Stop Tax Haven Abuse Act
Representative Lloyd Doggett and Senator Sheldon Whitehouse

Title I: Ending corporate offshore tax avoidance

Section 101: Allocation of expenses and taxes on basis of repatriation of foreign income
Section 301 would prohibit companies from deducting from their taxes expenses related to profits for which the taxes have been deferred. In other words, a company would have to choose whether it wants to defer taxes on foreign profits or deduct related expenses. It could not, as is the case under current law, have it both ways.

JCT estimates this provision would raise $51 billion over ten years.

The second part of Section 101 would close a loophole that allows corporations to game their foreign tax credits, the tax credits they receive for payment of income taxes in other countries. Currently, many corporations utilize foreign tax credits in higher tax jurisdictions to offset taxes in lower-tax ones. For example, if a corporation paid a 40% tax rate in Germany, it will have an excess credit not needed to offset the 35% U.S. rate when it repatriated the income. It could then use that excess credit to offset taxes when repatriating money from a tax haven jurisdiction. Section 301 would require a U.S corporation to pool its foreign tax credits and would limit the amount of credits that could be used. For example, if a corporation repatriated 10% of its income, it could only use 10% of its pooled credits.

JCT estimates this provision would raise $59 billion over ten years.

Section 102: Current taxation of excess royalties and other income from intangibles received from a controlled foreign corporation
Current law allows corporations to transfer intellectual property, distribution rights, and other intangibles to offshore affiliates and then to defer taxes on profits from that property. Current IRS "transfer pricing" rules are intended to ensure that the U.S. corporation receives fair compensation for the transferred property. Determining the arm-length price involves complex calculations and many U.S. companies routinely undervalue their transferred property. The IRS lacks the resources to properly investigate underpricing. Section 302 would discourage companies from underpricing transferred intangibles by allowing the IRS to treat income attributed to the value of property in excess of 150% of the transfer price as immediately taxable.

JCT estimates this provision would raise $21 billion over ten years.

Section 103: Limitations on income shifting through intangible property transfers

Section 303 would clarify that the IRS can use sensible means of valuation in valuing transferred intangible property.

JCT estimates this provision would raise $2 billion over ten years.

Section 104: Repeal of check-the-box rules for certain foreign entities and the related CFC look-through provision.
Since 1997, corporations have been able to elect to disregard certain foreign entities in its corporate structure for purposes of determining whether they owe taxes in the current year. This provision,

originally promulgated by regulations, was made a temporary law in 2006, which Congress has since extended (most recently through 2014). Section 304 would repeal the so-called "check the box rule" and prohibit corporations from disregarding parts of their structure in determining whether they owe taxes in the current year or can defer payment.

JCT estimates this provision would raise $78 billion over ten years.

Section 105: Restrictions on deduction for interest expense of members of financial reporting groups with excess domestic indebtedness
Some multinational groups reduce or eliminate their U.S. tax bills by concentrating their worldwide debt, and the resulting interest deductions, in the U.S. subsidiaries. Section 105 would disallow interest deduction for U.S. subsidiaries of a multination corporation where a disproportionate share of the worldwide group's debt is located in the U.S. entity, a tactic commonly known as "earnings stripping." The limit for each U.S. subsidiary would equal the sum of the subsidiary's interest income plus its proportionate share of the corporate group's net interest expense. Alternatively, the corporation could choose an alternative interest deduction limitation of ten percent of "adjusted taxable income."

JCT estimates this provision would raise $41 billion over ten years.

Section 106: Treatment of foreign corporations managed and controlled in the U.S. as domestic corporations
Section 106 is designed to address the "Ugland House problem" of U.S. corporations organizing in tax havens but really doing business from the U.S. Ugland House in the Cayman Islands is a building that is the legal home of over 18,000 companies, many of them really American companies in every other sense. This section would discourage U.S. companies from incorporating abroad by deeming corporations worth $50 million or more and managed and controlled in the U.S. to be U.S. taxpayers.

JCT estimates this provision would raise $6.6 billion over ten years.

Section 107: Swaps payments made from the U.S. to persons offshore
Swaps are financial contracts in which people can wager on future events such as commodities prices and foreign currency rates. Swaps can also be used to assign revenue streams from financial instruments. While dividend and interest payments to offshore accounts are subject to a 30% tax withholding requirement, regulations currently allow swap payments sent offshore from the U.S. to be treated as non-U.S.-source income that may escape taxation. Congress closed one aspect of this loophole in 2010 pertaining to "dividend equivalent" swap payments, but the broader loophole, for non-dividend equivalent swap payments, remains. Section 107 would close this loophole by treating swaps payments sent from the U.S. to be taxable U.S. source income.

Section 108: Modifications to rules relating to inverted corporations

Section 108 would discourage corporate inversions by deeming the product of a merger between a U.S. company and a smaller foreign firm to be a U.S. taxpayer, no matter where in the world the new company is headquartered. Specifically, it would continue to treat a combined foreign corporation as a domestic corporation if the shareholders of the original U.S. corporation continue to own more than 50 percent of the new firm, or if the affiliated group that includes the new corporation continues to be managed and controlled in the United States and engages in "significant domestic business activities" (defined as 25% of employees by number, employees by compensation, assets, or income) in the United States. The Section applies to inversions completed after May 8, 2014.

