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Corporate Tax Inversions: A Brief Overview

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Corporate Tax Inversions:
A Brief Overview

A Thesis
Presented to
The Faculty and the Honors Program
Of the University of San Diego

By
Hannah Jean Mueller
Accountancy
2016

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ABSTRACT

Purpose and Research Methods

The purpose of this report is to give a brief overview of corporate tax inversions and how policymakers are attempting to curb these efforts. The data in this report was obtained through online methods. Much of the information comes from the U.S. Department of the Treasury, in the form of the Internal Revenue Code, press releases, Internal Revenue Bulletins, and fact sheets. I have also used research articles and opinion pieces. The websites were confirmed to be of appropriate origin. The report is quite lengthy, but it is still just an introduction into this topic.

Review of Paper

The United States has one of the highest corporate tax rates in the world. As a result, many U.S. corporations have been going through corporate tax inversions in order to save money on taxes. The corporations claim that they must go through these inversions and pay less tax in order to stay competitive in the international market. The government believe that these corporations are not paying their fair share of taxes and are considered "corporate deserters".

Conclusions

After reviewing the applicable laws, regulations, and arguments of both the corporations and the government, I have concluded that the corporations should go through the inversions if it is keeping them competitive. It is up to the government to change the tax law to prevent these inversions from happening, but it is not unethical for corporations to go through them.

Recommendations

My recommendation is for the corporations to continue inverting as long as it is lucrative to them and the United States government needs to reduce the corporate income tax rate at the very least. They could also stop taxing on global income making repatriation easier.

INTRODUCTION

Within the accounting major, there are endless topics to research. One of the biggest areas is taxation, especially international taxation. The topic of corporate tax inversions is very timely, as corporations are going through these inversions practically weekly now. The U.S. government is doing all that they can to stop these inversions from happening, since it is causing them to lose out on million and billions of tax revenue every year. In researching this area of the law, it is important to look at a general overview of the structure of this tax-savings transaction and then move into the arguments from both sides of the equation.

One method corporations save tax is by reclassifying themselves as a foreign entity, instead of a U.S. entity, thus going through an inversion. There are several benefits to this transaction, including the tax rate savings, the repatriation benefits, and the debt leverage of the new parent-subsidiary entity. However, there are some consequences involved, including the possible loss of customers, being exposed to the public opinion, the uncertainty of future laws undoing the cost and work involved in the transaction, and whether this can be classified as ethical or not. Putting these consequences aside, there are dozens of large corporations that have already inverted and have reaped the benefits while incurring few consequences.

The U.S. government has put out several initiatives to try to stop the U.S. companies from taking advantage of the current tax code and going through these inversions to save taxes. After an inversion, nothing really changes for the U.S. operations of the entity, except for the lower tax bill. The politicians see this as an ethical violation of these companies to their country of America. The question is, can the government really ever stop these inversions? Is it ethical for corporations to go through these inversions just to save taxes? These questions will be answered throughout the research.

INVERSION OVERVIEW

Inversions have proven to be very complex and difficult to understand. Although it is, in essence, a reverse merger, the detail in the law can make the whole process very long and gruesome. The reason for these complexities is because the companies are trying to avoid paying U.S. taxes while the law is trying to keep them paying the taxes.

Definition

As stated earlier, a corporate tax inversion for the purposes of avoiding U.S. tax is considered a reverse merger. A typical merger involves Company A acquiring the net assets of Company B. It is usually a mutual decision between the two companies, and the result is a larger Company A, which holds the net assets of Company B. The shareholders of Company B give up their stock in exchange for cash, stock of Company A, or both.

A corporate tax inversion is considered a "reverse" merger, meaning the company who initiates the merger is not the ultimate standing company. In our example earlier, the new company would be Company B to maintain the abroad corporate status. Most of the time, however, the foreign company will take on the U.S. company name. A U.S. company will go through a reverse merger if they have operations abroad already, typically. The restructuring ends so that a foreign company replaces the U.S. parent company (U.S. Treasury Fact Sheet). In reality, an "U.S. company mergers with a foreign one, dissolves its United States corporate status and reincorporates in the foreign country. The U.S. company becomes a subsidiary of the foreign one, but the foreign firm is controlled by the original U.S. firm" (Gural).

The definition of a corporate inversion sounds simple enough, but the details of different code sections can make it very difficult to execute. In essence, the code section allows two different ways to perform this merger as to avoid U.S. taxes.

How to Invert—Substantial Business Activities

Although there are two ways for an U.S. company to reincorporate in another country or jurisdiction, code section 7874 makes one of these ways very difficult.

The first way a company could go through a corporate tax inversion is to "self-invert". To do this, the company must have "substantial business activities" in a foreign country. Prior to the temporary regulations in code section 7874 originally introduced in 2006, it was relatively easy for a company to show business activities in a foreign jurisdiction. Beginning in 2006, the U.S. Treasury began to introduce new, temporary regulations to make it more difficult for a company to show "substantial business activities" in a foreign jurisdiction.

The first set of temporary regulations to code section 7874 issued in 2006 introduced a "facts and circumstances" test. It also included a safe harbor rule that stated that a corporation is considered to have substantial business activities if more than 10% of the corporation's employees, assets, and sales occurred in a foreign jurisdiction (PwC). The 2009 regulations removed this safe harbor rule and removed all examples of the facts and circumstances test. The regulations continued to adapt and in 2012, a bright line rule replaced the facts and circumstances test. This bright line test stated that a corporation has substantial business activities if and only if 25% of the corporation employees, assets, and gross income occurred in a foreign jurisdiction (PwC). The final regulations, issued in June 2015, adopted most of the 2012 regulations with some changes.

The final version of the substantial business activities test in code section 7874 is effective for acquisitions occurring on or after June 3, 2015. It considers all transactions relating to the acquisition, even if occurring after the final merger date (PwC). The regulations adopt the same 25% bright line test described in 2012. However, there are specifications for meeting the

bright line test. The employees test must be met by having 25% of all employees considered for tax purposes located in the foreign jurisdiction as well as 25% of the total payroll for those employees over the year preceding the final acquisition date (called the "testing period"). The assets test measures all tangible personal property and real property. The assets must be physically located in the foreign jurisdiction at acquisition date (excluding mobile assets) and they must have been in that foreign jurisdiction more than any other jurisdiction during the testing period (PwC). Finally, the gross income test must be met by sales occurring from normal business activity to unrelated customers in the foreign jurisdiction (PwC). This final version of these regulations is definitely difficult for a U.S. Corporation to comply with, making it very uncommon to follow today.

How to Invert—Reverse Merger

Based on the prior discussion, it is obvious that going through a self-inversion has become a very difficult maneuver for U.S. corporations attempting to reincorporate elsewhere. Luckily, there is still another method that corporations can do that obtains the same result: a reverse merger.

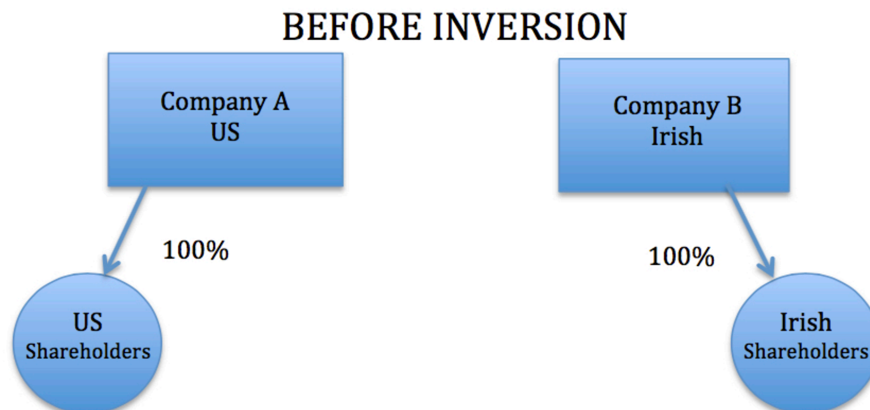

Figure 1: A graphic illustration of two companies before an inversion takes place.

