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111TH CONGRESS
1ST SESSION

S. 1934

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax on income from assets held abroad, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 2009

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

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A BILL

To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax on income from assets held abroad, 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 ''Foreign Account Tax Compliance Act of 2009''.

(b) REFERENCE.—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 consid-

ered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

TITLE I—INCREASED DISCLOSURE OF BENEFICIAL OWNERS

Sec. 101. Reporting on certain foreign accounts.
Sec. 102. Repeal of certain foreign exceptions to registered bond requirements.

TITLE II—UNDER REPORTING WITH RESPECT TO FOREIGN ASSETS

Sec. 201. Disclosure of information with respect to foreign financial assets.
Sec. 202. Penalties for underpayments attributable to undisclosed foreign financial assets.
Sec. 203. Modification of statute of limitations for significant omission of income in connection with foreign assets.

TITLE III—OTHER DISCLOSURE PROVISIONS

Sec. 301. Disclosure of assistance in acquiring or forming a foreign entity.
Sec. 302. Reporting of activities with respect to passive foreign investment companies.
Sec. 303. Secretary permitted to require financial institutions to file certain returns related to withholding on foreign transfers electronically.

TITLE IV—PROVISIONS RELATED TO FOREIGN TRUSTS

Sec. 401. Clarifications with respect to foreign trusts which are treated as having a United States beneficiary.
Sec. 402. Presumption that foreign trust has United States beneficiary.
Sec. 403. Uncompensated use of trust property treated as a distribution.
Sec. 404. Reporting requirement of United States owners of foreign trusts.
Sec. 405. Minimum penalty with respect to failure to report on certain foreign trusts.

TITLE V—DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS

Sec. 501. Dividend equivalent payments received by foreign persons treated as dividends.

TITLE I—INCREASED DISCLOSURE OF BENEFICIAL OWNERS

SEC. 101. REPORTING ON CERTAIN FOREIGN ACCOUNTS.

(a) IN GENERAL.—The Internal Revenue Code of 1986 is amended by inserting after chapter 3 the following new chapter:

"CHAPTER 4—TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS

"Sec. 1471. Withholdable payments to foreign financial institutions.
"Sec. 1472. Withholdable payments to other foreign entities.
"Sec. 1473. Definitions.
"Sec. 1474. Special rules.

"SEC. 1471. WITHHOLDABLE PAYMENTS TO FOREIGN FINANCIAL INSTITUTIONS.

"(a) IN GENERAL.—In the case of any withholdable payment to a foreign financial institution which does not meet the requirements of subsection (b), the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

"(b) REPORTING REQUIREMENTS, ETC.—

"(1) IN GENERAL.—The requirements of this subsection are met with respect to any foreign financial institution if an agreement is in effect between

such institution and the Secretary under which such institution agrees—

''(A) to obtain such information from each holder of each account maintained by such institution as is necessary to determine which (if any) of such accounts are United States accounts,

''(B) to comply with such verification and due diligence procedures as the Secretary may require with respect to the identification of United States accounts,

''(C) in the case of any United States account maintained by such institution, to report on an annual basis (at such time and in such manner as the Secretary may provide) the information described in subsection (c) with respect to such account,

''(D) to comply with requests by the Secretary for additional information with respect to any United States account maintained by such institution, and

''(E) in any case in which any foreign law would (but for a waiver described in clause (i)) prevent the reporting of any information referred to in this subsection or subsection (c)

with respect to any United States account maintained by such institution—

"(i) to attempt to obtain a valid and effective waiver of such law from each holder of such account, and

"(ii) if a waiver described in clause (i) is not obtained from each such holder, to close such account.

"(2) TERMINATION OF AGREEMENT.—Any agreement entered into under this subsection may be terminated by the Secretary upon a determination by the Secretary that the foreign financial institution is out of compliance with such agreement.

"(c) INFORMATION REQUIRED TO BE REPORTED ON UNITED STATES ACCOUNTS.—

"(1) IN GENERAL.—The agreement described in subsection (b) shall require the foreign financial institution to report the following with respect to each United States account maintained by such institution:

"(A) The name, address, and TIN of each account holder which is a specified United States person and, in the case of any account holder which is a United States owned foreign

entity, the name, address, and TIN of each substantial United States owner of such entity.

''(B) The account number.

''(C) The account balance or value (determined at such time and in such manner as the Secretary may provide).

''(D) The gross receipts and gross withdrawals or payments from the account (determined for such period and in such manner as the Secretary may provide).

