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114TH CONGRESS
1ST SESSION

H. R. 297

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 13, 2015

Mr. DOGGETT (for himself, Mr. BLUMENAUER, Ms. DELAURO, Ms. EDWARDS, Mr. ELLISON, Mr. GUTIÉRREZ, Mr. HASTINGS, Mr. HIGGINS, Mr. JOHNSON of Georgia, Mr. LANGEVIN, Mr. LARSON of Connecticut, Mr. LYNCH, Mr. MCDERMOTT, Mr. NADLER, Mr. RUSH, Ms. SLAUGHTER, Ms. TSONGAS, Mr. VAN HOLLEN, Mr. WELCH, Mr. HUFFMAN, Mr. POCAN, Ms. NORTON, Mr. YARMUTH, Mr. DEUTCH, Mrs. NAPOLITANO, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the "Stop Tax Haven Abuse Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

TITLE I—DETERRING 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. Restrictions on deduction for interest expense of members of financial reporting groups with excess domestic indebtedness.

TITLE IV—INVERTED CORPORATIONS

Sec. 401. Modifications to rules relating to inverted corporations.

TITLE I—DETERRING 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.

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

(1) by striking the section heading and inserting the following:

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

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

"(a) SPECIAL MEASURES TO COUNTER MONEY LAUNDERING AND EFFORTS TO SIGNIFICANTLY IMPEDE UNITED STATES TAX ENFORCEMENT.—";

(3) in subsection (c)—

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

"(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN OR TO BE SIGNIFICANTLY IMPEDING UNITED STATES TAX ENFORCEMENT.—"; and

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

"(C) OTHER CONSIDERATIONS.—The fact that a jurisdiction or financial institution is cooperating with the United States on implementing the requirements specified in chapter 4 of the Internal Revenue Code of 1986 may be favorably considered in evaluating whether such jurisdiction or financial institution is significantly impeding United States tax enforcement.";

(4) in subsection (a)(1), by inserting "or is significantly impeding United States tax enforcement" after "primary money laundering concern";

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by inserting "in matters involving money laundering," before "shall consult"; and

(ii) by striking ''and'' at the end;

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

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

''(B) in matters involving United States tax enforcement, shall consult with the Commissioner of the Internal Revenue, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and'';

(6) in each of paragraphs (1)(A), (2), (3), and (4) of subsection (b), by inserting ''or to be significantly impeding United States tax enforcement'' after ''primary money laundering concern'' each place that term appears;

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

''(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING CERTAIN PAYMENT CARDS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more

financial institutions operating outside of the United States, or 1 or more classes of transactions within or involving a jurisdiction outside of the United States to be of primary money laundering concern or to be significantly impeding United States tax enforcement, the Secretary, in consultation with the Secretary of State, the Attorney General of the United States, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon—

"(A) the opening or maintaining in the United States of a correspondent account or payable-through account; or

"(B) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such cor-

respondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.''; (8) in subsection (c)(1), by inserting ''or is significantly impeding United States tax enforcement'' after ''primary money laundering concern''; (9) in subsection (c)(2)(A)—

(A) in clause (ii), by striking ''bank secrecy or special regulatory advantages'' and inserting ''bank, tax, corporate, trust, or financial secrecy or regulatory advantages'';

(B) in clause (iii), by striking ''supervisory and counter-money'' and inserting ''supervisory, international tax enforcement, and counter-money'';

(C) in clause (v), by striking ''banking or secrecy'' and inserting ''banking, tax, or secrecy''; and

(D) in clause (vi), by inserting '', tax treaty, or tax information exchange agreement'' after ''treaty'';

(10) in subsection (c)(2)(B)—

(A) in clause (i), by inserting ''or tax evasion'' after ''money laundering''; and

(B) in clause (iii), by inserting ", tax evasion," after "money laundering"; and

(11) in subsection (d), by inserting "involving money laundering, and shall notify, in writing, the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of any such action involving United States tax enforcement" after "such action".

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

(a) REPORTING ACTIVITIES WITH RESPECT TO PASSIVE FOREIGN INVESTMENT COMPANIES.—Section 1298(f) is amended by inserting ", or who directly or indirectly forms, transfers assets to, is a beneficiary of, has a beneficial interest in, or receives money or property or the use thereof from," after "shareholder of".

(b) WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.—Section 1471(d) is amended—

(1) by inserting "or transaction" after "any depository" in paragraph (2)(A), and

(2) by striking "or any interest" and all that follows in paragraph (5)(C) and inserting "derivatives, or any interest (including a futures or forward contract, swap, or option) in such securities, partnership interests, commodities, or derivatives.".

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

(1) by inserting ''as a result of any customer identification, anti-money laundering, anti-corruption, or similar obligation to identify account holders,'' after ''reason to know,'' in subsection (b)(2), and

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

(d) DEFINITIONS.—Clauses (i) and (ii) of section 1473(2)(A) are each amended by inserting ''or as a beneficial owner'' after ''indirectly''.

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

(1) by inserting '', except that information provided under sections 1471(c) or 1472(b) may be disclosed to any Federal law enforcement agency, upon request or upon the initiation of the Secretary, to investigate or address a possible violation of United States law'' after ''shall apply'' in paragraph (1), and

(2) by inserting '', or has had an agreement terminated under such section,'' after ''section 1471(b)'' in paragraph (2).

(f) INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.—Section 6038D(a) is amended by inserting ''ownership or beneficial ownership'' after ''holds any''.

(g) ESTABLISHING PRESUMPTIONS FOR ENTITIES AND TRANSACTIONS INVOLVING NON-FATCA INSTITUTIONS.—

(1) PRESUMPTIONS FOR TAX PURPOSES.—

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

''Subchapter F—Presumptions for Certain Legal Proceedings

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

''SEC. 7492. PRESUMPTIONS PERTAINING TO ENTITIES AND TRANSACTIONS INVOLVING NON-FATCA INSTITUTIONS.

