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As Congress Seeks Additional Funding, Inversion Proposal Emerges

Throughout the past several weeks, Pfizer's attempt to acquire AstraZeneca has garnered significant congressional and media attention. Pfizer, a U.S. multinational corporation, made a bid for AstraZeneca in an effort to move its tax domicile to the United Kingdom, which has a corporate tax rate of 21 percent compared to the U.S. corporate tax rate of 35 percent. More than 20 U.S. companies have pursued similar inversion tactics by merging with foreign companies in lower-tax jurisdictions throughout the past two years. With the number of members growing every day to put an end to this practice, U.S. multinational corporations must actively engage Congress and the Obama administration to consider long-term solutions in the context of comprehensive tax reform as merger activity continues in the months and years ahead.

Under current law, U.S. companies that reincorporate overseas must ensure that at least 20 percent of its stock is owned by its foreign counterpart. Recently, Sen. Ron Wyden (D-OR), chairman of the Finance Committee, proposed raising that figure to 50 percent effective May 8, 2014. He plans to address inversion in the context of a comprehensive tax reform proposal, which he hopes to unveil within the next year.

As the prospect of comprehensive tax reform within the next year remains uncertain, Sen. Carl Levin (D-MI), chairman of the Permanent Subcommittee on Investigations, recently released the *Stop Corporate Inversions Act of 2014* – Congressman Sandy Levin (D-MI), ranking member of the Ways and Means Committee, released a similar bill in the House. The Senate bill, which currently has 13 cosponsors, would:

- Increase the needed percentage change in stock ownership from 20 percent to 50 percent;
- Treat the company as a domestic U.S. company if management and control of the merged company remains in the U.S. and either 25 percent of its employees, sales or assets remain in the U.S.;
- Provide a two-year moratorium on inversions that do not meet the above criteria so Congress could consider a longer-term solution in the context of comprehensive tax reform; and
- Be retroactively effective to May 8, 2014.

The Senate bill shares similarities with a proposal in the President's Budget for Fiscal Year 2015, which would also increase the needed percentage change in stock ownership from 20 percent to 50% percent. The Congressional Budget Office estimated that the White House proposal would increase federal revenue by $17 billion whereas the Joint Committee on Taxation estimated that the Senate bill would save $791 million over a two-year period. Additionally, the Joint Committee on Taxation found that the House bill would raise approximately $19.5 billion over 10 years. Such funding could help defray the cost of programs such as the Highway Trust Fund or future tax-cut bills.

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Senate Republicans, who established anti-inversion provisions via Section 7874 of the U.S. tax code in 2004, would prefer to examine such measures in the context of comprehensive tax reform. Sen. Orrin Hatch (R-UT), ranking member of the Finance Committee, recently said, “These proposals are not long-term solutions—they are not even good short-term fixes.”

Although mergers will likely increase until Congress and the Obama administration pass anti-inversion provisions, the retroactive nature of the *Stop Corporate Inversions Act of 2014* threatens potential merger activity. Whether the bill passes as a stand-alone measure or Congress packages it with a comprehensive tax reform vehicle, the retroactive nature of the provision could negatively impact U.S. multinational corporations.

Current policy enables U.S. multinational corporations to pursue lower-tax jurisdictions abroad—failure to engage Congress and the administration may significantly impact future tax savings. As such, U.S. companies must take a proactive approach and work with Capitol Hill and the White House to address this issue in the coming year as chairman Wyden readies his tax reform proposal.

Links to the official documents regarding the *Stop Corporate Inversions Act of 2014* can be found below.

- **Bill Text**
- **Press Release**
- **Detailed Summary**

This document is intended to provide you with general information regarding the Stop Corporate Inversions Act of 2014. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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