''(2) ELECTION TO BE SUBJECT TO SAME REPORTING AS UNITED STATES FINANCIAL INSTITUTIONS.—In the case of a foreign financial institution which elects the application of this paragraph—

''(A) subparagraphs (C) and (D) of paragraph (1) shall not apply, and

''(B) the agreement described in subsection (b) shall require such foreign financial institution to report such information with respect to each United States account maintained by such institution as such institution would be required to report under sections 6041, 6042, 6045, and 6049 if—

''(i) such institution were a United States person, and

''(ii) each holder of such account which is a specified United States person or United States owned foreign entity were a natural person and citizen of the United States.

An election under this paragraph shall be made at such time, in such manner, and subject to such conditions as the Secretary may provide.

''(3) INFORMATION SUPPLIED BY ACCOUNT HOLDERS.—The foreign financial institution may rely on a certification from an account holder as to whether an account is a United States account and for the information required under paragraph (1)(A) with respect to such account holder if neither the financial institution nor any entity which is a member of the same expanded affiliated group as such financial institution knows, or has reason to know, that any information provided in such certification is incorrect.

''(4) SEPARATE REQUIREMENTS FOR QUALIFIED INTERMEDIARIES.—In the case of a foreign financial institution which is treated as a qualified intermediary by the Secretary for purposes of section 1441 and the regulations issued thereunder, the requirements of this section shall be in addition to

any reporting or other requirements imposed by the Secretary for purposes of such treatment.

''(d) DEFINITIONS.—For purposes of this section—

''(1) UNITED STATES ACCOUNT.—

''(A) IN GENERAL.—The term 'United States account' means any financial account which is held by one or more specified United States persons or United States owned foreign entities.

''(B) EXCEPTION FOR CERTAIN ACCOUNTS HELD BY INDIVIDUALS.—Unless the foreign financial institution elects to not have this subparagraph apply, such term shall not include any depository account maintained by such financial institution if—

''(i) each holder of such account is a natural person, and

''(ii) with respect to each holder of such account, the aggregate value of all depository accounts held (in whole or in part) by such holder and maintained by the same financial institution which maintains such account does not exceed $10,000 ($50,000 if all such accounts were in exist-

ence on the date of the enactment of this section).

For purposes of clause (ii), all financial institutions which are members of the same expanded affiliated group shall be treated as a single financial institution.

''(2) FINANCIAL ACCOUNT.—The term 'financial account' means, with respect to any financial institution—

''(A) any depository account maintained by such financial institution,

''(B) any custodial account maintained by such financial institution, and

''(C) except as otherwise provided by the Secretary, any equity or debt interest in such financial institution (other than interests which are regularly traded on an established securities market).

Any equity or debt interest which constitutes a financial account under subparagraph (C) with respect to any financial institution shall be treated for purposes of this section as maintained by such financial institution.

''(3) UNITED STATES OWNED FOREIGN ENTITY.—The term 'United States owned foreign entity'

means any foreign entity which has one or more substantial United States owners.

''(4) FOREIGN FINANCIAL INSTITUTION.—The term 'foreign financial institution' means any financial institution which is a foreign entity.

''(5) FINANCIAL INSTITUTION.—Except as otherwise provided by the Secretary, the term 'financial institution' means any entity that—

''(A) accepts deposits in the ordinary course of a banking or similar business,

''(B) is engaged in the business of holding financial assets for the account of others, or

''(C) is engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities (as defined in section 475(c)(2) without regard to the last sentence thereof), partnership interests, commodities (as defined in section 475(e)(2)), or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

''(e) AFFILIATED GROUPS.—

''(1) IN GENERAL.—The requirements of subsections (b), (c)(1), and (c)(3) shall apply—

"(A) with respect to United States accounts maintained by the foreign financial institution, and

"(B) except as otherwise provided by the Secretary, with respect to United States accounts maintained by each other foreign financial institution (other than any foreign financial institution which meets the requirements of subsection (b)) which is a member of the same expanded affiliated group as such foreign financial institution.

"(2) EXPANDED AFFILIATED GROUP.—For purposes of this section, the term 'expanded affiliated group' means an affiliated group as defined in section 1504(a), determined—

"(A) by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears, and

"(B) without regard to paragraphs (2) and (3) of section 1504(b).

A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by mem-

bers of such group (including any entity treated as a member of such group by reason of this sentence).