To help illustrate this point, an example of a reverse merger will be introduced. Suppose Company A is an U.S. corporation and is looking to go through a reverse merger with Company B, an Irish based corporation. The goal of this transaction is to avoid paying U.S. taxes on global

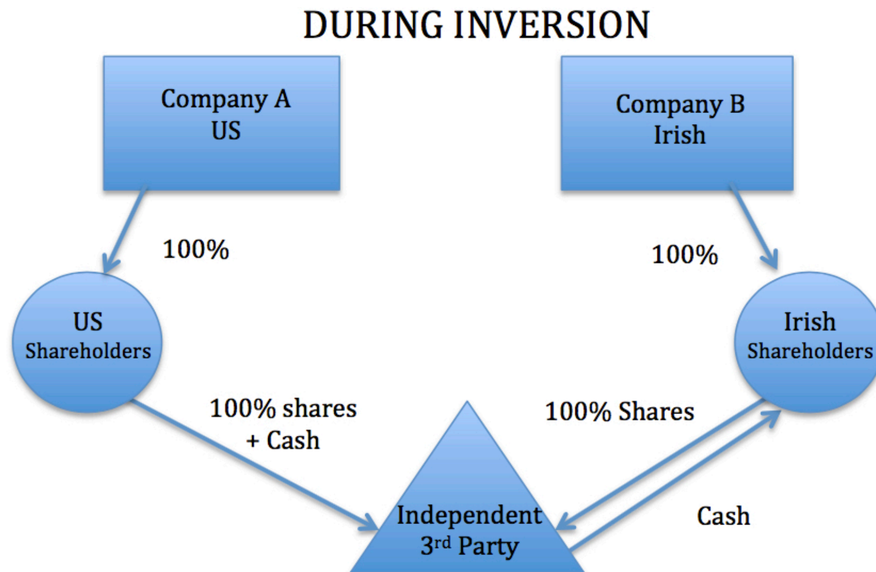

Figure 2: A graphic illustration of two companies during an inversion.

income. During the deal, both companies' shareholders will surrender its stock to an independent third party. Depending on the size of the two companies, cash may be involved as well to "buy out" some of the shareholders of one company. Once the deal is complete, the companies hope to only pay U.S. taxes on U.S. generated income. To accomplish this, the former shareholders of Company A must receive less that 80% of the voting power and value of the new corporation. If 80% or more of the vote or value belongs to the former A shareholders, then the U.S. will treat the new corporation as if it were a domestic corporation (IRS §7874). This means that the new corporation is not any better off than Company A was originally. It is much easier for a corporate tax inversion to proceed under these circumstances than it is under the previous example.

There are some further considerations that must be made when structuring a transaction in this way. If the former A shareholders receive 60% or more of the vote or value, and less than

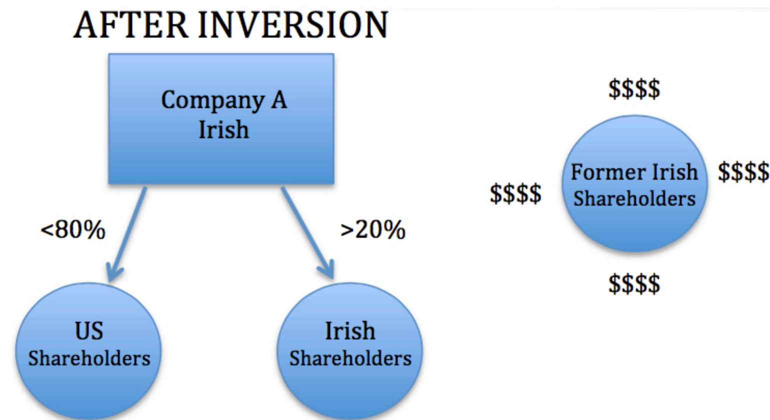

Figure 3: A graphic illustration of two companies that have inverted.

80%, then code section 7874 may still apply in the form of an "inversion gain" (IRS §7874). This requires that any future taxable income of the new corporation cannot be less than the inversion gain (basically, the gain on the transaction due to the transfer of stock). Furthermore, IRC §367(a) will cause any property contributed from Company A to Company B to have a different gain recognition rule (IRS §367). It does this by pretending that Company B is not a corporation and thus will not receive the same benefits from IRC §§332, 351, 354, 356, or 361. IRC §4985 may also apply in this situation, which will impose an excise tax on certain stock-related compensation (IRS §4985). Although many code sections are applying in this situation, it is still a tax-saving effect as compared to being considered a domestic corporation.

The goal of a corporate tax inversion is for an U.S. company to have a new foreign parent while still maintaining control. It is difficult to maintain control of a new corporation if the original Company A shareholders own less than 60%, but there are still some tax consequences associated with this value and will be discussed briefly. If the former A shareholders own more than 50% of the new company, but less than 60%, only IRC §367(a) concerning gain recognition applies. If the former A shareholders own less than 50% of the new corporation, then IRC §367(a) may apply, depending on facts and circumstances. In reality, a reverse merger would

probably never end with less than 60% ownership from the original U.S. company for fear of losing ownership and management control of the corporation.

Summary

To conclude, a U.S. company goes through a corporate tax inversion by going through the steps of a merger. The difference, however, is that the new parent company is a foreign one. This allows the U.S. company to save money on paying the corporate tax in America, but how far do the benefits reach? A discussion of benefits and consequences of these reverse mergers are to follow.

BENEFITS

Corporate tax inversions are very popular for U.S. corporations right now, and there are many reasons for this. The obvious benefit of this transaction is to save money on paying U.S. taxes, but there are other benefits to it as well. As with anything else in life, it is not all benefits. There are several consequences with reverse mergers as well. The decision to go through with a reverse merger depends on a variety of factors: cost savings, business advantage, and more

U.S. Tax Savings

The U.S. tax rate for corporations is one of the highest in the world at 35%, but many large multinational U.S. corporations have an effective rate of below 20%. Regardless, the United States also is one of few countries that taxes corporations on worldwide earnings with a

2015 Corporate Income Tax Rates by County

Country	Tax Rate
Bahamas	0%
Belgium	33%
Cayman Islands	0%
Denmark	23.5%
France	33.33%
Germany	15%
Ireland	12.5%
Italy	27.5%
Mexico	30%
Netherlands	25%
Singapore	17%
Spain	28%
Switzerland	8.5%
United Kingdom	20%
United States	35%

Table 1: Corporate income tax rates for selected countries for the year 2015.

credit for foreign taxes paid. This means that if a corporation paid 20% tax in a foreign country, the United States would charge an additional 15% tax to make the total up to the national rate. When a corporation goes through a corporate tax inversion, they no longer have to pay tax on

global income. Instead, tax is only paid to the United States on income earned in the country. This is exactly how the corporations are saving millions and billions of tax dollars by reincorporating into another country, such as Ireland with a tax rate of 12.5%. Other countries, such as the Bahamas and the Cayman Islands, have a 0% income tax rate. This shows that corporations look at much more in reincorporating in different countries besides for just the tax rate. Corporations are looking to inversions to try to save on tax dollars by facing a lower rate and no longer being taxed on global income, simply to continue staying competitive. The figure below depicts how corporations feel about the high tax rate in the U.S. Not only are there savings on the income tax, but there are also savings of repatriating trapped cash from abroad.

Figure 4 A political cartoon depicting how the corporations feel about competing internationally as a U.S. corporations as opposed to a foreign corporation. (Courtesy of investors.com/cartoons)

Repatriation of Trapped Cash Offshore

In Corporate America, "trapped cash" can be considered a loaded word. The corporations complain about it, the politicians complain about it, and the general public complains about it. With all of this hype about it, it is important to understand the meaning behind it and why everyone is so upset about it.

