117TH CONGRESS
1ST SESSION

S. 725

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

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

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

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:

TITLE I—ENDING CORPORATE OFFSHORE TAX AVOIDANCE

SEC. 101. 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. 102. 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.”.

SEC. 103. REQUIREMENT TO DISCLOSE TOTAL CORPORATE TAXES PAID.

(a) IN GENERAL.—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 TOTAL CORPORATE TAXES PAID.—

“(1) ISSUER DISCLOSURE REQUIREMENT.— Each issuer required to file an annual or quarterly report under subsection (a) shall disclose in that report—

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

"(B) the total amount paid by the issuer in State taxes during the period covered by the report;

"(C) the total amount paid by the issuer in Federal taxes during the period covered by the report; and

"(D) the total amount paid by the issuer in foreign taxes during the period covered by the report.

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

"(A) revenues generated from transactions with other constituent entities;

"(B) revenues not generated from transactions with other constituent entities;

"(C) profit or loss before income tax;

"(D) total income tax paid on a cash basis to all tax jurisdictions, and any taxes withheld on payments received by the constituent entities;

"(E) total accrued tax expense recorded on taxable profits or losses, reflecting only operations in the relevant annual period and excluding deferred taxes or provisions for uncertain tax liabilities;

"(F) stated capital, except that the stated capital of a permanent establishment must be reported in the tax jurisdiction of residence of the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes;

"(G) total accumulated earnings, except that accumulated earnings of a permanent establishment must be reported by the legal entity of which it is a permanent establishment;

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

"(I) net book value of tangible assets, which, for purposes of this section, does not include cash or cash equivalents, intangibles, or financial assets.

"(3) AVAILABILITY OF INFORMATION.—The Commission shall make the information filed with the Commission pursuant to this subsection publicly available through the Commission website in a manner that is searchable, sortable, and downloadable.".

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

SEC. 104. PENALTY FOR ELECTION TO PAY TAX ON DEFERRED FOREIGN INCOME IN INSTALLMENTS.

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

"(7) PENALTY.—Interest on installments under this subsection shall be payable as determined under section 6601 by treating the last date prescribed for payment for any installment as the date for payment of the first installment under this subsection.".

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

SEC. 105. MODIFICATIONS TO BASE EROSION AND ANTI-ABUSE TAX.

(a) REDUCTION OF EXEMPTION BASED ON ANNUAL GROSS RECEIPTS.—Section 59A(e)(1)(B) is amended by striking "$500,000,000" and inserting "$100,000,000".

(b) ELIMINATION OF EXCEPTION BASED ON BASE EROSION PERCENTAGE.—Section 59(e)(1) is amended by inserting "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(c) CERTAIN CAPITALIZED AMOUNTS INCLUDED AS BASE EROSION PAYMENTS.—Section 59A(d) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) CERTAIN CAPITALIZED AMOUNTS.—Such term shall also include any interest, royalty, or any other amount identified by the Secretary that is paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer and with respect to which the taxpayer increases the value of property under section 1016 or any other provision of this title.".

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

SEC. 106. TREATMENT OF FOREIGN BASE COMPANY OIL RELATED INCOME AS SUBPART F INCOME.

(a) IN GENERAL.—Section 954(a) is amended by striking ''and'' at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting '', and'', and by adding at the end the following new paragraph:

''(4) the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).''.

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

''(g) FOREIGN BASE COMPANY OIL RELATED INCOME.—For purposes of this section, the term 'foreign base company oil related income' means foreign oil related income (within the meaning of paragraphs (2) and (3) of section 907(c)) other than income derived from a source within a foreign country in connection with—

''(1) oil or gas which was extracted from an oil or gas well located in such foreign country, or

''(2) oil, gas, or a primary product of oil or gas which is sold by the foreign corporation or a related person for use or consumption within such country or is loaded in such country on a vessel or aircraft as fuel for such vessel or aircraft.

Such term shall not include any foreign personal holding company income (as defined in subsection (c)).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 952(c)(1)(B)(iii) is amended by redesignating subclauses (III) and (IV) as subclauses (IV) and (V), respectively, and by inserting after subclause (II) the following new subclause:

''(III) foreign base company oil related income.''.