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

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

"(b) TRANSFERS OF INCOME.—For purposes of any United States civil judicial or administrative proceeding to determine or collect tax, there shall be a rebuttable presumption that any amount or thing of value received by a United States person directly or indirectly from an account or from an entity that holds an account, or in any other manner has assets, in a non-FATCA institution, constitutes income of such person taxable in the year of receipt; and any amount or thing of value paid or transferred by or on behalf of a United States person directly or indirectly to an account, or entity that holds an account, or in any other manner has assets, in a non-FATCA institution, represents previously unreported income of such person taxable in the year of the transfer.

"(c) REBUTTING THE PRESUMPTIONS.—The presumptions established in this section may be rebutted only by clear and convincing evidence, including detailed documentary, testimonial, and transactional evidence, establishing that—

"(1) in subsection (a), such taxpayer exercised no control, directly or indirectly, over account or entity at the time in question, and

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

Any court having jurisdiction of a civil proceeding in which control of such an offshore account or offshore entity or the income character of such receipts or amounts transferred is an issue shall prohibit the introduction by the taxpayer of any foreign based document that is not authenticated in open court by a person with knowledge of such document, or any other evidence supplied by a person outside the jurisdiction of a United States court, unless such person appears before the court.".

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

"SUBCHAPTER F. PRESUMPTIONS FOR CERTAIN LEGAL PROCEEDINGS".

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

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

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

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

"(1) CONTROL.—For purposes of any civil judicial or administrative proceeding under this title, there shall be a rebuttable presumption that a United States person who, directly or indirectly, formed, transferred assets to, was a beneficiary of, had a beneficial interest in, or received money or property or the use thereof from an entity, including a trust, corporation, limited liability company, partnership, or foundation, that holds an account, or in any other manner has assets, in a non-FATCA institution (as defined in section 7701(a)(51) of the Internal Revenue Code of 1986), exercised control over such entity. The presumption of control created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of control.

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

tion that securities that are nominally owned by an entity, including a trust, corporation, limited liability company, partnership, or foundation, and that are held in a non-FATCA institution (as so defined), are beneficially owned by any United States person who directly or indirectly exercised control over such entity. The presumption of beneficial ownership created by this paragraph shall not be applied to prevent the Commission from determining or arguing the absence of beneficial ownership.''.

(4) PRESUMPTION FOR REPORTING PURPOSES RELATING TO FOREIGN FINANCIAL ACCOUNTS.—Section 5314 of title 31, United States Code, is amended by adding at the end the following new subsection:

''(d) REBUTTABLE PRESUMPTION.—For purposes of this section, there shall be a rebuttable presumption that any account with a non-FATCA institution (as defined in section 7701(a)(51) of the Internal Revenue Code of 1986) contains funds in an amount that is at least sufficient to require a report prescribed by regulations under this section.''.

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

Securities and Exchange Commission shall each adopt regulations or other guidance necessary to implement the amendments made by this subsection. The Secretary and the Chairman may, by regulation or guidance, provide that the presumption of control shall not extend to particular classes of transactions, such as corporate reorganizations or transactions below a specified dollar threshold, if either determines that applying such amendments to such transactions is not necessary to carry out the purposes of such amendments.

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

SEC. 103. TREATMENT OF FOREIGN CORPORATIONS MANAGED AND CONTROLLED IN THE UNITED STATES AS DOMESTIC CORPORATIONS.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) CERTAIN CORPORATIONS MANAGED AND CONTROLLED IN THE UNITED STATES TREATED AS DOMESTIC FOR INCOME TAX.—

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

"(A) the corporation would not otherwise be treated as a domestic corporation for purposes of this title, but

"(B) the management and control of the corporation occurs, directly or indirectly, primarily within the United States,

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

"(2) CORPORATION DESCRIBED.—

"(A) IN GENERAL.—A corporation is described in this paragraph if—

"(i) the stock of such corporation is regularly traded on an established securities market, or

"(ii) the aggregate gross assets of such corporation (or any predecessor thereof), including assets under management for investors, whether held directly or indirectly, at any time during the taxable year or any preceding taxable year is $50,000,000 or more.

"(B) GENERAL EXCEPTION.—A corporation shall not be treated as described in this paragraph if—

"(i) such corporation was treated as a corporation described in this paragraph in a preceding taxable year,

"(ii) such corporation—

"(I) is not regularly traded on an established securities market, and

"(II) has, and is reasonably expected to continue to have, aggregate gross assets (including assets under management for investors, whether held directly or indirectly) of less than $50,000,000, and

"(iii) the Secretary grants a waiver to such corporation under this subparagraph.

"(3) MANAGEMENT AND CONTROL.—

"(A) IN GENERAL.—The Secretary shall prescribe regulations for purposes of determining cases in which the management and control of a corporation is to be treated as occurring primarily within the United States.

"(B) EXECUTIVE OFFICERS AND SENIOR MANAGEMENT.—Such regulations shall provide that—

"(i) the management and control of a corporation shall be treated as occurring primarily within the United States if substantially all of the executive officers and senior management of the corporation who exercise day-to-day responsibility for making decisions involving strategic, financial, and operational policies of the corporation are located primarily within the United States, and

"(ii) individuals who are not executive officers and senior management of the corporation (including individuals who are officers or employees of other corporations in the same chain of corporations as the corporation) shall be treated as executive officers and senior management if such individuals exercise the day-to-day responsibilities of the corporation described in clause (i).

"(C) CORPORATIONS PRIMARILY HOLDING INVESTMENT ASSETS.—Such regulations shall

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

"(i) the assets of such corporation (directly or indirectly) consist primarily of assets being managed on behalf of investors, and

"(ii) decisions about how to invest the assets are made in the United States.".