''(f) EXCEPTION FOR CERTAIN PAYMENTS.—Subsection (a) shall not apply to any payment if the beneficial owner of such payment is—

''(1) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

''(2) any international organization or any wholly owned agency or instrumentality thereof,

''(3) any foreign central bank of issue, or

''(4) any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

''SEC. 1472. WITHHOLDABLE PAYMENTS TO OTHER FOREIGN ENTITIES.

''(a) IN GENERAL.—In the case of any withholdable payment to a non-financial foreign entity, if—

''(1) the beneficial owner of such payment is such entity or any other non-financial foreign entity, and

''(2) the requirements of subsection (b) are not met with respect to such beneficial owner,

then the withholding agent with respect to such payment shall deduct and withhold from such payment a tax equal to 30 percent of the amount of such payment.

''(b) REQUIREMENTS FOR WAIVER OF WITHHOLDING.—The requirements of this subsection are met with respect to the beneficial owner of a payment if—

''(1) such beneficial owner or the payee provides the withholding agent with either—

''(A) a certification that such beneficial owner does not have any substantial United States owners, or

''(B) the name, address, and TIN of each substantial United States owner of such beneficial owner,

''(2) the withholding agent does not know, or have reason to know, that any information provided under paragraph (1) is incorrect, and

''(3) the withholding agent reports the information provided under paragraph (1)(B) to the Secretary in such manner as the Secretary may provide.

''(c) EXCEPTIONS.—Subsection (a) shall not apply to—

''(1) except as otherwise provided by the Secretary, any payment beneficially owned by—

"(A) any corporation the stock of which is regularly traded on an established securities market,

"(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

"(C) any foreign government, any political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

"(D) any international organization or any wholly owned agency or instrumentality thereof,

"(E) any foreign central bank of issue, or

"(F) any other class of persons identified by the Secretary for purposes of this subsection, and

"(2) any class of payments identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion.

"(d) NON-FINANCIAL FOREIGN ENTITY.—For purposes of this section, the term 'non-financial foreign entity' means any foreign entity which is not a financial institution (as defined in section 1471(d)(5)).

"SEC. 1473. DEFINITIONS.

''For purposes of this subchapter—

''(1) WITHHOLDABLE PAYMENT.—The term 'withholdable payment' means—

''(A) any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income, if such payment is from sources within the United States, and

''(B) any gross proceeds from the sale of any property of a type which can produce interest or dividends from sources within the United States.

''(2) SUBSTANTIAL UNITED STATES OWNER.—

''(A) IN GENERAL.—The term 'substantial United States owner' means—

''(i) with respect to any corporation, any specified United States person which owns, directly or indirectly, more than 10 percent of the stock of such corporation (by vote or value),

''(ii) with respect to any partnership, any specified United States person which owns, directly or indirectly, more than 10

percent of the profits interests or capital interests in such partnership, and

"(iii) in the case of a trust, any specified United States person treated as an owner of any portion of such trust under subpart E of part I of subchapter J of chapter 1.

"(B) SPECIAL RULE FOR INVESTMENT VEHICLES.—In the case of any financial institution described in section 1471(d)(5)(C), clauses (i) and (ii) of subparagraph (A) shall be applied by substituting '0 percent' for '10 percent'.

"(3) SPECIFIED UNITED STATES PERSON.—Except as otherwise provided by the Secretary, the term 'specified United States person' means any United States person other than—

"(A) any corporation the stock of which is regularly traded on an established securities market,

"(B) any corporation which is a member of the same expanded affiliated group (as defined in section 1471(e)(2) without regard to the last sentence thereof) as a corporation described in subparagraph (A),

"(C) any organization exempt from taxation under section 501(a) or an individual retirement plan,

"(D) the United States or any wholly owned agency or instrumentality thereof,

"(E) any State, the District of Columbia, any possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

"(F) any bank (as defined in section 581),

"(G) any real estate investment trust (as defined in section 856),

"(H) any regulated investment company (as defined in section 851),

"(I) any common trust fund (as defined in section 584(a)), and

"(J) any trust which—

"(i) is exempt from tax under section 664(c), or

"(ii) is described in section 4947(a)(1).

"(4) WITHHOLDING AGENT.—The term 'withholding agent' means all persons, in whatever capac-

ity acting, having the control, receipt, custody, disposal, or payment of any withholdable payment.

''(5) FOREIGN ENTITY.—The term 'foreign entity' means any entity which is not a United States person.

"SEC. 1474. SPECIAL RULES.