There is a total of $2.1 trillion of trapped profits abroad from U.S. companies (Rubin). This profit becomes trapped in two steps: first, a multinational company earns profits abroad through operations and pays tax on it in the foreign jurisdiction and, second, the corporation leaves this money in the foreign jurisdiction to avoid paying the U.S. taxes on it if they brought it back. When the U.S. companies bring this money back into the United States, they face paying the 35% corporate tax rate on it. To give an idea of the magnitude of this additional tax, Duke Energy Corp from North Carolina paid $373 million in tax in February 2015 to bring back some of their $2.7 billion in accumulated foreign profits (Rubin). Cisco has been investing in India, Israel, and France due to lack of U.S. policy changes. CEO John Chambers has said that he would rather invest back in the United States, but he is battling between market expectations and shareholder demands (Rubin). This becomes a very difficult problem for Corporate America, since the companies want to bring the money back to be able to invest it, the politicians want the money back to get the taxes on it, and the public wants the money back to improve the economy.

Bloomberg has attempted to paint a better picture of what is happening with these trapped profits by analyzing 304 large U.S. based companies that are holding cash abroad (Rubin). The figure below shows the top five companies that have the most accumulated profits by the end of

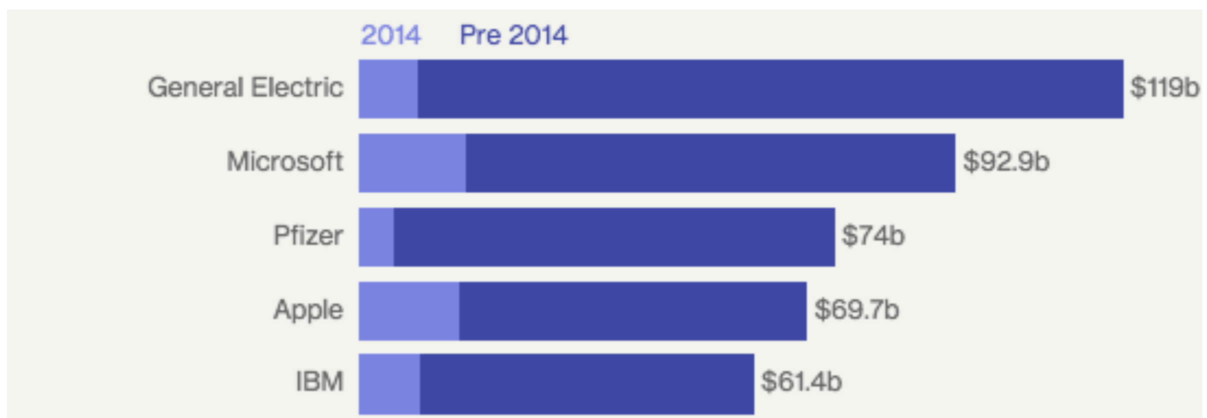

Figure 5: Top 5 companies with most profits trapped abroad as of the end of 2014.

2014. General Electric has $119 billion, Microsoft has $92.9 billion, and Pfizer has $74 billion all trapped abroad. In 2014 alone, U.S. companies added an additional $154.5 million to the total money stuck overseas (Rubin). Even though General Electric has the most accumulated profits,

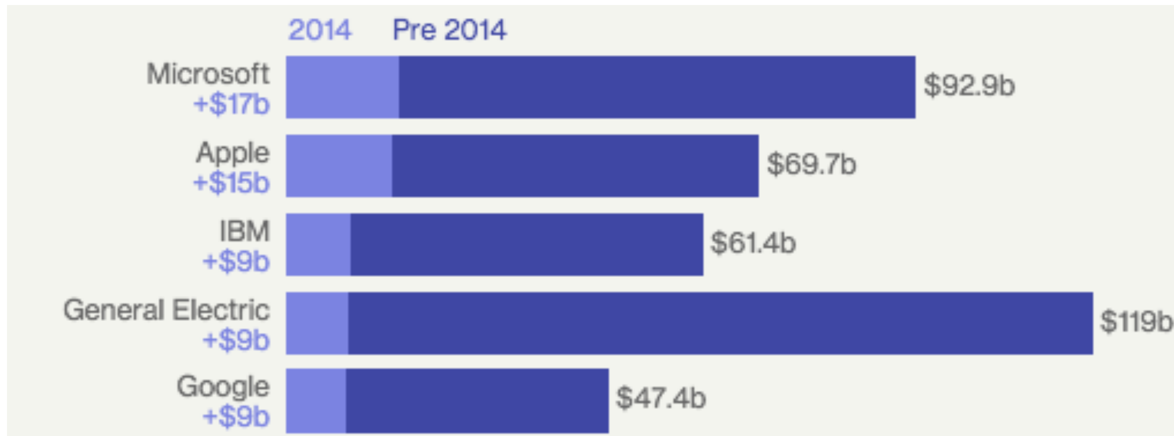

Figure 6: Top 5 companies that have added the most to their trapped profits in 2014.

Microsoft added the most to its accumulated profits in 2014: a total of $17 billion. To compare, the figure above shows that Apple added $15 billion, IBM added $9 billion, and General Electric added $9 billion to its accumulated profits in 2014. These billions of profit continue to stay overseas, since the companies do not want to pay the taxes on it to bring it back.

After going through an inversion, there is a major benefit for the corporations to bring back trapped cash. Consider Figure 7, which shows how a hopscotch loan can be used to repatriate the earnings from the foreign subsidiary up to the foreign parent (hopscotching around the U.S. subsidiary), and then issuing a loan to the U.S. subsidiary. By doing this, the entity pays a small amount of repatriation taxes to bring the trapped profits to another foreign nation, but it is at a much lower rate that it would have cost to bring it into the U.S. Once the foreign parent issues the trapped cash to the U.S. subsidiary in the form of a loan, there is no income to the U.S. since a loan cannot be considered income (since it needs to be paid back). However, the U.S. subsidiary will most likely never pay this loan back and just pay the required interest expense

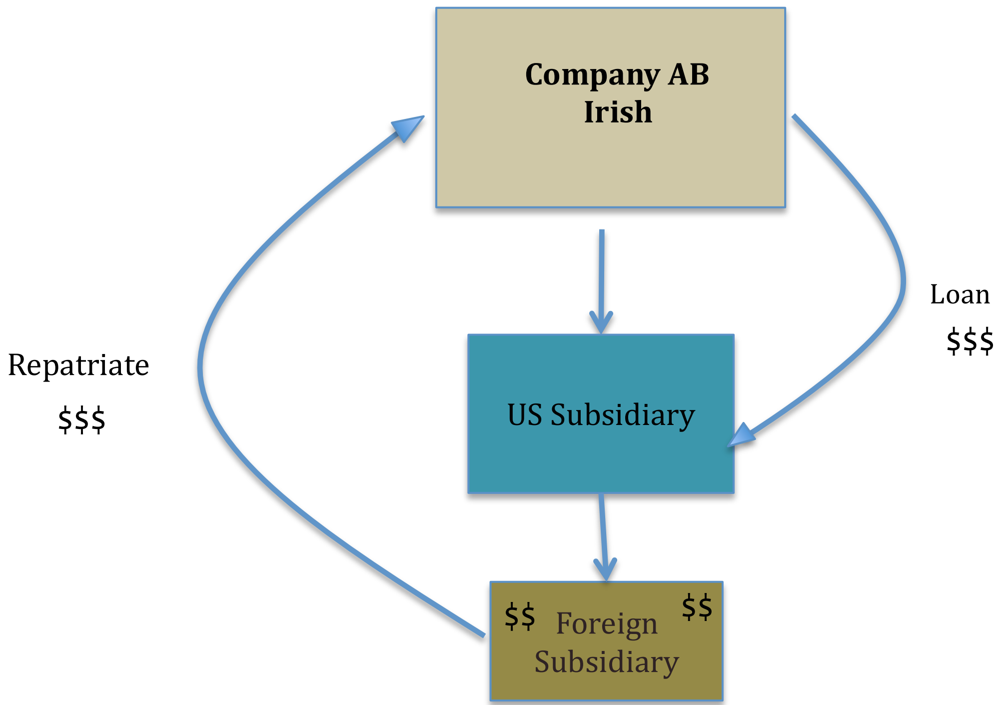

Figure 7 Pictorial representation of a hopscotch loan.

year after year. In the next section, it will be described how this interest expense is yet another type of benefit to the inverted corporations.