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

SEC. 104. REPORTING UNITED STATES BENEFICIAL OWNERS OF FOREIGN OWNED FINANCIAL ACCOUNTS.

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

"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.

"(a) REQUIREMENT OF RETURN.—If—

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

"(2) such withholding agent determines for purposes of titles 14, 18, or 31 of the United States Code that a United States person has any beneficial interest in the foreign entity or in the account in such entity's name (hereafter in this section referred to as 'United States beneficial owner'),

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

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

"(1) the name, address, and, if known, the taxpayer identification number of the United States beneficial owner,

"(2) the known facts pertaining to the relationship of such United States beneficial owner to the foreign entity and the account,

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

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

"(c) STATEMENTS TO BE FURNISHED TO BENEFICIAL OWNERS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE REPORTED.—A withholding agent required to make a return under subsection (a) shall furnish to each United States beneficial owner whose name is required to be set forth in such return a statement showing—

"(1) the name, address, and telephone number of the information contact of the person required to make such return, and

"(2) the information required to be shown on such return with respect to such United States beneficial owner.

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

"SEC. 6045D. RETURNS BY FINANCIAL INSTITUTIONS REGARDING ESTABLISHMENT OF ACCOUNTS IN NON-FATCA INSTITUTIONS.

''(a) REQUIREMENT OF RETURN.—Any financial institution directly or indirectly opening a bank, brokerage, or other financial account for or on behalf of an offshore entity, including a trust, corporation, limited liability company, partnership, or foundation (other than an entity with shares regularly traded on an established securities market), in a non-FATCA institution (as defined in section 7701(a)(51)) at the direction of, on behalf of, or for the benefit of a United States person shall make a return according to the forms or regulations prescribed by the Secretary.

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

"(1) the name, address, and taxpayer identification number of such United States person,

"(2) the name and address of the financial institution at which a financial account is opened, the type of account, the account number, the name under which the account was opened, and the amount of the initial deposit,

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

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

"(c) STATEMENTS TO BE FURNISHED TO UNITED STATES PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE REPORTED.—A financial institution required to make a return under subsection (a) shall furnish to each United States person whose name is required to be set forth in such return a statement showing—

"(1) the name, address, and telephone number of the information contact of the person required to make such return, and

"(2) the information required to be shown on such return with respect to such United States person.

The written statement required under the preceding sentence shall be furnished to such United States person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

"(d) EXEMPTION.—The Secretary may by regulations exempt any class of United States persons or any class of accounts or entities from the requirements of this section if the Secretary determines that applying this section to such persons, accounts, or entities is not necessary to carry out the purposes of this section.".

(b) PENALTIES.—

(1) RETURNS.—Section 6724(d)(1)(B) is amended by striking "or" at the end of clause (xxiv), by striking "and" at the end of clause (xxv), and by adding after clause (xxv) the following new clauses:

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

"(xxvii) section 6045D(a) (relating to returns by financial institutions regarding establishment of accounts at non-FATCA institutions), and".

(2) PAYEE STATEMENTS.—Section 6724(d)(2) is amended by striking "or" at the end of subparagraph (GG), by striking the period at the end of subparagraph (HH), and by inserting after subparagraph (HH) the following new subparagraphs:

"(II) section 6045C(c) (relating to returns regarding United States beneficial owners of financial accounts located in the United States and held in the name of a foreign entity),

"(JJ) section 6045D(c) (relating to returns by financial institutions regarding establishment of accounts at non-FATCA institutions).".

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 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 accounts at non-FATCA institutions.".

(d) ADDITIONAL PENALTIES.—

(1) ADDITIONAL PENALTIES ON BANKS.—Section 5239(b)(1) of the Revised Statutes of the United States (12 U.S.C. 93(b)(1)) is amended by inserting ''or any of the provisions of section 6045D of the Internal Revenue Code of 1986,'' after ''any regulation issued pursuant to,''.

(2) ADDITIONAL PENALTIES ON SECURITIES FIRMS.—Section 21(d)(3)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(A)) is amended by inserting ''any of the provisions of section 6045D of the Internal Revenue Code of 1986,'' after ''the rules or regulations thereunder,''.

(e) REGULATORY AUTHORITY AND EFFECTIVE DATE.—

(1) REGULATORY AUTHORITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall adopt regulations, forms, or other guidance necessary to implement this section.

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

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

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

(a) TAX ON SWAP PAYMENTS RECEIVED BY FOREIGN PERSONS.—Section 871(a)(1) is amended—

(1) by inserting ''swap payments (as identified in section 1256(b)(2)(B)),'' after ''annuities,'' in subparagraph (A), and

(2) by adding at the end the following new sentence: ''In the case of swap payments, the source of a swap payment is determined by reference to the location of the payor.''.

(b) TAX ON SWAP PAYMENTS RECEIVED BY FOREIGN CORPORATIONS.—Section 881(a) is amended—

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

(2) by adding at the end the following new sentence: ''In the case of swap payments, the source of a swap payment is determined by reference to the location of the payor.''.

TITLE II—OTHER MEASURES TO COMBAT TAX HAVEN ABUSES

SEC. 201. COUNTRY-BY-COUNTRY REPORTING.

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

"(s) DISCLOSURE OF FINANCIAL PERFORMANCE ON A COUNTRY-BY-COUNTRY BASIS.—

"(1) RULES REQUIRED.—The Commission shall issue rules that require each issuer to include in an annual report filed by the issuer with the Commission information on a country-by-country basis during the covered period for each tax jurisdiction, aggregated from all subsidiaries residing in that jurisdiction, consisting of—

"(A) revenues from unrelated parties, related parties, and in total,

"(B) profit or loss before taxes,

"(C) income tax accrued for the current year,

"(D) income tax paid (on a cash basis),

"(E) stated capital,

"(F) accumulated earnings,

"(G) number of employees,

"(H) tangible assets other than cash or cash equivalents; and

"(I) such other financial information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

"(2) RULES RELATING TO FOREIGN SUBSIDIARY.—For each foreign subsidiary, the report required by paragraph (1) shall be grouped by resident jurisdiction (including a group for subsidiaries resident nowhere), the tax jurisdiction (if different), and main business activity.".