''(a) LIABILITY FOR WITHHELD TAX.—Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

''(b) CREDITS AND REFUNDS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the determination of whether any tax deducted and withheld under this chapter results in an overpayment shall be made as if such tax had been deducted and withheld under subchapter A of chapter 3.

''(2) SPECIAL RULE WHERE FOREIGN FINANCIAL INSTITUTION IS BENEFICIAL OWNER OF PAYMENT.—

''(A) IN GENERAL.—In the case of any tax deducted and withheld under section 1471(a) from a specified financial institution payment—

''(i) if the foreign financial institution referred to in subparagraph (B) with respect to such payment is entitled to a reduced rate of tax with respect to such payment by reason of any treaty obligation of the United States—

''(I) the amount of any credit or refund with respect to such tax shall not exceed the amount of credit or refund attributable to such reduction in rate, and

''(II) no interest shall be allowed or paid with respect to such credit or refund, and

''(ii) if such foreign financial institution is not so entitled, no credit or refund shall be allowed or paid with respect to such tax.

''(B) SPECIFIED FINANCIAL INSTITUTION PAYMENT.—The term 'specified financial institution payment' means any withholdable payment if the foreign financial institution payee referred to in section 1471(a) with respect to such payment is the beneficial owner of such payment.

''(c) CONFIDENTIALITY OF INFORMATION.—

''(1) IN GENERAL.—For purposes of this chapter, rules similar to the rules of section 3406(f) shall apply.

''(2) DISCLOSURE OF LIST OF QUALIFIED FOREIGN FINANCIAL INSTITUTIONS PERMITTED.—The identity of a foreign financial institution which meets the requirements of section 1471(b) shall not be treated as return information for purposes of section 6103.

''(d) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this chapter.''.

(b) COORDINATION WITH OTHER WITHHOLDING PROVISIONS.—

(1) WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.—Subsection (c) of section 1441 is amended by adding at the end the following new paragraph:

''(13) WITHHOLDABLE PAYMENTS TAXED UNDER CHAPTER 4.—No tax shall be required to be deducted and withheld under subsection (a) from any amount with respect to which tax is required to be deducted and withheld under chapter 4.''.

(2) WITHHOLDING OF TAX ON DISPOSITIONS OF UNITED STATES REAL PROPERTY INTERESTS.—Subsection (b) of section 1445 is amended by adding at the end the following new paragraph:

"(10) WITHHOLDABLE PAYMENTS TAXED UNDER CHAPTER 4.—No tax shall be required to be deducted and withheld under subsection (a) from any amount with respect to which tax is required to be deducted and withheld under chapter 4.".

(c) CLERICAL AMENDMENT.—The table of chapters of such Code is amended by adding at the end the following new item:

"CHAPTER 4. TAXES TO ENFORCE REPORTING ON CERTAIN FOREIGN ACCOUNTS.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to payments made after December 31, 2010.

(2) GRANDFATHERED TREATMENT OF CERTAIN OUTSTANDING OBLIGATIONS.—The amendments made by this section shall not apply to any obligation outstanding on the date of first committee action, if such obligation—

(A) is in bearer form, or

(B) includes (on the date of the issuance of such obligation) a provision under which the issuer would (but for this paragraph) be obligated to make additional payments under such obligation by reason of the amendments made by this section.

SEC. 102. REPEAL OF CERTAIN FOREIGN EXCEPTIONS TO REGISTERED BOND REQUIREMENTS.

(a) REPEAL OF EXCEPTION TO DENIAL OF DEDUCTION FOR INTEREST ON NON-REGISTERED BONDS.—

(1) IN GENERAL.—Paragraph (2) of section 163(f) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 163(f)(2) is amended by inserting ''or'' at the end of clause (ii), by striking '', or'' at the end of clause (iii) and inserting a period, and by striking clause (iv).

(B) Subparagraph (B) of section 163(f)(2), as redesignated by paragraph (1), is amended—

(i) by striking ", and subparagraph (B)," in the matter preceding clause (i), and

(ii) by amending clause (i) to read as follows:

"(i) such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, and".

(C) Sections 165(j)(2)(A) and 1287(b)(1) are each amended by striking "except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply".

(b) REPEAL OF TREATMENT AS PORTFOLIO DEBT.—

(1) IN GENERAL.—Paragraph (2) of section 871(h) is amended to read as follows:

"(2) PORTFOLIO INTEREST.—For purposes of this subsection, the term 'portfolio interest' means any interest (including original issue discount) which—

"(A) would be subject to tax under subsection (a) but for this subsection, and

"(B) is paid on an obligation—

"(i) which is in registered form, and

''(ii) with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person.''.