(2) Section 954(b) is amended—

(A) by striking ''and the foreign base company services income'' in paragraph (5) and inserting ''the foreign base company services income, and the foreign base company oil related income'', and

(B) by adding at the end the following new paragraph:

''(6) FOREIGN BASE COMPANY OIL RELATED INCOME NOT TREATED AS ANOTHER KIND OF BASE COMPANY INCOME.—Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of such corporation under paragraph (2) or (3) of subsection (a).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after the date of the enactment of this Act, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 107. MODIFICATIONS OF FOREIGN TAX CREDIT RULES APPLICABLE TO DUAL CAPACITY TAXPAYERS.

(a) IN GENERAL.—Section 901 of the Internal Revenue Code of 1986 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

''(n) SPECIAL RULES RELATING TO DUAL CAPACITY TAXPAYERS.—

''(1) GENERAL RULE.—Notwithstanding any other provision of this chapter, any amount paid or accrued by a dual capacity taxpayer to a foreign country or possession of the United States for any period with respect to combined foreign oil and gas income (as defined in section 907(b)(1)) shall not be considered a tax to the extent such amount exceeds the amount (determined in accordance with regulations) which would have been required to be paid if the taxpayer were not a dual capacity taxpayer.

"(2) DUAL CAPACITY TAXPAYER.—For purposes of this subsection, the term 'dual capacity taxpayer' means, with respect to any foreign country or possession of the United States, a person who—

"(A) is subject to a levy of such country or possession, and

"(B) receives (or will receive) directly or indirectly a specific economic benefit (as determined in accordance with regulations) from such country or possession.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxes paid or accrued in taxable years beginning after December 31, 2020.

(2) CONTRARY TREATY OBLIGATIONS UPHELD.—The amendments made by this section shall not apply to the extent contrary to any treaty obligation of the United States.

SEC. 108. TREATMENT OF INTANGIBLES TRANSFERRED TO PARTNERSHIPS.

(a) REPEAL OF CERTAIN REGULATORY AUTHORITY.—Section 367(d) is amended by striking paragraph (3).

(b) EXCEPTION TO RULES PROVIDING NONRECOGNITION OF GAIN.—Section 721(d) is amended to read as follows:

"(d) CERTAIN TRANSFERS OF INTANGIBLE PROPERTY TO PARTNERSHIPS.—

"(1) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property within the meaning of section 367(d)(4) to a specified partnership in an exchange described in this section, subsection (a) shall not apply to the transfer of such property and the provisions of section 367(d)(2) shall apply to such transfer.

"(2) SPECIFIED PARTNERSHIP.—For purposes of this subsection, the term 'specified partnership' means any partnership if any item of income or gain attributable to intangible property is taken into account in determining any distributive share of such partnership to a person that is not a United States person.".

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

TITLE II—ADDITIONAL MEASURES TO COMBAT TAX EVASION

SEC. 201. AUTHORIZING SPECIAL MEASURES AGAINST FOREIGN JURISDICTIONS, FINANCIAL INSTITUTIONS, AND OTHERS THAT SIGNIFICANTLY IMPEDE UNITED STATES TAX ENFORCEMENT.

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

(1) by striking the section heading and inserting the following: "**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: "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: "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) in paragraph (2), by adding at the end the following:

''(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 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 by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such 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, domestic financial agency, or credit card company or association for or on behalf of a foreign banking institution, if such 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 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".

(b) CLERICAL AMENDMENT.—The table of contents for chapter 53 of title 31, United States Code, is amended by striking the item relating to section 5318A 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.".

SEC. 202. 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) in paragraph (2)(A), by inserting ‘‘or transaction’’ after ‘‘any depository’’, and

(2) in paragraph (5)(C), by striking ‘‘or any interest’’ and all that follows 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 section 1471(c) or 1472(b) may be dis-

closed 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 presumption 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. 203. 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 title 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 AT 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 (xxv), by striking "and" at the end of clause (xxvi), and by adding after clause (xxvi) the following new clauses:

"(xxvii) 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

"(xxviii) 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 redesignating the second subparagraph (JJ) as (KK), by striking "or" at the end of subparagraph (JJ), by striking the period at the end of subparagraph (KK), and by inserting after subparagraph (KK) the following new subparagraphs:

"(LL) 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), or

"(MM) 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 regula-

tions, 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. 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, whether or not regulations are issued under Section 6045D.

SEC. 204. 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 such violation, the amount of 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.".

(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 such violation, the amount of 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 such violation, the amount of 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. 205. 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 (as defined in section 202(a) of the Investment Advisers Act of 1940);".

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

(1) in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, not later than 180 days after the date of enactment 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. 206. 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 205 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 Se-

curity, 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. 207. 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 ascertainable 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. 208. 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".

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