Policy makers have tried to change America's tax law to allow companies to repatriate these profits without going through an inversion. This will be discussed further in the "changing law" section.

Debt Leverage of the U.S. Company

Besides paying lower income taxes and being able to repatriate profits at a lower rate, there is also the benefit of leveraging debt to get further deductions on the U.S. income. This is done easily since the U.S. company is now considered a subsidiary of the resulting company of the inversion. It is structured like this: first, the U.S. subsidiary borrows from its foreign parent, second, the U.S. subsidiary pays interest expense to the foreign parent, and third, the foreign parent recognizes interest income.

Interest deductions seem like it would contribute a little towards saving taxes, but it can have a large effect. "Multinationals that invert have an easier time achieving 'earnings stripping,'

a tax maneuver in which an American subsidiary is loaded up with debt to offset domestic earnings, lowering the effective tax rate paid on sales in the United States" (Gelles). IRC §163(j)(2)(B)(II) states that corporations can take interest deductions up to 50% of its taxable income. This saves the company up to 35% of the total interest deductions. Furthermore, the interest income for the foreign parent is taxed at the lower foreign rate. Since this is all happening internally in a company, there is not a change in earnings simple by making the payments.

The company nets out overall with larger profits and less taxes paid as a result of this transaction. This is still just one additional benefit of going through a corporate tax inversion. Another benefit is the "de-controlling" of a controlled foreign corporation in order to avoid Subpart F taxes on earnings.

Controlled Foreign Corporations

Under the current U.S. tax law, revenues from a "controlled foreign corporation", or CFC, are taxable under "Subpart F". In order to understand this, it is first critical to understand what makes a company a CFC. A corporation is considered a CFC when it is a foreign corporation with U.S. shareholders who together make up more than 50% of the combined total voting power of the outstanding shares (Deloitte Guide to CFC). The earnings of a CFC are taxed to U.S. shareholders through IRC 951-965 in the form of a dividend (Deloitte Guide to CFC). Any sales of CFC stock are taxed as dividends up to any previous untaxed earnings and the remaining is taxed to gain from the sale of stock (Deloitte Guide to CFC). By going through a corporate tax inversion, companies are able to avoid some of this Subpart F taxation.

The method that an inversion uses to avoid getting taxed on Subpart F income is actually quite simple. With the way the restructuring works out, the company just "de-controls" the

foreign corporation so that it cannot be considered a CFC. This allows the company to gain access to trapped profits of the U.S. corporation without paying U.S. taxes on it (U.S. Treasury Fact Sheet). Consider the following example:

> "After an inversion transaction, a foreign acquiring corporation could issue a note or transfer property to an expatriated foreign subsidiary in exchange for stock representing at least 50 percent of the voting power and value of the expatriated foreign subsidiary. The expatriated foreign subsidiary would cease to be a CFC, and the U.S. shareholders would no longer be subject to subpart F of the Code with respect to the expatriated foreign subsidiary." (IRB 2014-42)

Summary

Companies have been using this method to avoid Subpart F after an inversion for years, and it had been working quite well despite the strict enforcement and high penalties of this area of tax code. However, this benefit of an inversion may soon disappear, as new expected regulations will be issued soon. This will be further talked about in the "changing law" section.

EXAMPLES OF INVERSIONS

Thus far, the discussion has been focused around how to go through with a reverse merger and why companies do them. In order to display the magnitude of some of these reverse mergers and the tax savings associated with them, it is important to review some of the largest and most recent transactions.

Eaton Corp and Cooper Industries

Eaton Corp is a U.S. based company that began an electrical line in 1994 due to its acquisition of Westinghouse Electric. It includes surge protectors, circuit-breaker panels, batteries that automatically provide backup power, and equipment connecting solar panels to power systems. Up until 2012, these electrical sales made up 45% of its total company (Hagerty, Tita).

Eaton Corp acquired Cooper Industries in 2012 through a reverse merger deal totaling $11.8 billion. Cooper Industries, an Irish corporation began in 1833 making fuses, circuit-protection equipment, lighting, lighting controls, electrical plugs and receptacles, and voltage regulators. When the deal was completed, the electrical sales of the new company increased to be 59% of total sales (Hagerty, Tita). This was the largest purchase yet for Eaton Corp.

Through this merger, Eaton Corp would become reincorporated in Ireland, though the headquarters of both of the companies are located in the United States. To give an estimate on tax savings, consider this: Eaton Corp paid U.S. tax of $201 million in 2011 and Cooper Industries paid $120 million (Hagerty, Tita). This deal is expected to yield tax savings of $160 million due to the decrease in corporate tax rates from the U.S. to Ireland (35%, 12.5% respectively). The company also plans on saving up to $260 million by 2016 due to the nature of

the merger—managerial positions can be combined, goods can come cheaper, and more (Hagerty, Tita).

This deal has allowed Eaton Corp to become more competitive in the global market. Not only can it now save money on taxes, but also analysts believe that this is a great deal for the two companies to help them both grow and expand.

Pfizer and Allergan

At the time, the Eaton Corp and Cooper Industries deal was one of the biggest reverse mergers thus far. That record was beat by far with the Pfizer and Allergan deal that was released at the end of 2015. The $150 billion deal is the largest reverse merger to date. The Dublin based Allergan company is purchasing the New York based Pfizer in an exchange of 11.3 Pfizer shares for every Allergan share, plus some cash (Rockoff). As a result of the deal, the Pfizer CEO will lead the new company with the Allergan CEO has second in command.

The tax savings for these two companies will be grand. The effective tax rate of Pfizer will decrease from 25% to less than 20% (Rockoff). The two companies, together, bring in over $60 billion in sales every year, and it is expected that the merger will create an additional $15 billion in sales from new products (Rockoff). The reincorporation of Pfizer will help bring in $74 billion in trapped profits offshore (Drawbaugh).

The politicians have already began scrutinizing this deal and bringing it into the 2016 presidential election. Hillary Clinton has accused Pfizer of using legal loopholes to avoid its "fair share" of taxes in a deal that would "leave the U.S. taxpayers holding the bag" (Drawbaugh). Donald Trump called the deal "disgusting" and says that the U.S. "politicians should be ashamed" (Drawbaugh). Congress will likely begin pushing new regulations to the floor as a result of this deal and others similar to it, but it is unlikely that anything will be passed soon. The

CEO of Pfizer has defended the company by stating the Pfizer will maintain its headquarters in New York City, currently has over 40,000 employees across the U.S. and is growing, and this deal allows Pfizer to gain more resources that it can use to make more investments in the U.S. (Drawbaugh). This deal is already finished, but some say that Pfizer may have ruined some of its reputation in the United States as a result.

The politicians argue that Pfizer and other companies that go through these deals are taking advantage of the Corporate America environment without paying their fair share of the taxes. The debate about these corporate inversions is starting to get more heated, and it is going to be a battle to the end between the corporations and the congressmen.

Walgreens and Boots Alliance

The merger between Pfizer and Allergan has drawn a lot of public attention recently, but no one knew about the deal until it was final. Walgreens, on the other hand, was not so good as keeping the secret until the end.