(2) CONFORMING AMENDMENT.—Section 871(h)(3)(A) is amended by striking ''subparagraph (A) or (B) of''.

(c) REPEAL OF EXCEPTION TO REQUIREMENT THAT TREASURY OBLIGATIONS BE IN REGISTERED FORM.—

(1) IN GENERAL.—Subsection (g) of section 3121 of title 31, United States Code, is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) CONFORMING AMENDMENTS.—Paragraph (1) of section 3121(g) of such title is amended—

(A) by adding ''or'' at the end of subparagraph (A),

(B) by striking ''; or'' at the end of subparagraph (B) and inserting a period, and

(C) by striking subparagraph (C).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date which is 180 days after the date of the enactment of this Act.

TITLE II—UNDER REPORTING WITH RESPECT TO FOREIGN ASSETS

SEC. 201. DISCLOSURE OF INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.

(a) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6038C the following new section:

"SEC. 6038D. INFORMATION WITH RESPECT TO FOREIGN FINANCIAL ASSETS.

''(a) IN GENERAL.—Any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A for such taxable year the information described in subsection (c) with respect to each such asset if the aggregate value of all such assets exceeds $50,000 (or such higher dollar amount as the Secretary may prescribe).

''(b) SPECIFIED FOREIGN FINANCIAL ASSETS.—For purposes of this section, the term 'specified foreign financial asset' means—

''(1) any financial account (as defined in section 1471(d)(2)) maintained by a foreign financial institution (as defined in section 1471(d)(4)), and

''(2) any of the following assets which are not held in an account maintained by a financial institution (as defined in section 1471(d)(5))—

''(A) any stock or security issued by a person other than a United States person,

''(B) any financial instrument or contract held for investment that has an issuer or counterparty which is other than a United States person, and

''(C) any interest in a foreign entity (as defined in section 1473).

''(c) REQUIRED INFORMATION.—The information described in this subsection with respect to any asset is:

''(1) In the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account.

''(2) In the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part.

''(3) In the case of any other instrument, contract, or interest—

''(A) such information as is necessary to identify such instrument, contract, or interest, and

''(B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest.

''(4) The maximum value of the asset during the taxable year.

''(d) PENALTY FOR FAILURE TO DISCLOSE.—

''(1) IN GENERAL.—If any individual fails to furnish the information described in subsection (c) with respect to any taxable year at the time and in the manner described in subsection (a), such person shall pay a penalty of $10,000.

''(2) INCREASE IN PENALTY WHERE FAILURE CONTINUES AFTER NOTIFICATION.—If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual shall pay a penalty (in addition to the penalties under paragraph (1)) of $10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day

period. The penalty imposed under this paragraph with respect to any failure shall not exceed $50,000.

''(e) PRESUMPTION THAT VALUE OF SPECIFIED FOREIGN FINANCIAL ASSETS EXCEEDS DOLLAR THRESHOLD.—If—

''(1) the Secretary determines that an individual has an interest in one or more specified foreign financial assets, and

''(2) such individual does not provide sufficient information to demonstrate the aggregate value of such assets,

then the aggregate value of such assets shall be treated as being in excess of $50,000 (or such higher dollar amount as the Secretary prescribes for purposes of subsection (a)) for purposes of assessing the penalties imposed under this section.

''(f) APPLICATION TO CERTAIN ENTITIES.—To the extent provided by the Secretary in regulations or other guidance, the provisions of this section shall apply to any domestic entity which is formed or availed of for purposes of holding, directly or indirectly, specified foreign financial assets, in the same manner as if such entity were an individual.

''(g) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is

shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

''(h) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide appropriate exceptions from the application of this section in the case of—

''(1) classes of assets identified by the Secretary, including any assets with respect to which the Secretary determines that disclosure under this section would be duplicative of other disclosures, and

''(2) nonresident aliens.''.

(b) CLERICAL AMENDMENT.—The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6038C the following new item:

''Sec. 6038D. Information with respect to foreign financial assets.''.

(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. 202. PENALTIES FOR UNDERPAYMENTS ATTRIBUTABLE TO UNDISCLOSED FOREIGN FINANCIAL ASSETS.