(b) RULEMAKING.—

(1) DEADLINES.—The Securities and Exchange Commission (in this section referred to as the "Commission") shall—

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

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

(2) DATA FORMAT.—The information required to be provided by this section shall be provided by the issuer in a report in a format prescribed by the Commission, and such report shall be made available to the public online, in such format as the Commission shall prescribe.

(3) EFFECTIVE DATE.—Subsection (s) of section 13 of the Securities Exchange Act of 1934, as added by this section, shall become effective 1 year after the date on which the Commission issues a final rule under this section.

SEC. 202. PENALTY FOR FAILING TO DISCLOSE OFFSHORE HOLDINGS.

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

"(iv) FOURTH TIER.—Notwithstanding clauses (i), (ii), and (iii), for each violation, the amount of the penalty shall not exceed $1,000,000 for any natural person or $10,000,000 for any other person, if—

"(I) such person directly or indirectly controlled any foreign entity, in-

cluding any trust, corporation, limited liability company, partnership, or foundation through which an issuer purchased, sold, or held equity or debt instruments;

"(II) such person knowingly or recklessly failed to disclose any such holding, purchase, or sale by the issuer; and

"(III) the holding, purchase, or sale would have been otherwise subject to disclosure by the issuer or such person under this title.".

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

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), for each violation, the amount of the penalty shall not exceed $1,000,000 for any natural person or $10,000,000 for any other person, if—

"(i) such person directly or indirectly controlled any foreign entity, including any trust, corporation, limited liability company, partnership, or foundation through

which an issuer purchased, sold, or held equity or debt instruments;

"(ii) such person knowingly or recklessly failed to disclose any such holding, purchase, or sale by the issuer; and

"(iii) the holding, purchase, or sale would have been otherwise subject to disclosure by the issuer or such person under this title.".

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

"(D) FOURTH TIER.—Notwithstanding subparagraphs (A), (B), and (C), for each violation, the amount of the penalty shall not exceed $1,000,000 for any natural person or $10,000,000 for any other person, if—

"(i) such person directly or indirectly controlled any foreign entity, including any trust, corporation, limited liability company, partnership, or foundation through which an issuer purchased, sold, or held equity or debt instruments;

"(ii) such person knowingly or recklessly failed to disclose any such holding, purchase, or sale by the issuer; and

"(iii) the holding, purchase, or sale would have been otherwise subject to disclosure by the issuer or such person under this title.".

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

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

(1) in subparagraph (Y), by striking "or" at the end;

(2) by redesignating subparagraph (Z) as subparagraph (BB); and

(3) by inserting after subparagraph (Y) the following:

"(Z) an investment adviser;".

(b) RULES REQUIRED.—The Secretary of the Treasury shall—

(1) in consultation with the Chairman of the Securities and Exchange Commission and the Chairman of the Commodity Futures Trading Commission, not later than 180 days after the date of enact-

ment of this Act, publish a proposed rule in the Federal Register to carry out the amendments made by this section; and

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

(c) CONTENTS.—The final rule published under this section shall require, at a minimum, each investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11))) registered with the Securities and Exchange Commission pursuant to section 203 of that Act (15 U.S.C. 80b–3)—

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

(2) to comply with—

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

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

SEC. 204. ANTI-MONEY LAUNDERING REQUIREMENTS FOR FORMATION AGENTS.

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

"(AA) any person engaged in the business of forming new corporations, limited liability companies, partnerships, trusts, or other legal entities; or".

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

(1) PROPOSED RULE.—The Secretary of the Treasury, in consultation with the Attorney General of the United States, the Secretary of Homeland Security, and the Commissioner of Internal Revenue, shall—

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

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

(2) EXCLUSIONS.—The rule promulgated under this subsection shall exclude from the category of persons engaged in the business of forming new corporations or other entities—

(A) any government agency; and

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

SEC. 205. STRENGTHENING JOHN DOE SUMMONS PROCEEDINGS.

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

''(f) ADDITIONAL REQUIREMENT IN THE CASE OF A JOHN DOE SUMMONS.—

''(1) GENERAL RULE.—Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

"(A) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

"(B) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

"(C) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

"(2) EXCEPTION.—Paragraph (1) shall not apply to any summons which specifies that it is limited to information regarding a United States correspondent account (as defined in section 5318A(e)(1)(B) of title 31, United States Code) or a United States payable-through account (as defined in section 5318A(e)(1)(C) of such title) of a financial institution that is held at a non-FATCA institution (as defined in section 7701(a)(51)).

"(3) PRESUMPTION IN CASES INVOLVING NON-FATCA INSTITUTIONS.—For purposes of this section, in any case in which the particular person or ascer-

tainable group or class of persons have financial accounts in or transactions related to a non-FATCA institution (as defined in section 7701(a)(51)), there shall be a presumption that there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with provisions of internal revenue law.

"(4) PROJECT JOHN DOE SUMMONSES.—

"(A) IN GENERAL.—Notwithstanding the requirements of paragraph (1), the Secretary may issue a summons described in paragraph (1) if the summons—

"(i) relates to a project which is approved under subparagraph (B),

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

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

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

"(i) any summons issued with respect to the project will be issued to a member of an ascertainable group or class of persons, and

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

"(C) EXTENSION.—Upon application of the Secretary, the court may extend the time for issuing such summonses under subparagraph (A)(i) for additional 3-year periods, but only if the court continues to exercise oversight of such project under subparagraph (D).