This majority ownership test would replace an 80-20 test enacted in 2004. The 2004 law effectively prohibits U.S. firms from avoiding taxes by merging with foreign “shells,” but still allows U.S. companies to avoid taxes through foreign mergers so long as the new company has less than 80% of the same shareholders as the original U.S. company.

JCT estimates this provision would raise $19 billion over ten years.

Section 109: Country-by-country reporting
Section 109 would require multinational companies to disclose in their public SEC filings basic country-by-country information including revenues, profits, and the number of employees. The current lack of this information impedes efficient tax administration by U.S. and foreign tax authorities and can leave investors without a complete understanding of their companies’ operations. These disclosures would help fulfill President Obama’s commitment to other G-20 leaders to share information to stop international tax avoidance.

Title II: Additional measures to combat tax evasion

Section 201: Authorizing special measures against foreign jurisdictions, financial institutions, and others that significantly impede U.S. tax enforcement
The Foreign Account Tax Compliance Act of 2010 (FATCA) requires foreign banks with U.S. investments to disclose all accounts opened by Americans or face hefty withholding penalties on the U.S. investment income they receive. Section 201 would give Treasury enforcement tools to encourage banks without U.S. investments to comply. It is modeled on authority provided under current law to combat foreign financial institutions that assist money launderers. Allowable sanctions would include prohibiting U.S. banks from dealing with offending foreign banks and ensuring that credit and debit cards issued by the foreign banks do not work in the U.S. This provision passed the Senate in 2012 as part of the highway bill, but was dropped in conference with the House.

JCT estimates this provision would raise $879 million over ten years.

Section 202: Strengthening the Foreign Account Tax Compliance Act of 2010 (FATCA)
While Section 201 would give Treasury tools to encourage foreign banks to comply with FATCA, Section 202 would strengthen existing laws to improve information collection to identify Americans hiding assets offshore. Too commonly U.S. taxpayers set up legal entities in tax havens to hold their wealth. While the foreign entities have legal control of the assets, the U.S. taxpayers are really the ones calling the shots. Section 202 would look through this legal fiction by rebuttable evidentiary presumptions that would deem U.S. taxpayers to control offshore entities that they create or finance. These presumptions would apply only in civil judicial, administrative tax, or SEC enforcement proceedings. In addition to the control presumption, Section 202 would presume that any money transferred to an offshore account is taxable income that has not yet been taxed.

In addition to rebuttable presumptions, Section 202 would strengthen FATCA disclosure requirements. It would ensure that checking accounts and derivatives are disclosed. It would also codify several regulations Treasury has already issued under FATCA, including guidance that requires banks to comply with FATCA if they discover through money laundering due diligence that a foreign entity is really controlled by a U.S. taxpayer. Section 202 would also allow the IRS to share taxpayer information with other regulators and law enforcement agencies and require foreign holding companies (passive foreign investment companies) to file tax returns.

Section 203: Reporting U.S. beneficial owners of foreign owned financial accounts
Section 203 would require banks and brokers that discover through money laundering due diligence that the beneficial owner of a foreign account is a U.S. taxpayer to disclose that information to the IRS.

Section 204: Penalty for failing to disclose offshore holdings
Current law requires corporate insiders of public companies to disclose stock holdings and transactions with affiliated offshore entities. Section 204 would strengthen this requirement by establishing a new monetary penalty of up to $1 million for noncompliance.

Section 205: Deadline for anti-money-laundering requirements for formation agents
Currently hedge funds and private equity funds can transfer substantial offshore funds to the U.S. without complying with anti-money laundering programs that require banks and other financial institutions to know their customers and report suspicious activity. Section 205 would extend current programs to cover investment advisors to hedge funds and private equity funds registered with the SEC.

Section 206: Anti-money-laundering requirements for formation agents
Section 206 would extend anti-money-laundering requirements to formation agents—parties who help taxpayers form corporations and trusts.

Section 207: Strengthening John Doe summons proceedings
John Doe summons, an important tool used by the IRS to identify taxpayers involved in offshore schemes, allow the IRS to request information in cases in which the identity of the taxpayer is unknown. The IRS has used John Doe summons to obtain the names of U.S. account holders at Swiss banks. Section 207 would make it easier for the IRS to obtain these summonses by presuming that cases involving non-FATCA-complaint foreign banks raise tax compliance issues. It would also streamline proceedings in cases involving multiple summonses.

Section 208: Improving enforcement of foreign financial account reporting
Under current law, a person holding a foreign bank account worth over $10,000 is required to file a Foreign Bank Account Report (FBAR) with the IRS. Section 208 would allow the IRS to more easily use other information from tax filings to determine if a taxpayer should have filed an FBAR. It would also clarify that any FBAR penalties be calculated using the highest account balance in the reporting period.