Walgreens, a Chicago based company, had been looking to merger into the international market for some time. The time finally came for the company when a merger with British Boots Alliance seemed prominent. During the merger discussions, it was rumored that the company would relocate to Ireland to save money on U.S. taxes. During this time, Walgreens received much criticism from the Obama administration and the Illinois Democrat, Senator Dick Durbin, for trying to take advantage of this tax loophole (Japsen). Walgreens executive chairman, James Skinner, said “the Obama administration made Walgreens ‘a whipping boy to further their agenda’”(Japsen). The deal finally closed at the end of 2014, and Skinner took heat from the shareholders the following year. Some of the shareholders believe that Walgreens had already

damaged the company's image and the public relations battle (Japsen). The merger did not result in a reincorporation.

Although going through a reverse merger has saved many companies, like Eaton Corp and Pfizer, millions and billions in taxes, it just is not the right fit for every company. Walgreens experienced this battle first-hand and lost out on the savings.

Summary

The politicians have been very worried about these corporate inversions over the past 20 years or so, and they are starting to worry even more. The U.S. Treasury predicts that these reverse mergers, alone, will cost the U.S. government near $20 billion over the next 10 years (Drawbaugh). These examples above prove how the government is losing their money. The discussion will follow by analyzing the changing law surrounding inversions and how Congress is trying to close this loophole.

CHANGING LAW

There are certainly many, many advantages to going through a corporate inversion and they certainly extend beyond the tax benefits for corporations. However, the U.S. government is losing millions and millions in tax dollars every year because of these corporate inversions. There have been many proposed laws, regulations, and acts. Here is a brief summary of these changes.

Repatriation of Profits

Policymakers want corporations to repatriate its profits in order to collect the taxes on them and to boost the economy from the extra cash. Many companies avoid repatriation now because the corporations would have to pay tax on them up to 35%. Policymakers have been working on proposed changes to the policy to make these taxes due not too steep to corporations while not to low for the government.

In 2004, President George W. Bush had introduced a voluntary repatriation plan for companies. Under this plan, companies could repatriate its profits at a flat 5.25% tax rate (Mason, Drawbaugh). The idea under this plan was that the corporations would bring back so much money that the economy would get a boost as an effect. Since this tax break, studies have shown that although some companies did repatriate some profits, it was not enough to help the economy (Mason, Drawbaugh). As a result, this plan was considered a failure.

President Barack Obama has a new plan for repatriation that he thinks will help the economy in the end. The President wants to enact a one-time mandatory 14% tax on all $2.1 trillion profits held abroad by U.S. companies. Once this tax is paid, all of these present profits could be brought back and invested into the American economy with no additional taxes. In addition to this tax, all future profits earned abroad will be taxed at 19%--much lowers than the

35% it is now. The companies would still get the tax credit for foreign taxes paid under this plan, meaning that the corporations will pay a maximum of 19% on these profits, not an additional 19% (Mason, Drawbaugh). Obama thinks that this plan will generate approximately $248 billion in tax dollars to use on infrastructure improvements. So far, there has not been much positive response from companies is response to this plan.

The repatriation of profits back to America is going to take some skilled policymakers to generate a plan that is worthwhile for the government, the companies, and the public. One congressman, Dave Camp, has attempted to start the wave of tax changes through a bill he introduced in 2014.

Dave Camp's (R-MI) Tax Reform Discussion Draft

Congressman Dave Camp, a Republican from Michigan, has presented a bill title, "Tax Reform Act of 2014" that has been working its way through Congress. The bill has appropriately been termed "Camp's Discussion Draft" as it addresses a multitude of tax reform issues. For purposes of tax inversions in this discussion paper, there are two big changes to IRC §§7874 and 163(j).

As discussed earlier in this paper, IRC 7874 defines certain ownership requirements of inverted companies in order to be considered for domestic tax purposes. The basis of the code states that if the new resulting company is less than 80% owned by domestic U.S. shareholders, then it will not be taxed as a domestic company. Camp's proposal introduces a change in this ownership percentage as well as how the ownership is calculated. First, he wants to change this percentage to 50% instead of 80% (PwC Camp Discussion). The observations here are that this would broaden the range of inversions that are taking place in order to avoid taxation. However, this would also cause common cross-border mergers and acquisitions to be succumbed under this

rule (PwC Impact on Recent Legislation). It could also cause a decrease in American business, thus hurting the nation's economy. This new percentage could cause a foreign company that purchases a small U.S. subsidiary to be suddenly considered a domestic corporation for tax purposes. Furthermore, this ownership requirement would be disregarded and the company would be considered a domestic company nonetheless is the following conditions are met: first, the foreign corporation acquires most of the assets of a U.S. corporation, second, the affiliated group that includes the foreign corporation has substantial business activities in the U.S., and, third, the foreign corporation is primarily managed and controlled in the United States (PwC Impact on Recent Legislation). These changes to the ownership requirement would steeply change the way corporations are going about these inversions, but it does seem that this is going a bit too far in order to close the loophole. Camp has also introduced a limit on interest deductions for inverted companies.

IRC §163(j) states that a corporation can deduct up to half of its taxable income in interest expense, even if to a related party. As discussed earlier, this is how many inverted companies lower its U.S. tax bill. Under Camp's proposal, this allowable percentage would change to 40% and there would be limited or no carry forwards of nondeductible interest expenses (PwC Impact on Recent Legislation). Furthermore, Camp would like to introduce a new calculation of the amount of allowable interest expense. This new method requires the multinational corporation to find the total interest expense by all entities and then apply a percentage (based on sales by each entity) to find the appropriate interest expense that may be allocated to each entity (PwC Impact on Recent Legislation). This new calculation would probably vastly change the amount that the expatriated U.S. corporations are currently deducting, thus reducing the benefit of inversions.

Despite the strict new proposals in Camp's bill, it is unlikely that this change will happen anytime soon. With elections just around the corner, the policymakers will be pre-occupied and it may be difficult to get back into the discussions once new people are occupying the seats of Congress. However, this bill also shows the public and the corporations the start of tax reform and helps them start preparing for them. Not only is Congress trying to go through tax reform, but the Treasury has also started to introduce some proposed changes to curb the effects of inversions.

Internal Revenue Bulletin 2014-42

Late in 2014, the U.S. Treasury issued Internal Revenue Bulletin 2014-42. This bulletin addresses many of the current benefits of inversions and how the IRS is planning on curbing these benefits. There are six main points that this bulletin addresses: De-controlling of CFCs, use of loans in expatriated entities, transfers of property to gain access to trapped profits tax free, the use of "cash boxes", the slimming rule, and spinversions.

One of the biggest points of focus in 2014-42 is the removing of benefits associated with a de-controlling strategy of CFCs. The focus of this discussion is to keep an entity a CFC in its entirety. The IRS will do this by acting as if stock purchased by the foreign corporation is stock of a U.S. corporation, thus maintaining its status as a CFC (U.S. Treasury Fact Sheet). It will also re-characterize the U.S. shareholders of the expatriated foreign subsidiary as a U.S. shareholder of a CFC, if both corporations are under the same control (IRB 2014-42). This means that the "new foreign parent would be treated as owning stock in the former U.S. parent, rather than the CFC, to remove the benefits of de-controlling" (Bennett). The purpose of this re-characterization is to "prevent inverted companies from restructuring a foreign subsidiary in order to access the subsidiary's earnings tax-free" (U.S. Treasury Fact Sheet). The CFC would, thus, continue to be

a CFC and subject to U.S. tax on its profits earned abroad as well as its deferred earnings (Bennett). Brenda Zent, a taxation specialist in the Treasury's Office of International Tax Counsel, states that this "recast" is determined to be forever, as long as the entities continue to exist (Bennett). Even if corporations are able to get past this new CFC requirement, there will also be new regulations addressing the use of loans in expatriated entities.

