

Summary of Cut Unjustified Tax (CUT) Loopholes, S.2075

Tuesday, February 7, 2012

Title I – Ending Offshore Tax Abuses

Raising over \$130 billion over 10 years by stopping offshore tax dodges, this title would:

- **Authorize special measures to stop offshore tax abuse (§101)** by allowing Treasury to take specified steps against foreign jurisdictions or financial institutions that impede U.S. tax enforcement, including prohibiting U.S. financial institutions from doing business with a designated foreign jurisdiction or foreign bank.
- **Strengthen FATCA (§102)** by clarifying when, under the Foreign Account Tax Compliance Act, foreign financial institutions and U.S. persons must report foreign financial accounts to the IRS.
- **Establish rebuttable presumptions to combat offshore secrecy (§102)** in U.S. tax and securities law enforcement proceedings by treating non-publicly traded offshore entities as controlled by the U.S. taxpayer who formed them, sent them assets, received assets from them, or benefited from them when those entities have accounts or assets in non-FATCA institutions, unless the taxpayer proves otherwise.
- **Stop companies run from the United States from claiming foreign status and dodging U.S. taxes on their foreign income (§103)** by treating foreign corporations that are publicly traded or have gross assets of \$50 million or more and whose management and control occur primarily in the United States as U.S. domestic corporations for income tax purposes.
- **Strengthen detection of offshore activities (§104)** by requiring U.S. financial institutions that open accounts for foreign entities controlled by U.S. clients or open foreign accounts in non-FATCA institutions for U.S. clients to report the accounts to the IRS.
- **Close the offshore swap payments loophole (§105)** by treating swap payments that originate in the United States as taxable U.S. source income.
- **Close the foreign subsidiary deposits loophole (§106)** by treating deposits made by a controlled foreign corporation (CFC) to a financial account located in the United States as a taxable constructive distribution by the CFC to its U.S. parent.
- **Require annual country-by-country reporting (§111)** by SEC-registered corporations on employees, sales, financing, tax obligations, and tax payments.
- **Establish a penalty for corporate insiders who hide offshore holdings (§112)** by authorizing a fine of up to \$1 million per violation of securities laws.
- **Require anti-money laundering programs (§§113-114)** for private funds and formation agents to ensure they screen clients and offshore money.
- **Strengthen John Doe summons (§115)** by streamlining the process used by the IRS to issue summons to a class of persons, such as the clients of an offshore bank, accounting firm, or law firm, while strengthening court oversight.
- **Combat hidden foreign financial accounts (§116)** by allowing IRS use of tax return information to evaluate foreign financial account reports, simplifying penalty calculations for unreported foreign accounts, and facilitating use of suspicious activity reports in civil tax enforcement.
- **Strengthen penalties (§§121-122)** on tax shelter promoters and those who aid and abet tax evasion by increasing the maximum fine to 150% of any ill-gotten gains.
- **Prohibit fee arrangements (§123)** in which a tax advisor is paid a fee based upon the amount of paper losses generated to shelter income or taxes not paid by a client.
- **Require bank examination techniques (§124)** to detect and prevent abusive tax shelter activities or the aiding and abetting of tax evasion by financial institutions.
- **Allow sharing of tax information with federal financial regulators (§125)** upon request when engaged in a law enforcement effort.

- **Require disclosure of information to Congress (§126)** related to an IRS determination of whether to exempt an organization from taxation.
- **Direct the establishment of standards for tax opinions (§127)** rendering advice on transactions with a potential for tax avoidance or evasion.
- **Defer corporate tax deductions (§131)** for expenses related to deferred income so that, for example, a corporation would be barred from taking a tax deduction for building a plant offshore until it also declared and paid U.S. taxes on income produced by that plant.
- **Determine foreign tax credits (§131)** on a pooled basis to prevent U.S. corporations from manipulating and taking excess foreign tax credits to reduce their U.S. taxes.
- **Tax excess income from intangible property that has been transferred offshore (§132)** including patents, trademarks, and copyrights, to remove incentives for U.S. corporations to move their intellectual property offshore.
- **Limit shifting of income to offshore entities through the transfer of intangible property (§133)**, so that U.S. corporations no longer receive tax benefits from creating offshore shell entities to hold ownership of their patents, trademarks, and copyrights.
- **Limit earnings stripping (§134)** by stopping U.S. corporations that reincorporate in another country from treating their U.S. income as foreign income.

Title II – Ending Excessive Corporate Tax Deductions for Stock Options

Raising \$25 billion over ten years by stopping excessive corporate stock options tax deductions, this title would:

- **Eliminate favored tax treatment of corporate stock option deductions (§201)**, in which corporations are currently allowed to deduct a higher stock option compensation expense on their tax returns than shown on their financial books by prohibiting corporations from taking a tax deduction that exceeds the expense shown on their books.
- **Allow corporations to deduct stock option compensation on their tax returns in the same year it is recorded on the company books**, without waiting for the options to be exercised.
- **Make corporate stock option deductions subject to the existing \$1 million cap (§202)** on overall corporate deductions for compensation paid to the top executives of publicly held corporations.
- **Ensure research tax credits use the same methodology** for calculating stock option compensation expenses when computing wages.
- **Make no change to stock option compensation rules for individuals or for incentive stock options** used by start-up companies and small businesses