(a) IN GENERAL.—Section 6662 is amended—

(1) in subsection (b), by inserting after paragraph (5) the following new paragraph:

''(6) Any undisclosed foreign financial asset understatement.'', and

(2) by adding at the end the following new subsection:

''(i) UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENT.—

''(1) IN GENERAL.—For purposes of this section, the term 'undisclosed foreign financial asset understatement' means, for any taxable year, the portion of the understatement for such taxable year which is attributable to any transaction involving an undisclosed foreign financial asset.

''(2) UNDISCLOSED FOREIGN FINANCIAL ASSET.—For purposes of this subsection, the term 'undisclosed foreign financial asset' means, with respect to any taxable year, any asset with respect to which information was required to be provided under section 6038, 6038B, 6038D, 6046A, or 6048 for such taxable year but was not provided by the tax-

payer as required under the provisions of those sections.

''(3) INCREASE IN PENALTY FOR UNDISCLOSED FOREIGN FINANCIAL ASSET UNDERSTATEMENTS.—In the case of any portion of an underpayment which is attributable to any undisclosed foreign financial asset understatement, subsection (a) shall be applied with respect to such portion by substituting '40 percent' for '20 percent'.''.

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

SEC. 203. MODIFICATION OF STATUTE OF LIMITATIONS FOR SIGNIFICANT OMISSION OF INCOME IN CONNECTION WITH FOREIGN ASSETS.

(a) EXTENSION OF STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 6501(e) is amended by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C), respectively, and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

''(A) GENERAL RULE.—If the taxpayer omits from gross income an amount properly includible therein and—

''(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

''(ii) such amount—

''(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

''(II) is in excess of $5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.''.

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 6501(e)(1), as redesignated by paragraph (1), is amended by striking all that precedes clause (i) and inserting the following:

''(B) DETERMINATION OF GROSS INCOME.—For purposes of subparagraph (A)—''.

(B) Paragraph (2) of section 6229(c) is amended by striking ''which is in excess of 25 percent of the amount of gross income stated in its return'' and inserting ''and such amount is described in clause (i) or (ii) of section 6501(e)(1)(A)''.

(b) ADDITIONAL REPORTS SUBJECT TO EXTENDED PERIOD.—Paragraph (8) of section 6501(c) is amended—

(1) by inserting ''pursuant to an election under section 1295(b) or'' before ''under section 6038'',

(2) by inserting ''1298(f),'' before ''6038'', and

(3) by inserting ''6038D,'' after ''6038B,''.

(c) CLARIFICATIONS RELATED TO FAILURE TO DISCLOSE FOREIGN TRANSFERS.—Paragraph (8) of section 6501(c) is amended by striking ''event'' and inserting ''tax return, event,''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) returns filed after the date of the enactment of this Act; and

(2) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 (determined without regard to

such amendments) for assessment of such taxes has not expired as of such date.

TITLE III—OTHER DISCLOSURE PROVISIONS

SEC. 301. DISCLOSURE OF ASSISTANCE IN ACQUIRING OR FORMING A FOREIGN ENTITY.

(a) IN GENERAL.—Subchapter B of chapter 61 is amended by redesignating section 6116 as section 6117 and by inserting after 6115 the following new section:

"SEC. 6116. DISCLOSURE OF ASSISTANCE IN ACQUIRING OR FORMING A FOREIGN ENTITY.

''(a) IN GENERAL.—Each material advisor with respect to any foreign entity transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

''(1) the identity of the foreign entity referred to in subsection (d),

''(2) the identity of the citizen or resident of the United States referred to in subsection (d), and

''(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

''(b) PENALTY FOR NONDISCLOSURE.—Any person who is required to file a return under subsection (a) with

respect to any foreign entity transaction and fails to file such return on or before the date prescribed therefor (or files false or incomplete information with respect to such transaction) shall pay a penalty equal to the greater of—

''(1) $10,000, or

''(2) 50 percent of the gross income derived by such person with respect to aid, assistance or advice which is provided with respect to such transaction before the date the return is filed under subsection (a).

''(c) MATERIAL ADVISOR.—For purposes of this section, the term 'material advisor' means any person—

''(1) who provides any material aid, assistance, or advice with respect to carrying out one or more foreign entity transactions, and

''(2) who directly or indirectly derives gross income in excess of $100,000 for providing such aid, assistance or advice during the calendar year.

''(d) FOREIGN ENTITY TRANSACTION.—For purposes of this section, the term 'foreign entity transaction' means the direct or indirect acquisition of any interest in a foreign entity (including any interest acquired in connection with the formation of such entity) if any citizen or resident of the United States is required to file a report

under section 6038, 6038B, 6046, 6046A, or 6048 in connection with such acquisition.