Corporations are able to use loans in multiple ways in order to save U.S. taxes and to gain access to trapped profits tax-free. The first of afore mentioned is considered a method of "earnings stripping". This is when the foreign parent grants a loan to the U.S. subsidiary so that the subsidiary can get huge interest deductions on the loan (Bennett). This notice intends to decrease the opportunities to go through these "earnings stripping". Another type of loan commonly used in inverted companies is a hopscotch loan. These are loans from the foreign subsidiary to the foreign parent and then to the U.S. subsidiary in order to gain access to trapped cash. The notice intends to prevent companies from being able to use these hopscotch loans and other creative loans (U.S. Treasury Fact Sheet). However, loans are only one method of gaining access to trapped cash. Another method is the use of transfers of property.

The IRS intends to "close a loophole to prevent an inverted company from transferring cash or property from a CFC to the new parent to completely avoid U.S. tax" (U.S. Treasury Fact Sheet). The current loophole allows the U.S. subsidiary to give trapped profits and property to the CFC as a dividend and then the new foreign parent sells stock to the CFC in exchange for the property and trapped profits. Finally, the foreign parent can give these profits back to the U.S. company as a dividend (Bennett). This transaction avoids U.S. tax because the transfers are in the forms of dividends or sales. The past three changes that IRB 2014-42 introduces are all addressing loopholes that occur after the inversion date. The following changes focus on the

strengthening the 80% requirement of IRC 7874 in order to prevent companies from expatriating in the first place.

There are a couple of methods that a company uses in order to meet the ownership requirements that would make an inversion successful. One of these methods is using a "cash box". A company employs this strategy by stuffing assets into the new foreign parent to make it seem larger than it really is in reality (U.S. Treasury Fact Sheet). The result is that the foreign parent makes up over 20% of total property, while the U.S. company makes up less than 80% of the total. The IRS and Treasury would eliminate these "cash boxes" by deeming them a passive asset that would not count toward the size/ownership requirement (U.S. Treasury Fact Sheet). This new rule would disregard the foreign corporation's stock entirely if at least 50% of its assets are considered to be passive (Bennett). Since it may be difficult to transfer assets to the new foreign corporation before an inversion, some corporations have also tried to make the U.S. subsidiary seem smaller.

U.S. corporations that want to expatriate through an inversion may issue extraordinary dividends shortly before the inversion in order to make it seem smaller in order to make up less than 80% of the resulting company (U.S. Treasury Fact Sheet). Corporations may choose to go through this type of "slimming" rather than using a cash box due to trust or controlling of the transferred assets. The corporation would rather have its U.S. shareholders take advantage of the transfer of assets rather than the foreign shareholders of the new company also taking a part in it. If even this seems too costly to the company, a corporation may also choose to go through a "spinversion".

Examples of expatriated entities discussed earlier prove that inversions can (and are) a very costly transaction. Not all companies are able to go through this large of a transaction, but

they also feel the need to reduce its tax bill in order to stay competitive in the market. In this situation, a spinversion has proven to be helpful. A spinversion occurs by inverting some a portion, perhaps a department, of a corporation by combining it with a foreign corporation. The U.S. corporation gives some assets in exchange for the stock of the companies in lower tax jurisdictions. This process saves shareholders and the corporation taxes on that portion of the business without the fuss and mess of going through a giant transaction (Sutherland). The name of spinversions come from the concept that a corporation "spins off" some of its operations in order to benefit the shareholders and save taxes (U.S. Treasury Fact Sheet). Under new regulations, these spin offs will be considered a domestic corporation for all tax purposes (U.S. Treasury Fact Sheet). It is unclear how the treasury will go about identifying these transactions compared with common cross-border transactions with goals different from saving taxes. This is also a question for most of the items discussed in IRB 2014-42.

The most pertinent factor in all of the information released in the IRB 2014-42 is that these new regulations will be applied proactively to all inversions taking place on or after the date of the bulletin (October 14, 2014). So far, the Treasury has not released the official regulations yet, but they are going the affect millions and billions of dollars spent in recent reverse mergers. Still, this is not the only list of changes that are coming—not only to the United States, but also around the world.

Base Erosion and Profit Shifting Project by the OECD

The basis of corporate tax inversions is base erosion and profit shifting of companies, or BEPS. Governments all around the world know that companies are taking advantage of loopholes and gaps in tax policy in order to shift profits to low or no tax countries while paying little to no corporate income tax (OECD).

The OECD, the Organization for Economic Co-Operation and Development, has been researching this topic for years with countries from all over the world in order to come up with guidance on how the countries can attack this problem. Research since 2013 has shown that these BEPS transactions show annual losses of 4-10% of corporation income tax; this equates to $100-240 billion annually (OECD). Angel Gurría, OECD Secretary-General, has stated, "Let's be crystal clear: what is at stake is to restore the confidence of your people in the fairness of our tax systems" (OECD). In order to show credibility here, the OECD was established in 1948 in Europe to help implement the Marshall Plan after the world wars left the continent in shambles (OECD). The organization served as a channel for different countries' economies to come together and cooperate to change the face of Europe. Today, there are 34 countries that are members of the OECD that make up 80% of world trade and investment in the world economy (OECD). Together, the countries identify problems, analyze them, and promote policies to fix them. This is where the BEPS project comes into play,

The BEPS project began recently in order to help governments find solutions for modern international tax law. A final package of ideas has been presented in late 2015 that included input from OECD, G20 countries, and more than 80 non-OECD and non-G20 countries (OECD). The countries, including some developing economies, have worked together on "equal footing" in order to make a final list of 15 actions that would provide governments with domestic and international tools to tackle the problems of BEPS. "The final BEPS package gives countries the tools they need to ensure that profits are taxed where economic activities generating the profits are performed and where value is created, while at the same time give business greater certainty by reducing disputes over the application of international tax rules, and standardizing compliance requirements" (OECD). The entirety of these actions could not be discussed within the context of

this paper, but there are some items of interest. These items include the following: design effective controlled foreign company rules, limit base erosion involving interest deductions, prevent artificial avoidance of permanent establishments status, mandatory disclosure rules, measure and monitor BEPS, and neutralize the effects of hybrid mismatch arrangements (OECD). These categories will all have substantial affect on the inversions visited in this discussion.

The work done by OECD on the BEPS project has laid some serious groundwork for governments to close the inversion loopholes. The list of actions is not sensitive toward the interests of the companies at all, as the OECD states that multinational enterprises will not have to restructure their business in light of the outputs as long as the group's legal and tax structure reflect the underlying economic reality (OECD). The planning and implementation of inversions purposely distorts reality in a way that is in favor of the taxpayer. Although this final package was just introduced recently, the U.S. has already started to adopt some of the suggested actions.

U.S. Model Treaty Proposed Changes

The U.S. Model Treaty provides a starting point for bilateral treaty negotiations with other countries concerning tax law. The U.S. Model Income Tax Convention was last changed in 2006, but was just released with new suggested changes for public comment. These new changes attempt to balance the benefits negotiated with other counties in the treaty network with denial of certain benefits to inversions (U.S. Treasury News Release). The Treasury sees that it is important to make changes to the U.S. Model now as it is expected that other countries are likely to change its tax codes than they have been in the past in favor or BEPS by multinational firms. The purpose of treatises is to eliminate double taxation, not create opportunities to exploit for

BEPS (U.S. Treasury News Release). With that in mind, there are three main issues addressed in the changes: special tax regimes, earnings stripping payments, and permanent establishments.