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

(b) JURISDICTION OF COURT.—

(1) IN GENERAL.—Paragraph (1) of section 7609(h) is amended by inserting after the first sentence the following new sentence: ''Any United States district court in which a member of the group or class to which a summons may be issued resides or is found shall have jurisdiction to hear and determine the approval of a project under subsection (f)(4)(B).''.

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

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

SEC. 206. IMPROVING ENFORCEMENT OF FOREIGN FINANCIAL ACCOUNT REPORTING.

(a) CLARIFYING THE CONNECTION OF FOREIGN FINANCIAL ACCOUNT REPORTING TO TAX ADMINISTRATION.—Paragraph (4) of section 6103(b) is amended by adding at the end the following new sentence:

''For purposes of subparagraph (A)(i), section 5314 of title 31, United States Code, and sections 5321 and 5322 of such title (as such sections pertain to such section 5314), shall be considered related statutes.''.

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

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

TITLE III—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

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

(a) IN GENERAL.—Part III of subchapter N of chapter 1 is amended by inserting after subpart G the following new subpart:

''Subpart H—Special Rules for Allocation of Foreign-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.

"SEC. 975. DEDUCTIONS ALLOCATED TO DEFERRED FOREIGN INCOME MAY NOT OFFSET UNITED STATES SOURCE INCOME.

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

"(1) shall be taken into account for such taxable year only to the extent that such deductions are allocable to currently-taxed foreign income, and

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

Foreign-related deductions shall be allocated to currently-taxed foreign income in the same proportion which currently-taxed foreign income bears to the sum of currently-taxed foreign income and deferred foreign income.

"(b) DEDUCTIONS RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

"(1) IN GENERAL.—If there is repatriated foreign income for a taxable year, the portion of the previously deferred deductions allocated to the repatriated foreign income shall be taken into account for the taxable year as a deduction allocated to income from sources outside the United States. Any such amount shall not be included in foreign-related

deductions for purposes of applying subsection (a) to such taxable year.

"(2) PORTION OF PREVIOUSLY DEFERRED DEDUCTIONS.—For purposes of paragraph (1), the portion of the previously deferred deductions allocated to repatriated foreign income is—

"(A) the amount which bears the same proportion to such deductions, as

"(B) the repatriated income bears to the previously deferred foreign income.

"(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

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

"(2) CURRENTLY-TAXED FOREIGN INCOME.—The term 'currently-taxed foreign income' means the amount of gross income from sources without the United States for the taxable year (determined without regard to repatriated foreign income for such year).

"(3) DEFERRED FOREIGN INCOME.—The term 'deferred foreign income' means the excess of—

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

"(i) all controlled foreign corporations were treated as one controlled foreign corporation, and

"(ii) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952), over

"(B) the sum of—

"(i) all dividends received during the taxable year from controlled foreign corporations, plus

"(ii) amounts includible in gross income under section 951(a).

"(4) PREVIOUSLY DEFERRED FOREIGN INCOME.—The term 'previously deferred foreign income' means the aggregate amount of deferred foreign income for all prior taxable years to which this part applies, determined as of the beginning of the taxable year, reduced by the repatriated foreign income for all such prior taxable years.

"(5) REPATRIATED FOREIGN INCOME.—The term 'repatriated foreign income' means the amount included in gross income on account of distributions out of previously deferred foreign income.

"(6) PREVIOUSLY DEFERRED DEDUCTIONS.—The term 'previously deferred deductions' means the aggregate amount of foreign-related deductions not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by any amounts taken into account under subsection (b) for such prior taxable years.

"(7) TREATMENT OF CERTAIN FOREIGN TAXES.—

"(A) PAID BY CONTROLLED FOREIGN CORPORATION.—Section 78 shall not apply for purposes of determining currently-taxed foreign income and deferred foreign income.

"(B) PAID BY TAXPAYER.—For purposes of determining currently-taxed foreign income, gross income from sources without the United States shall be reduced by the aggregate amount of taxes described in the applicable paragraph of section 901(b) which are paid by

the taxpayer (without regard to sections 902 and 960) during the taxable year.

"(8) COORDINATION WITH SECTION 976.—In determining currently-taxed foreign income and deferred foreign income, the amount of deemed foreign tax credits shall be determined with regard to section 976.

"SEC. 976. AMOUNT OF FOREIGN TAXES COMPUTED ON OVERALL BASIS.

"(a) CURRENT YEAR ALLOWANCE.—For purposes of this chapter, the amount taken into account as foreign income taxes for any taxable year shall be an amount which bears the same ratio to the total foreign income taxes for that taxable year as—

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

"(2) the sum of the currently-taxed foreign income and deferred foreign income for such year.

The portion of the total foreign income taxes for any taxable year not taken into account under the preceding sentence for a taxable year shall only be taken into account as provided in subsection (b) (and shall not be taken into account for purposes of applying sections 902 and 960).

"(b) ALLOWANCE RELATED TO REPATRIATED DEFERRED FOREIGN INCOME.—

"(1) IN GENERAL.—If there is repatriated foreign income for any taxable year, the portion of the previously deferred foreign income taxes paid or accrued during such taxable year shall be taken into account for the taxable year as foreign taxes paid or accrued. Any such taxes so taken into account shall not be included in foreign income taxes for purposes of applying subsection (a) to such taxable year.

"(2) PORTION OF PREVIOUSLY DEFERRED FOREIGN INCOME TAXES.—For purposes of paragraph (1), the portion of the previously deferred foreign income taxes allocated to repatriated deferred foreign income is—

"(A) the amount which bears the same proportion to such taxes, as

"(B) the repatriated deferred income bears to the previously deferred foreign income.