''(e) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect.

''(f) REGULATIONS.—The Secretary may prescribe regulations or other guidance which provide—

''(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

''(2) exemptions from the requirements of this section, and

''(3) such rules as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 61 is amended by redesignating the item relating to section 6116 as an item relating to section 6117 and by inserting after the item relating to section 6115 the following new item:

''Sec. 6116. Disclosure of assistance in acquiring or forming a foreign entity.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to aid, assistance, and advice provided after the date of the enactment of this Act.

SEC. 302. REPORTING OF ACTIVITIES WITH RESPECT TO PASSIVE FOREIGN INVESTMENT COMPANIES.

(a) IN GENERAL.—Section 1298 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

''(f) REPORTING REQUIREMENT.—Each person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.''.

(b) CONFORMING AMENDMENT.—Subsection (e) of section 1291 is amended by striking '', (d), and (f)'' and inserting ''and (d)''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of the enactment of this Act.

SEC. 303. SECRETARY PERMITTED TO REQUIRE FINANCIAL INSTITUTIONS TO FILE CERTAIN RETURNS RELATED TO WITHHOLDING ON FOREIGN TRANSFERS ELECTRONICALLY.

(a) IN GENERAL.—Subsection (e) of section 6011 is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR RETURNS FILED BY FINANCIAL INSTITUTIONS WITH RESPECT TO WITHHOLDING ON FOREIGN TRANSFERS.—Paragraph (2)(A) shall not apply to any return filed by a finan-

cial institution (as defined in section 1471(d)(5)) with respect to tax for which such institution is made liable under section 1461 or 1474(a).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due date for which (determined without regard to extensions) is after the date of the enactment of this Act.

TITLE IV—PROVISIONS RELATED TO FOREIGN TRUSTS

SEC. 401. CLARIFICATIONS WITH RESPECT TO FOREIGN TRUSTS WHICH ARE TREATED AS HAVING A UNITED STATES BENEFICIARY.

(a) IN GENERAL.—Paragraph (1) of section 679(c) is amended by adding at the end the following:

''For purposes of subparagraph (A), an amount shall be treated as accumulated for the benefit of a United States person even if the United States person's interest in the trust is contingent on a future event.''.

(b) CLARIFICATION REGARDING DISCRETION TO IDENTIFY BENEFICIARIES.—Subsection (c) of section 679 is amended by adding at the end the following new paragraph:

''(4) SPECIAL RULE IN CASE OF DISCRETION TO IDENTIFY BENEFICIARIES.—For purposes of para-

graph (1)(A), if any person has the discretion (by authority given in the trust agreement, by power of appointment, or otherwise) of making a distribution from the trust to, or for the benefit of, any person, such trust shall be treated as having a beneficiary who is a United States person unless—

"(A) the terms of the trust specifically identify the class of persons to whom such distributions may be made, and

"(B) none of those persons are United States persons during the taxable year.".

(c) CLARIFICATION THAT CERTAIN AGREEMENTS AND UNDERSTANDINGS ARE TERMS OF THE TRUST.—Subsection (c) of section 679, as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(5) CERTAIN AGREEMENTS AND UNDERSTANDINGS TREATED AS TERMS OF THE TRUST.—For purposes of paragraph (1)(A), if any United States person who directly or indirectly transfers property to the trust is directly or indirectly involved in any agreement or understanding (whether written, oral, or otherwise) that may result in the income or corpus of the trust being paid or accumulated to or for the benefit of a United States person,

such agreement or understanding shall be treated as a term of the trust.''.

SEC. 402. PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.

(a) IN GENERAL.—Section 679 is amended by redesignating subsection (d) as subsection (e) and inserting after subsection (c) the following new subsection:

''(d) PRESUMPTION THAT FOREIGN TRUST HAS UNITED STATES BENEFICIARY.—If a United States person directly or indirectly transfers property to a foreign trust (other than a trust described in section 6048(a)(3)(B)(ii)), such trust shall be presumed to have a United States beneficiary for purposes of applying this section to such transfer unless such person—

''(1) submits such information to the Secretary as the Secretary may require with respect to such transfer, and

''(2) demonstrates to the satisfaction of the Secretary that such trust satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1).''.

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

SEC. 403. UNCOMPENSATED USE OF TRUST PROPERTY TREATED AS A DISTRIBUTION.