The use of special tax regimes is common for expatriated entities to save money on taxes. This was discussed earlier in the form of interest, royalties, dividends, and other income to the foreign parent that would be taxed at the lower, preferential rate. The proposed changes to the U.S. Model addresses these by stating that the entity receiving such income is treated as a "special tax regime" if the purpose of the payments is to take advantage of a preferential rate and the payments are made to a related party (PwC US Model). These special tax regimes would not benefit for U.S. tax purposes. This will also apply to the expatriated entity, but it will be classified differently.

A U.S. subsidiary, or the expatriated entity, may also receive interest, royalties, dividends, and other income from its new foreign parent in order to help gain access to trapped profits while receiving preferential tax treatment. Under the introduced changes, any of this income made to or by an expatriated entity within 10 years of inversion will be taxed under U.S. domestic law and disregarded for any benefits of the treaty (PwC U.S. Model). In contrast to the special tax regimes, this classification of payments has a time cap on it. There could be benefits past the 10 years, but the time value of money would vastly reduce the savings. The final change introduced to the U.S. Model deals with exempting permanent establishments.

The final revision to the U.S. Model is to prevent inappropriate benefits of tax treatise that is attributable to a permanent establishment located outside the U.S. and the ability of the company to make base eroding payments (U.S. Treasury News Release). The basis of this states that treaty benefits will be denied to income from contracted sales with residents outside of the state of the permanent establishment and the profits of the permanent establishment is subject to

less than 60% aggregate tax or the establishment is in a country that the U.S. does not have a tax treaty with currently (PwC U.S. Model). There is a little bit of focus for the corporations here: the taxpayer can get relief from this rule if it can prove that the benefits are justified by the reasons that the taxpayer did not satisfy these rule (PwC U.S. Model). Despite this exemption, it does seem very steep that the treaty benefits will be denied is a corporation is already paying more than 60% in the aggregate of taxes. It seems nearly impossible for a corporation to be able to get around this new change. There are even a few anti-treaty "shopping" measures that the Treasury suggests to put in place, as well as a stipulation for subsequent changes in tax laws.

In addition to the limited benefits for special tax regimes, expatriated entities, and certain permanent establishments, there are also some other proposals in the new U.S. Model. One of these is an anti-treaty shopping measure, meaning that a corporation can only claim treaty benefits if at least 95% of the ownership is by "equivalent beneficiaries" (PwC U.S. Model). These are basically entities that are subject to U.S. tax. There are also even stricter base erosion requirements for public companies that are attempting to go through an inversion. Furthermore, if a company's applicable tax rate falls below 15% after the initiation of the afore mentioned changes, the provisions in the US Model involving interest, dividends, and royalties may cease to have effect (PwC U.S. Model). This allows the government to continually keep companies in check without the requirement of passing a new law for every new loophole the corporations find. These are just a glimpse at the changes to the U.S. Model Treaty, and it is unlikely that they will change very much after public comments.

The U.S. Model Treaty has been used for years in order to help provide an international tax union between the United States and its treaty countries. These changes to the treaty are

based on the OECD suggested actions for controlling BEPS, and other countries are likely to follow soon.

Summary

The law of the United States is changing in every jurisdiction, every day. Tax reform is always a hot topic for discussion toward change. The 2016 political campaign has tax reform on its top list for debate, but many politicians do not know the beginning of the scope that tax reform entails. Corporate tax inversions take advantage of a narrow section of the U.S. tax code: mostly only IRC §§7874 and IRC 163(j). The plans for repatriation tax on profits, Camp's Discussion Draft, IRB 2014-42, BEPS project by the OECD, and the U.S. Model proposed changes are just the beginning to reform corporate tax inversions. This battle will take time and multiple tries, with incredible effort put in by the politicians and the corporations' lobbyists. Long story short, tax reform is happening, but it is not happening tomorrow.

ETHICAL CONSIDERATIONS

The benefits of corporate tax inversions for U.S. corporation has been discussed. It seems that it is a win-win game for the corporations, but is there anything else to consider? The answer is yes, there are ethical considerations that may play into the decision to invert or not. These considerations include the politicians and public's opinion in the U.S. regarding inversions, the possible loss of customer loyalty, the possible effects of proactive law going into effect, and the basis of ethical decision-making, as defined by Kant's categorical imperative.

It seems that most politicians and some of the public in the United States do not agree with corporations going through inversions for the purpose of avoiding taxes. These people

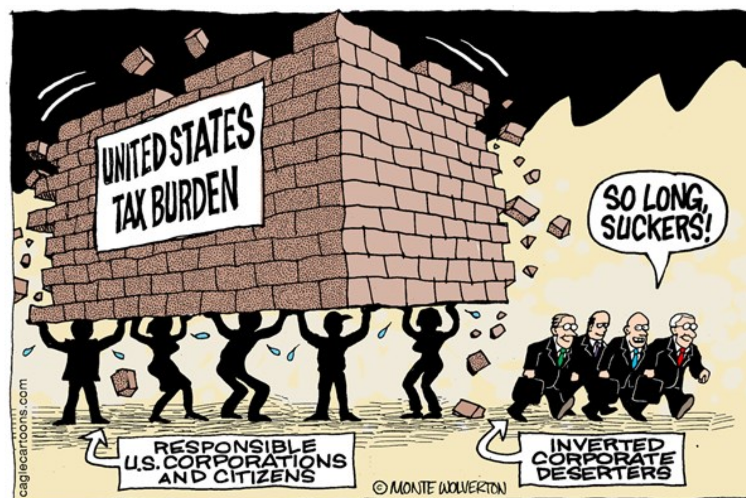

Figure 8 A political cartoon depicting the public opinion about inversions. (Courtesy of politicalcartoons.com)

believe that these corporations are taking advantage of the resources available to businesses in the U.S. without paying their fair share of taxes to deserve these resources. It cost tax dollars to support some of the business environment in the U.S., including funding the SEC, infrastructure to support transportation, and the congressman that make laws to protect the American businesses in the free market economy. The political cartoon in Figure 8 perfectly describes this situation: there is a great tax burden in the United States to support the various activities of the

government, and the corporations that usually have a very large tax bill is deserting the country just to save some money. The opinions of the politicians may affect these corporations as they create law that starts to hurt American businesses instead of help. However, it is the view of the public that could affect the corporations more.

As there is more and more press coverage concerning this negative viewpoint of corporate tax inversions, it is possible that customers of these corporations will begin to develop a negative opinion surrounding the topic. The loss of customer loyalty is a concern to these corporations going through inversions, especially companies that face the general public as customers (such as Burger King). When looking at this possible consequence, the corporations could actually do a mathematical calculation of how much money is saved in taxes compared to how much revenue is lost of the loss of customer loyalty. For most companies that invert, this is not a big concern. The biggest concern is how the law is changing.

The changing law has been discussed and it is clear that the U.S. government is trying to do something to stop these inversions. Some laws, such as the IRS pronouncement, are going to apply proactively and the corporations do not know how it will affect them. It is very important for accountants and lawyers to try to estimate how these new laws will affect their clients and whether it is still a good decision or not. The threat of changing law is probably to most serious consequence of these transactions, as new regulations could easily undo the work of the inversion and make the transaction very costly and a waste of time and resources. Even if the new laws do not affect some corporations, is it an ethical action to pursue these inversions?

Kant's categorical imperative is a standard in ethics for considering ethical actions. The concept relates to deontology, which says that there are absolute laws and norms that must be obeyed in all situations. In order to come up with these laws, Kant states that one must examine

what would happen if everyone participated in inversions. First, Kant asks if this is even possible, or if the definition of the act falls apart. Second, Kant asks if it is something that society would want. If both answers are yes, then the action is ethical. So, what would happen if every single American company went through an inversion? There would be no more American companies left. How would this affect the nation? Tax revenue would be substantially lower, possibly requiring absurdly high tax rates for individuals who stay in the country. If all companies were inverted, is it really a competitive advantage to go through one, or is it a requirement? Going through these questions makes it seem like society would not want a world where all American companies going through an inversion. According to Kant, that makes the action unethical.

