

116TH CONGRESS  
1ST SESSION

# S. 779

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

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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

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## 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 redес-  
 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.—

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

5           “(i) includes—

6           “(I) at least one foreign corpora-  
7 tion engaged in a trade or business  
8 within the United States, or

9           “(II) at least one domestic cor-  
10 poration and one foreign corporation,

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

13           “(iii) reports in such statements aver-  
14 age annual gross receipts (determined in  
15 the aggregate with respect to all entities  
16 which are part of such group) for the 3-re-  
17 porting-year period ending with such re-  
18 porting year in excess of \$100,000,000.

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

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

1           “(A) IN GENERAL.—The term ‘allowable  
2 percentage’ means, with respect to any domestic  
3 corporation for any taxable year, the ratio (ex-  
4 pressed as a percentage and not greater than  
5 100 percent) of—

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

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

15           “(B) REPORTED NET INTEREST EX-  
16 PENSE.—The term ‘reported net interest ex-  
17 pense’ means—

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

21           “(I) the aggregate amount of in-  
22 terest expense reported in such  
23 group’s consolidated financial state-  
24 ments 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                   curring 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)”; and

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

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

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

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

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

1 ferred is an issue shall prohibit the introduction by the  
 2 taxpayer of any foreign based document that is not au-  
 3 thenticated in open court by a person with knowledge of  
 4 such document, or any other evidence supplied by a person  
 5 outside the jurisdiction of a United States court, unless  
 6 such person appears before the court.”.

7 (B) The table of subchapters for chapter  
 8 76 is amended by inserting after the item relat-  
 9 ing to subchapter E the following new item:

“SUBCHAPTER F. PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

10 (2) DEFINITION OF NON-FATCA INSTITUTION.—

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

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

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

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

23 “(1) CONTROL.—For purposes of any civil judi-  
 24 cial or administrative proceeding under this title,  
 25 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-

1 mines that applying such amendments to such trans-  
 2 actions is not necessary to carry out the purposes of  
 3 such amendments.

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

8 **SEC. 203. REPORTING UNITED STATES BENEFICIAL OWN-**  
 9 **ERS OF FOREIGN OWNED FINANCIAL AC-**  
 10 **COUNTS.**

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

14 **“SEC. 6045C. RETURNS REGARDING UNITED STATES BENE-**  
 15 **FIcial OWNERS OF FINANCIAL ACCOUNTS**  
 16 **LOCATED IN THE UNITED STATES AND HELD**  
 17 **IN THE NAME OF A FOREIGN ENTITY.**

18 “(a) REQUIREMENT OF RETURN.—If—

19 “(1) any withholding agent under sections 1441  
 20 and 1442 has the control, receipt, custody, disposal,  
 21 or payment of any amount constituting gross income  
 22 from sources within the United States of any foreign  
 23 entity, including a trust, corporation, limited liability  
 24 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 reded-

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

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

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

14          (b) JURISDICTION OF COURT.—

15           (1) IN GENERAL.—Paragraph (1) of section  
16          7609(h) is amended by inserting after the first sen-  
17          tence the following new sentence: “Any United  
18          States district court in which a member of the group  
19          or class to which a summons may be issued resides  
20          or is found shall have jurisdiction to hear and deter-  
21          mine the approval of a project under subsection  
22          (f)(4)(B).”.

23           (2) CONFORMING AMENDMENT.—The first sen-  
24          tence of section 7609(h)(1) is amended by striking  
25          “(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”.

○