

113TH CONGRESS  
1ST SESSION

# S. 1533

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2013

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

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## A BILL

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

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

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

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

6 (b) **AMENDMENT OF 1986 CODE.**—Except as other-  
7 wise expressly provided, whenever in this Act an amend-  
8 ment or repeal is expressed in terms of an amendment  
9 to, or repeal of, a section or other provision, the reference

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

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

Sec. 1. Short title, etc.

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

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

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

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

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

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

TITLE II—OTHER MEASURES TO COMBAT TAX HAVEN ABUSES

Sec. 201. Country-by-country reporting.

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

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

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

Sec. 205. Strengthening John Doe summons proceedings.

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

TITLE III—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

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

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

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

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

Sec. 305. Prohibition on offshore loan abuse.

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

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

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

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

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

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

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

22 (3) in subsection (c)—

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

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

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

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

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

21               (5) in subsection (a)(4)—

22                       (A) in subparagraph (A)—

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

25                               and

1 (ii) by striking “and” at the end;

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

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

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

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

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

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

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

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

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

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

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

7           (9) in subsection (c)(2)(A)—

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

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

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

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

22           (10) in subsection (c)(2)(B)—

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

8 (1) PRESUMPTIONS FOR TAX PURPOSES.—

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

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

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

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

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

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

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

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

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

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

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

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

“SUBCHAPTER F—PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13           “(2) CORPORATION DESCRIBED.—

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

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

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



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

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

7                   “(ii) such corporation—

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

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

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

18           “(3) MANAGEMENT AND CONTROL.—

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

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

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

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

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

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

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

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

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

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

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

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

5 “(a) REQUIREMENT OF RETURN.—If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15          (b) PENALTIES.—

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

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



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

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

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

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

18                   (c) CLERICAL AMENDMENT.—The table of sections  
19                   for subpart B of part III of subchapter A of chapter 61  
20                   is amended by inserting after the item relating to section  
21                   6045B the following new items:

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

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

22                   (d) ADDITIONAL PENALTIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5           (b) RULEMAKING.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

12 “(Z) an investment adviser;”.

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

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

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

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

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

11 (2) to comply with—

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

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

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

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

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

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

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

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

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

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

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

25 (A) any government agency; and



1 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)(2)(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. 206. IMPROVING ENFORCEMENT OF FOREIGN FINAN-**  
5 **CIAL ACCOUNT REPORTING.**

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

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

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

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

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

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

5 **SEC. 301. ALLOCATION OF EXPENSES AND TAXES ON BASIS**  
6 **OF REPATRIATION OF FOREIGN INCOME.**

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

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

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

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

“Sec. 977. Application of subpart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(B) the sum of—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

17          “‘This subpart—

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(i) the sum of—

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

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

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

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

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

1 under the laws of which the controlled for-  
2 eign corporation is created or organized, or

3 “(ii) the services referred to in sub-  
4 paragraph (A)(i)(II) are performed in such  
5 country,

6 the gross income from such sale, lease, license,  
7 or other disposition, or provision of services,  
8 shall not be taken into account under subpara-  
9 graph (A)(i).

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

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

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

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

5           “(ii) 10 percentage points.

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

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

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

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

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

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

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

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

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

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

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

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

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

5           (d) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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



1       retary may require the valuation of transfers of in-  
 2       tangible property on an aggregate basis or the valu-  
 3       ation of such a transfer on the basis of the realistic  
 4       alternatives to such a transfer, in any case in which  
 5       the Secretary determines that such basis is the most  
 6       reliable means of valuation of such transfers.”.

7       (c) EFFECTIVE DATE.—

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

12          (2) NO INFERENCE.—Nothing in the amend-  
 13      ment made by subsection (a) shall be construed to  
 14      create any inference with respect to the application  
 15      of section 936(h)(3) of the Internal Revenue Code of  
 16      1986, or the authority of the Secretary of the Treas-  
 17      ury to provide regulations for such application, on or  
 18      before the date of the enactment of such amend-  
 19      ment.

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

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

25           (1) by striking “and”, and

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

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

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

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

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

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

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

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

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

1 “(b) DISQUALIFIED CFC LOAN AMOUNT.—

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

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

10 “(B) the foreign group earnings amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