The benefits of corporate tax inversions have been discussed, and the general viewpoint of the government has been examined. Now, these ethical considerations are really where the opinion needs to be drawn. Is it ethical for corporations to go through inversions if it keeps them competitive? Is it ethical for the U.S. government to charge the highest corporate tax rate in the world? This is what needs to be answered for each and every person.

THE FUTURE OF INVERSIONS

The future of inversions still remains uncertain. Ever since the tax code existed, corporations and individuals have always been able to find loopholes to take advantage of the code. Inversions can be considered a type of loophole in the tax code, but it is just due to how Congress wrote the code. It is clear that the politicians now see the error in how the code was written and are trying to undo these transactions with new laws and regulations. The future of inversions relies on how successful the government's efforts are concerning these inversions.

Several areas of the law have been discussed, including the executive branch and the legislative branch, including the IRS. Some of these plans may never be initiated. For example, Obama's repatriation plan was introduced over a year ago in Congress and it has gotten nowhere since then. With 2016 being an election year, it seems like a rare possibility that Obama would be able to push this plan through or that the next new President would even care about it. Dave Camp's proposal has two options considering its future: it could either never pass since it covers too much of the tax code and the congressmen will not want to approve it all, or it will pass because the congressmen will not take the time to read and understand the influence of the document and vote on it for a minor change presented somewhere in the document. The IRS has introduced their plans as well, but has not responded to this plan for the past two years. It seems unclear whether the IRS will ever follow up with these plans or the effect of them when they are initiated. In general, the new changing law happening right now does not seem to carry the effective weight required to create the change needed to stop these inversions. Plus, these plans do not seem to be the right type of ideas.

Corporations are going through inversions because they feel that the tax rate in the U.S. is unfair and is inhibiting them from competing in the global market. When the big competitors are

paying less than half that amount of taxes these U.S. corporations are, it just makes it too difficult to compete. The government is trying to do everything they can to close the loophole. This is not the solution. The government needs to do everything they can to reduce the reasoning that the corporations are using to leave. Corporations are leaving because of the high tax rates in this country and the unfair taxation on global income and repatriated profits. If the government addressed these issues, the U.S. corporations will not have the need to go through inversions. The U.S. needs to lower its tax rate, stop taxing global income, and make repatriating profits easier. This would reduce the burden of being a U.S. corporation and stop the corporations from going through an inversion since it would not be worth it anymore. The worldwide average top corporate tax rate is only 22.6%, and the U.S.'s 35% is bringing this average up (Pomerleau). It seems obvious that corporations would leave. Despite the ethical considerations, businesses exist to make money and compete. If these inversions are helping these corporations make more profits and stay more competitive, then they should do it. The unethical action here is the fact that the U.S. government is charging such a high rate to exist as a U.S. corporation.

Currently, the future of inversions is unsure because the government is on the wrong track. With the new laws currently in the works, corporations will still try to work around them, just as they have always done. Inversions will not and should not stop in the U.S. until the government lowers its corporate tax rate and make it easier for a U.S. corporation to compete internationally. The U.S. government needs to catch up on the global economy if it wants to keep its successful companies. Soon, there will be no more large corporations in the U.S. left to pay taxes, and new corporations will not incorporate in the United States to begin with. In my opinion, the government will not be able to make changes quick enough to prevent this from happening.

GENERAL OVERVIEW AND CONCLUSION

Throughout this report, an overview of corporate tax inversions has been discussed. A corporate tax inversion is a method that U.S. corporations use to save money in taxes. It is basically a reverse merger, with the new parent company ending up as a foreign company. This is what stops the entity from being taxed on global income, pay a lower tax rate to a foreign country, repatriate profits easier, and use debt leverage of the new U.S. subsidiary to save even more taxes from the U.S. Since inversions are predicted to cost the U.S. government near $20 billion over the next 10 years, it is clear that they will create initiatives to stop them from happening (Drawbaugh). Presidents, Congress, and the IRS has gotten involved with new law to try to stop inversions.

The changing law in the works now is focused on the closing the loophole in the tax code that is allowing corporations to go through these inversions. There is also an effort from politicians and the public to create a negative opinion of inversions, stating that inversions are unethical and leaves the rest of the country with the U.S. tax burden. A possible loss of customer loyalty is a constant threat for companies going through inversions, but the tax savings is usually great enough to counteract this threat. When looking at how the corporations leave the U.S., it does seem that it is an unethical action based on Kant's categorical imperative. However, these corporations are in business to make money and compete. As globalization continues to occur, these corporations need to be able to compete internationally. Inversions are a method to help corporations stay competitive, so it is an ethical action in the course of business.

After reviewing the applicable laws and arguments from both sides, I have concluded that corporations should go through inversions as long as it keeps them competitive. The government, in return, needs to lessen the tax burden in order to stop the inversions, if that is the goal.

UPDATE ON RECENT LAW CHANGES

There have been some changes released based on what was discussed in the "changing law" section of this paper. These changes are based upon the IRS's Notice 2014-52, which was discussed. The IRS issued temporary regulations to initiate the planned changes in April of 2016. These regulations are §§1.304-7T, 1.367(a)-3T, 1.367(b)-4T, 1.956-2T, 1.7702(l)-4T, 1.7874-1T, 1.7874-2T, 1.7874-3T, 1.7874-4T, 1.7874-6T, 1.7874-7T, 1.7874-8T, 1.7874-9T, 1.7874-10T, 1.7874-11T, and 1.7874.12T.

The temporary regulations include the rules released in the 2014 notice, rules released in a November 2015 notice, and some additional requirements. For review, the 2014 notice set out intentions to decrease the opportunities for loans (hopscotch and earnings stripping), close the loophole that allows transfers of property U.S. tax free, and strengthen the 80% requirement in the merger by limiting the cash involved in the transaction. The 2015 notice was not discussed in this paper due to timing. A summary of the Notice 2015-79, 2015-49 IRB 775 is as follows: requiring the foreign acquiring corporation to be taxed as a resident in the foreign country, defining inversion gain and requiring shareholders to recognize it, and further defines qualified and unqualified property in these transactions.

One of these additional requirements is that a CFC must report all realized gain in these transactions despite its normal exception under IRC §351. A subject-to-tax rule has also been implemented in addition to the three quantitative tests for group employees, group assets, and group income in Regulation §1.7874-3(b). This requires the foreign entity to not only contribute to the employees, assets, and income of the total parent-subsidiary group, but must also be taxed as a resident of the foreign country (Thomson Reuters).

Pfizer and Allergan had introduced the largest inversion to date in late 2015, but the deal was terminated by a mutual agreement a few days after the IRS released the temporary regulations. The companies announced that the decision was "concluded qualified as an 'Adverse Tax Law Change' under the merger agreement" (Pfizer Press Releases). So far, this is the only major inversion deal that has gotten cut due to the new regulations.

The IRS has released these regulations in response to the increase in inversions taking place. Congress, however, has not put out any new code sections. The purpose of regulations is to interpret the code sections released by Congress and it is meant to explain what Congress meant to be understood. With these dozen new regulations, it is being questioned whether or not they are valid. What is the IRS interpreting? Regulations may be released in response to court cases other changes to the law, but there were no changes to the law that prompted these changes. The question here is, is the IRS pushing Congress to create law to match these regulations? Are they working too fast? The IRS does not have a law-making capability, only law-interpreting capability that is then considered law. Although Pfizer and Allergan are not prepared to challenge these regulations immediately, it is possible that the U.S. corporations will try to challenge the authority of these regulations in a court of law.

As these regulations are released, the battle between U.S. corporations and the government is intensifying. My view on the situation still remains: the corporations will still be able to figure out their way around these new regulations, and the government is not making the proper changes to really stop these inversions.

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