"(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

"(1) PREVIOUSLY DEFERRED FOREIGN INCOME TAXES.—The term 'previously deferred foreign income taxes' means the aggregate amount of total foreign income taxes not taken into account under subsection (a) for all prior taxable years (determined as of the beginning of the taxable year), reduced by

any amounts taken into account under subsection (b) for such prior taxable years.

"(2) TOTAL FOREIGN INCOME TAXES.—The term 'total foreign income taxes' means the sum of foreign income taxes paid or accrued during the taxable year (determined without regard to section 904(c)) plus the increase in foreign income taxes that would be paid or accrued during the taxable year under sections 902 and 960 if—

"(A) all controlled foreign corporations were treated as one controlled foreign corporation, and

"(B) all earnings and profits of all controlled foreign corporations were subpart F income (as defined in section 952).

"(3) FOREIGN INCOME TAXES.—The term 'foreign income taxes' means any income, war profits, or excess profits taxes paid by the taxpayer to any foreign country or possession of the United States.

"(4) CURRENTLY-TAXED FOREIGN INCOME AND DEFERRED FOREIGN INCOME.—The terms 'currently-taxed foreign income' and 'deferred foreign income' have the meanings given such terms by section 975(c)).

"SEC. 977. APPLICATION OF SUBPART.

"This subpart—

"(1) shall be applied before subpart A, and

"(2) shall be applied separately with respect to the categories of income specified in section 904(d)(1).".

(b) CLERICAL AMENDMENT.—The table of subparts for part III of subpart N of chapter 1 is amended by inserting after the item relating to subpart G the following new item:

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

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

SEC. 302. EXCESS INCOME FROM TRANSFERS OF INTANGIBLES TO LOW-TAXED AFFILIATES TREATED AS SUBPART F INCOME.

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

"(4) the foreign base company excess intangible income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and".

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

"(f) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—For purposes of subsection (a)(4) and this subsection:

"(1) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME DEFINED.—

"(A) IN GENERAL.—The term 'foreign base company excess intangible income' means, with respect to any covered intangible, the excess of—

"(i) the sum of—

"(I) gross income from the sale, lease, license, or other disposition of property in which such covered intangible is used directly or indirectly, and

"(II) gross income from the provision of services related to such covered intangible or in connection with property in which such covered intangible is used directly or indirectly, over

"(ii) 150 percent of the costs properly allocated and apportioned to the gross in-

come taken into account under clause (i) other than expenses for interest and taxes and any expenses which are not directly allocable to such gross income.

"(B) SAME COUNTRY INCOME NOT TAKEN INTO ACCOUNT.—If—

"(i) the sale, lease, license, or other disposition of the property referred to in subparagraph (A)(i)(I) is for use, consumption, or disposition in the country under the laws of which the controlled foreign corporation is created or organized, or

"(ii) the services referred to in subparagraph (A)(i)(II) are performed in such country,

the gross income from such sale, lease, license, or other disposition, or provision of services, shall not be taken into account under subparagraph (A)(i).

"(2) EXCEPTION BASED ON EFFECTIVE FOREIGN INCOME TAX RATE.—

"(A) IN GENERAL.—Foreign base company excess intangible income shall not include the applicable percentage of any item of income received by a controlled foreign corporation if the

taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country in excess of 5 percent.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the term 'applicable percentage' means the ratio (expressed as a percentage), not greater than 100 percent, of—

"(i) the number of percentage points by which the effective rate of income tax referred to in subparagraph (A) exceeds 5 percentage points, over

"(ii) 10 percentage points.

"(C) TREATMENT OF LOSSES IN DETERMINING EFFECTIVE RATE OF FOREIGN INCOME TAX.—For purposes of determining the effective rate of income tax imposed by any foreign country—

"(i) such effective rate shall be determined without regard to any losses carried to the relevant taxable year, and

"(ii) to the extent the income with respect to such intangible reduces losses in the relevant taxable year, such effective

rate shall be treated as being the effective rate which would have been imposed on such income without regard to such losses.

"(3) COVERED INTANGIBLE.—The term 'covered intangible' means, with respect to any controlled foreign corporation, any intangible property (as defined in section 936(h)(3)(B))—

"(A) which is sold, leased, licensed, or otherwise transferred (directly or indirectly) to such controlled foreign corporation from a related person, or

"(B) with respect to which such controlled foreign corporation and one or more related persons has (directly or indirectly) entered into any shared risk or development agreement (including any cost sharing agreement).

"(4) RELATED PERSON.—The term 'related person' has the meaning given such term in subsection (d)(3).".

(c) SEPARATE BASKET FOR FOREIGN TAX CREDIT.—Subsection (d) of section 904 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) SEPARATE APPLICATION TO FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME.—

"(A) IN GENERAL.—Subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each item of income which is taken into account under section 954(a)(4) as foreign base company excess intangible income.

"(B) REGULATIONS.—The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.".

(d) CONFORMING AMENDMENTS.—

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

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

"(7) FOREIGN BASE COMPANY EXCESS INTANGIBLE INCOME NOT TREATED AS ANOTHER KIND OF BASE COMPANY INCOME.—Income of a corporation which is foreign base company excess intangible in-

come shall not be considered foreign base company income of such corporation under paragraph (2), (3), or (5) of subsection (a).''.

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

SEC. 303. LIMITATIONS ON INCOME SHIFTING THROUGH INTANGIBLE PROPERTY TRANSFERS.

(a) CLARIFICATION OF DEFINITION OF INTANGIBLE ASSET.—Clause (vi) of section 936(h)(3)(B) is amended by inserting ''(including any section 197 intangible described in subparagraph (A), (B), or (C)(i) of subsection (d)(1) of such section)'' after ''item''.

