
 20 tence shall be furnished to such United States person on
 21 or before January 31 of the year following the calendar
 22 year for which the return under subsection (a) was re-
 23 quired to be made.

24 “(d) EXEMPTION.—The Secretary may by regula-
 25 tions exempt any class of United States persons or any

1 class of accounts or entities from the requirements of this
 2 section if the Secretary determines that applying this sec-
 3 tion to such persons, accounts, or entities is not necessary
 4 to carry out the purposes of this section.”.

5 (b) PENALTIES.—

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

11 “(xxvii) section 6045C(a) (relating to
 12 returns regarding United States beneficial
 13 owners of financial accounts located in the
 14 United States and held in the name of a
 15 foreign entity), or

16 “(xxviii) section 6045D(a) (relating to
 17 returns by financial institutions regarding
 18 establishment of accounts at non-FATCA
 19 institutions), and”.

20 (2) PAYEE STATEMENTS.—Section 6724(d)(2)
 21 is amended by redesignating the second subpara-
 22 graph (JJ) as subparagraph (KK), by striking “or”
 23 at the end of subparagraph (II), by striking the pe-
 24 riod at the end of subparagraph (KK) (as so redes-

1 ignated), and by inserting after such subparagraph
2 (KK) the following new subparagraphs:

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

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

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

16 (d) ADDITIONAL PENALTIES.—

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

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

7 (e) REGULATORY AUTHORITY AND EFFECTIVE
 8 DATE.—

9 (1) REGULATORY AUTHORITY.—Not later than
 10 180 days after the date of the enactment of this Act,
 11 the Secretary of the Treasury shall adopt regula-
 12 tions, forms, or other guidance necessary to imple-
 13 ment this section.

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

1 by subsection (d)(2) shall take effect with respect to
 2 accounts opened after December 31 of the year of
 3 the date of the enactment of this act, whether or not
 4 regulations are issued under Section 6045D.

5 **SEC. 204. PENALTY FOR FAILING TO DISCLOSE OFFSHORE**
 6 **HOLDINGS.**

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

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

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

24 “(II) such person knowingly or
 25 recklessly failed to disclose any such

1 holding, purchase, or sale by the
2 issuer; and

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 205. 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 (as defined in
13 section 202(a) of the Investment Advisers Act
14 of 1940);”.

15 (b) RULES REQUIRED.—The Secretary of the Treas-
16 ury shall—

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

23 (2) not later than 270 days after the date of
24 enactment of this Act, publish a final rule in the
25 Federal Register on the matter described in para-
26 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. 206. 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 205 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. 207. 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)(4)(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. 208. 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”.

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