(a) IN GENERAL.—Paragraph (1) of section 643(i) is amended—

(1) by striking ''directly or indirectly to'' and inserting ''(or permits the use of any other trust property) directly or indirectly to or by'', and

(2) by inserting ''(or the fair market value of the use of such property)'' after ''the amount of such loan''.

(b) EXCEPTION FOR COMPENSATED USE.—Paragraph (2) of section 643(i) is amended by adding at the end the following new subparagraph:

''(E) EXCEPTION FOR COMPENSATED USE OF PROPERTY.—In the case of the use of any trust property other than a loan of cash or marketable securities, paragraph (1) shall not apply to the extent that the trust is paid the fair market value of such use within a reasonable period of time of such use.''.

(c) APPLICATION TO GRANTOR TRUSTS.—Subsection (c) of section 679, as amended by section 401, is amended by adding at the end the following new paragraph:

''(6) UNCOMPENSATED USE OF TRUST PROPERTY TREATED AS A PAYMENT.—For purposes of this subsection, a loan of cash or marketable securi-

ties (or the use of any other trust property) directly or indirectly to or by any United States person (whether or not a beneficiary under the terms of the trust) shall be treated as paid or accumulated for the benefit of a United States person. The preceding sentence shall not apply to the extent that the United States person repays the loan at a market rate of interest (or pays the fair market value of the use of such property) within a reasonable period of time.''.

(d) CONFORMING AMENDMENTS.—Paragraph (3) of section 643(i) is amended—

(1) by inserting ''(or use of property)'' after ''If any loan'',

(2) by inserting ''or the return of such property'' before ''shall be disregarded'', and

(3) by striking ''REGARDING LOAN PRINCIPAL'' in the heading thereof.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to loans made, and uses of property, after the date of the enactment of this Act.

SEC. 404. REPORTING REQUIREMENT OF UNITED STATES OWNERS OF FOREIGN TRUSTS.

(a) IN GENERAL.—Paragraph (1) of section 6048(b) is amended by inserting ''shall submit such information

as the Secretary may prescribe with respect to such trust for such year and'' before ''shall be responsible to ensure''.

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

SEC. 405. MINIMUM PENALTY WITH RESPECT TO FAILURE TO REPORT ON CERTAIN FOREIGN TRUSTS.

(a) IN GENERAL.—Subsection (a) of section 6677 is amended—

(1) by inserting ''the greater of $10,000 or'' before ''35 percent'', and

(2) by striking the last sentence and inserting the following: ''At such time as the gross reportable amount with respect to any failure can be determined by the Secretary, any subsequent penalty imposed under this subsection with respect to such failure shall be reduced as necessary to assure that the aggregate amount of such penalties do not exceed the gross reportable amount (and to the extent that such aggregate amount already exceeds the gross reportable amount the Secretary shall refund such excess to the taxpayer).''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to notices and returns required to be filed after December 31, 2009.

TITLE V—DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS

SEC. 501. DIVIDEND EQUIVALENT PAYMENTS RECEIVED BY FOREIGN PERSONS TREATED AS DIVIDENDS.

(a) IN GENERAL.—Section 871 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

''(l) TREATMENT OF DIVIDEND EQUIVALENT PAYMENTS.—

''(1) IN GENERAL.—For purposes of this section, sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

''(2) DIVIDEND EQUIVALENT.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'dividend equivalent' means—

''(i) any payment made pursuant to a notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

''(ii) any other payment determined by the Secretary to be substantially similar to a payment described in clause (i).

''(B) EXCEPTIONS.—Such term does not include any payment pursuant to any contract or other arrangement which the Secretary determines does not have the potential for tax avoidance. In making such determination, the Secretary may take into account the following factors with respect to such contract or arrangement:

''(i) The term (including provisions for early terminations and offsetting financial contracts).

''(ii) The amount of each party's investment and the amounts of any collateral posted.

''(iii) Whether the price of the equity used to measure the parties' entitlements or obligations is based on an objectively observable price.

''(iv) Whether either party sells (directly or indirectly) to the other party the security giving rise to dividends from sources within the United States.

''(v) Whether there are terms that address the hedge position of either party or other conditions which would compel either party to hold or acquire the security giving rise to dividends from sources within the United States.

''(vi) Such other factors as the Secretary determines appropriate.

''(C) PAYMENTS DETERMINED ON GROSS BASIS.—The term 'payment' includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

''(D) COORDINATION WITH CHAPTERS 3 AND 4.—For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made on or after the date that is 90 days after the date of the enactment of this Act.

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