(b) CLARIFICATION OF ALLOWABLE VALUATION METHODS.—

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

''(D) REGULATORY AUTHORITY.—For purposes of the last sentence of subparagraph (A), the Secretary may require—

''(i) the valuation of transfers of intangible property on an aggregate basis, or

"(ii) the valuation of such a transfer on the basis of the realistic alternatives to such a transfer,

in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.".

(2) ALLOCATION AMONG TAXPAYERS.—Section 482 is amended by adding at the end the following: "For purposes of the preceding sentence, the Secretary may require the valuation of transfers of intangible property on an aggregate basis or the valuation of such a transfer on the basis of the realistic alternatives to such a transfer, in any case in which the Secretary determines that such basis is the most reliable means of valuation of such transfers.".

(c) EFFECTIVE DATE.—

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

(2) NO INFERENCE.—Nothing in the amendment made by subsection (a) shall be construed to create any inference with respect to the application of section 936(h)(3) of the Internal Revenue Code of 1986, or the authority of the Secretary of the Treas-

ury to provide regulations for such application, on or before the date of the enactment of such amendment.

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

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

(1) by striking ''and'', and

(2) by inserting after ''insurance companies'' the following: '', and any foreign business entity that—

''(A) has a single owner that does not have limited liability, or

''(B) has one or more members all of which have limited liability''.

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

''(C) TERMINATION.—Subparagraph (A) shall not apply to dividends, interest, rents, and royalties received or accrued after the date of the enactment of the Stop Tax Haven Abuse Act.''.

(c) EFFECTIVE DATE.—

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

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

SEC. 305. RESTRICTIONS ON DEDUCTION FOR INTEREST EXPENSE OF MEMBERS OF FINANCIAL REPORTING GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.

(a) IN GENERAL.—Section 163 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) RESTRICTION ON DEDUCTION FOR INTEREST EXPENSE OF MEMBERS OF FINANCIAL REPORTING GROUPS WITH EXCESS DOMESTIC INDEBTEDNESS.—

''(1) IN GENERAL.—In the case of any corporation which is a member of an applicable financial reporting group the common parent of which is a foreign corporation, the deduction allowed under this chapter for interest paid or accrued by the corporation during the taxable year shall not exceed the applicable limitation for the taxable year.

''(2) CARRYFORWARD.—Any amount disallowed under paragraph (1) for any taxable year shall be

treated as interest paid or accrued in the succeeding taxable year.

"(3) APPLICABLE LIMITATION.—For purposes of this subsection—

"(A) IN GENERAL.—The applicable limitation with respect to a taxpayer for any taxable year is the sum of—

"(i) the greater of—

"(I) the taxpayer's allocable share of the applicable financial reporting group's net interest expense for the taxable year, or

"(II) 10 percent of the taxpayer's adjusted taxable income for the taxable year, plus

"(ii) the excess limitation carryforwards to the taxable year from any preceding taxable year.

"(B) LIMITATION NOT LESS THAN INCLUDIBLE INTEREST.—The applicable limitation under subparagraph (A) for any taxable year shall not be less than the amount of interest includible in the gross income of the taxpayer for the taxable year.

"(C) EXCESS LIMITATION CARRYFORWARD.—If the applicable limitation of a taxpayer for any taxable year (determined without regard to carryforwards under subparagraph (A)(ii)) exceeds the interest paid or accrued by the taxpayer during the taxable year, such excess shall be an excess limitation carryforward to the 1st succeeding taxable year and the 2nd and 3rd succeeding taxable years to the extent not previously taken into account under this paragraph.

"(4) ALLOCABLE SHARE OF NET INTEREST EXPENSE.—For purposes of this subsection—

"(A) IN GENERAL.—A taxpayer's allocable share of an applicable financial reporting group's net interest expense for any taxable year shall be the amount (not less than zero) which bears the same ratio to such net interest expense as—

"(i) the net earnings of the taxpayer, bears to

"(ii) the aggregate net earnings of all members of the applicable financial reporting group.

"(B) NET EARNINGS.—The term 'net earnings' means, with respect to any taxpayer, the earnings of the taxpayer—

"(i) computed without regard to any reduction allowable for—

"(I) net interest expense,

"(II) taxes, or

"(III) depreciation, amortization, or depletion, and

"(ii) computed with such other adjustments as the Secretary may by regulations prescribe.

"(C) BURDEN ON TAXPAYER.—If a taxpayer elects not to compute its allocable share, or fails to establish to the satisfaction of the Secretary the amount of its allocable share, for any taxable year, the allocable share shall be zero.

"(5) NET INTEREST EXPENSE AND NET EARNINGS DETERMINATIONS.—For purposes of this subsection—

"(A) NET INTEREST EXPENSE.—Any determination of net interest expense for any taxable year shall be made—

"(i) on the basis of the applicable financial statement of the applicable financial reporting group for the last financial reporting year ending with or within the taxable year, and

"(ii) under United States tax principles.

"(B) NET EARNINGS.—Any determination of net earnings for any taxable year shall be made on the basis of the applicable financial statement of the applicable financial reporting group for the last financial reporting year ending with or within the taxable year.

"(C) APPLICABLE FINANCIAL STATEMENT.—The term 'applicable financial statement' means a statement for financial reporting purposes which is made on the basis of—

"(i) generally accepted accounting principles,

"(ii) international financial reporting standards, or

"(iii) any other method specified by the Secretary in regulations.

A statement under clause (ii) or (iii) may be used as an applicable financial statement by a

group only if there is no statement of the group under any preceding clause.

"(6) APPLICABLE FINANCIAL REPORTING GROUP.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable financial reporting group' means, with respect to any corporation, a group of which such corporation is a member and which files an applicable financial statement.

"(B) EXCEPTION FOR GROUPS WITH MINIMAL DOMESTIC NET INTEREST EXPENSE.—Such term shall not include a group if the aggregate net interest expense for which a deduction is allowable to all members of the group under this chapter (determined without regard to this subsection or any other limitation on deductibility of interest under this chapter) is less than $5,000,000.

"(C) EXCEPTION FOR CERTAIN FINANCIAL ENTITIES.—A corporation which is described in section 864(f)(4)(B), or is treated as described in section 864(f)(4)(B) by reason of paragraph (4)(C) or (5)(A) of section 864(f) (without regard to whether an election is made under such paragraph (5)(A)), shall not be treated as a

member of an applicable financial reporting group of which it is otherwise a member and this subsection shall not apply to such corporation.

"(7) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) ADJUSTED TAXABLE INCOME.—The term 'adjusted taxable income' has the meaning given such term by subsection (j)(6)(A).

"(B) NET INTEREST EXPENSE.—The term 'net interest expense' has the meaning given such term by subsection (j)(6)(B).

"(C) TREATMENT OF AFFILIATED GROUP.—All members of the same affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

"(8) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations providing—

"(A) for the coordination of the application of this subsection and other provisions of this chapter relating to the deductibility of interest,

"(B) for the waiver of certain adjustments required under United States tax principles in

appropriate cases for purposes of applying this subsection,

"(C) for the determination of which financial institutions are eligible for the exception from membership in an applicable financial reporting group under paragraph (6)(C) and the application of this subsection to the other members of the group which are not so excepted, and

"(D) for the application of this subsection in the case of pass thru entities and for the treatment of pass thru entities as corporations in cases where necessary to prevent the avoidance of the purposes of this subsection.".

(b) COORDINATION WITH LIMITATION ON RELATED PARTY INDEBTEDNESS.—Paragraph (2) of section 163(j) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) COORDINATION WITH LIMITATION ON EXCESS DOMESTIC INDEBTEDNESS.—This subsection shall not apply to any corporation for any taxable year to which subsection (n) applies to such corporation.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

TITLE IV—INVERTED CORPORATIONS

SEC. 401. MODIFICATIONS TO RULES RELATING TO INVERTED CORPORATIONS.

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

"(b) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—

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

"(A) such corporation would be a surrogate foreign corporation if subsection (a)(2) were applied by substituting '80 percent' for '60 percent', or

"(B) such corporation is an inverted domestic corporation.

"(2) INVERTED DOMESTIC CORPORATION.—For purposes of this subsection, a foreign corporation shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

"(A) the entity completes after May 8, 2014, the direct or indirect acquisition of—

"(i) substantially all of the properties held directly or indirectly by a domestic corporation, or

"(ii) substantially all of the assets of, or substantially all of the properties constituting a trade or business of, a domestic partnership, and

"(B) after the acquisition, either—

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

"(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

"(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, or

"(ii) the management and control of the expanded affiliated group which includes the entity occurs, directly or indirectly, primarily within the United States, and such expanded affiliated group has significant domestic business activities.

"(3) EXCEPTION FOR CORPORATIONS WITH SUBSTANTIAL BUSINESS ACTIVITIES IN FOREIGN COUNTRY OF ORGANIZATION.—A foreign corporation described in paragraph (2) shall not be treated as an inverted domestic corporation if after the acquisition the expanded affiliated group which includes the entity has substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group. For purposes of subsection (a)(2)(B)(iii) and the preceding sentence, the term 'substantial business activities' shall have the meaning given such term under regulations in effect on May 8, 2014, except that the Secretary may issue regulations increasing the threshold percent in any of the tests under such regulations for determining if business activities constitute substantial business activities for purposes of this paragraph.

"(4) MANAGEMENT AND CONTROL.—For purposes of paragraph (2)(B)(ii)—

"(A) IN GENERAL.—The Secretary shall prescribe regulations for purposes of determining cases in which the management and control of an expanded affiliated group is to be treated as occurring, directly or indirectly, primarily within the United States. The regulations prescribed under the preceding sentence shall apply to periods after May 8, 2014.

"(B) EXECUTIVE OFFICERS AND SENIOR MANAGEMENT.—Such regulations shall provide that the management and control of an expanded affiliated group shall be treated as occurring, directly or indirectly, primarily within the United States if substantially all of the executive officers and senior management of the expanded affiliated group who exercise day-to-day responsibility for making decisions involving strategic, financial, and operational policies of the expanded affiliated group are based or primarily located within the United States. Individuals who in fact exercise such day-to-day responsibilities shall be treated as executive offi-

cers and senior management regardless of their title.

"(5) SIGNIFICANT DOMESTIC BUSINESS ACTIVITIES.—For purposes of paragraph (2)(B)(ii), an expanded affiliated group has significant domestic business activities if at least 25 percent of—

"(A) the employees of the group are based in the United States,

"(B) the employee compensation incurred by the group is incurred with respect to employees based in the United States,

"(C) the assets of the group are located in the United States, or

"(D) the income of the group is derived in the United States,

determined in the same manner as such determinations are made for purposes of determining substantial business activities under regulations referred to in paragraph (3) as in effect on May 8, 2014, but applied by treating all references in such regulations to 'foreign country' and 'relevant foreign country' as references to 'the United States'. The Secretary may issue regulations decreasing the threshold percent in any of the tests under such regulations for determining if business activities constitute significant

domestic business activities for purposes of this paragraph.''.

(b) CONFORMING AMENDMENTS.—

(1) Clause (i) of section 7874(a)(2)(B) is amended by striking ''after March 4, 2003,'' and inserting ''after March 4, 2003, and before May 9, 2014,''.

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

(A) in paragraph (2)—

(i) by striking ''subsection (a)(2)(B)(ii)'' and inserting ''subsections (a)(2)(B)(ii) and (b)(2)(B)(i)'', and

(ii) by inserting ''or (b)(2)(A)'' after ''(a)(2)(B)(i)'' in subparagraph (B),

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

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

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

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years ending after May
3 8, 2014.

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