New York Branch Meeting:

US Model Income Tax Convention: A New World

July 14, 2015

Material from Robert J. Kiggins

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EXHIBIT A

IBSA North America Branch

14 July 2015

Frank Hirth LLC, 88 Pine Street, 26th Floor, New York

Doug Clevenger

Regional Managing Principal, Robert R. Redwitz & Co.

Doug Clevenger has over 30 years of experience as a Certified Public Accountant. Doug serves as the Chairman of the AGN International Tax Committee, coordinating the efforts of an association of accounting firms around the world to provide relevant cross-border tax expertise for both outbound and inbound investors, including entity optimization, set up of Controlled Foreign Corporations, transfer-pricing issues, claiming tax treaty benefits, and U.S. compliance for foreign investors. Specialties: Accounting, auditing, and Federal, multi-state, and international tax consulting, planning, and compliance services for non-public domestic and international busineses, NPOs, and their principals.

Eric Collins

Business Tax Director, Frank Hirth LLC

Eric Collins' specialist area is the taxation of alternative investments, in particular private equity partnerships with UK and/or US partners, and offering withholding tax advice in the wake of the US Foreign Account Tax Compliance Act (FATCA).

Eric joined Frank Hirth in 2012, moving to the New York office in 2014 to support the business tax team. He is a member of the Institute of Chartered Accountants in England and Wales (ACA), is a US Enrolled Agent (EA), and co-authored the International Investment Funds and Private Equity (IBFD) tax portfolio: Investment Funds and Private Equity in 2012.

Robert J. Kiggins

Partner, Culhane Meadows LLP

Robert J. Kiggins is a member of Culhane Meadows' Corporate & General Business and Taxation groups. After 30 years of practice, he has gained extensive experience in corporate finance and tax matters, securities broker-dealers, investment advisors, investment companies, life insurance companies, hedge funds, medical practice purchases and sales, insurance agencies and bank expansion into insurance and securities fields. His focus is on helping organize start-up companies. He is especially familiar with the regulations and compliance imposed on securities broker-dealers, investment advisors, insurance companies and insurance agencies.

EXHIBIT B

The IBSA

The IBSA is a not-for-profit association founded to promote the practice of international business structuring as a transparent, effective and professional discipline. The Association is an international organisation, with branches around the globe dedicated to advancing the practice of international business structuring across multiple disciplines. The IBSA has created a community where professionals at all levels learn from each other, with access to worldwide knowledge and contacts, opening up professional and business opportunities for its members. The Association's members are drawn from a broad range of disciplines, including banking, accountancy, law, IP specialists, corporate service providers and international family offices. For further information about the IBSA in general, please visit the website

The Association runs a range of events across the globe including discussion groups, webinars, conferences and workshops. IBSA Members also enjoy the benefit of inclusion in our Member and Corporate Directories (depending on level of membership) and exclusive member benefits such as discounts on third party service provision, publication of articles in the IBSA Knowledge Bank and use of the IBSA Connects services. Please find attached a copy of our brochure, latest calendar of events and summary of a recent UK Branch discussion group.

Roy's Vision

"My personal vision is for the IBSA to provide a vehicle for the community of international advisors to access and exchange knowledge, develop new and deeper professional relationships and discover new business opportunities - I do hope that you will join me on this exciting journey."

Upcoming Events

September 29 – London – Growth: Funding, M&A and structuring your business for success
September 30 – Paris – Supply Chain Methodology
November 18 – London – Annual Members' Dinner, Hush
November 19 – London – Annual Members' Conference, Landmark Hotel
December 1 – Zurich – Topic to be confirmed

Plus, US events & various webinars yet to be scheduled.

EXHIBIT C

Press Center

Treasury Releases Select Draft Provisions for Next U.S. Model Income Tax Treaty

5/20/2015

Draft provisions address stateless income, corporate inversions and limitation on benefits

WASHINGTON - Today, the Treasury Department released for public comment draft updates to the U.S. Model Income Tax Convention (the "U.S. Model") — the baseline text used by the Treasury Department when it negotiates tax treaties. The revisions to the U.S. Model text are intended to ensure that the United States is able to maintain the balance of benefits negotiated under its treaty network as the tax laws of our treaty partners change over time, and to deny treaty benefits to companies that change their tax residence in an inversion transaction. The U.S. Model was last updated in 2006.

"The draft provisions we are releasing for comment today reflect the fact that the tax regimes of our treaty partners are more likely to change over time than they have in the past, and that they sometimes change in ways that encourage base erosion and profit shifting or BEPS, by multinational firms. Treaties exist to eliminate double taxation, not to create opportunities for BEPS, and today's updates fully take account of the new international tax environment. The draft provisions also articulate steps that would help prevent our treaty network from encouraging inversion transactions," said Deputy Assistant Secretary for International Tax Affairs Robert B. Stack.

One set of draft provisions address issues arising from so-called "special tax regimes," which provide very low rates of taxation in certain countries in particular to mobile income, such as royalties and interest. This is income that taxpayers can easily shift around the globe through deductible payments that can erode the U.S. tax base. Consistent with the G20/OECD BEPS Project, the proposals are intended to avoid instances of "stateless income" or double non-taxation, whereby a taxpayer uses provisions in the tax treaty, combined with special tax regimes, to pay no or very low tax in the treaty partner countries.

The second set of draft provisions is intended to reduce the tax benefits from a corporate inversion by imposing full withholding taxes on key payments such as dividends and base stripping payments, including interest and royalties, made by U.S. companies that are "expatriated entities" as defined under the Internal Revenue Code.

Finally, and also part of the effort to eliminate BEPS, the proposal makes revisions intended to prevent residents of third-countries from inappropriately obtaining the benefits of a bilateral tax treaty. These include more robust rules on the availability of treaty benefits for income that is not subject to tax by a treaty partner because it is attributable to a permanent establishment located outside the country, and the ability of a company to make excessive base eroding payments.

Recognizing that multinationals often have global operations dispersed through many subsidiaries around the globe, the U.S. model for the first time contains a so-called "derivative benefits" rule. This taxpayer-favorable rule is an additional method of qualifying for treaty benefits based on a broader concept of ownership that includes certain third-country ownership.

While not among the draft treaty provisions that are being released today, the Treasury Department intends to include in the next U.S. Model a new Article to resolve disputes between tax authorities through mandatory binding arbitration.

The Treasury Department invites comments on the proposed treaty rules. Comments received will be taken into account as the Treasury Department works to finalize its revisions.

View the draft provisions here.

EXHIBIT D

TRANSCRIPT OF DISCUSSION GROUP OF THE US BRANCH OF IBSA: TOPIC US CORPORATE INVERSIONS

Robert Kiggins of Culhane Meadows opened the discussion by referring to the disparity of US corporate tax rates with the rest of the world. With the nominal federal corporate tax rate of 35% plus state taxes, and for those operating in New York City, city taxes as well, the overall corporate tax rate can easily rise to the mid-forties. This can be compared to the forthcoming 20% corporate tax rate in the UK and 12.5% in Ireland. Add to that the fact that the US does not have a territorial tax system and it is therefore no wonder that US corporations are looking to reduce their corporate tax bills. He then went on to explain the methods by which the inversion can take place. The attached diagram, prepared by co-panellist Bernhard Gilbey from Squire Patton Boggs, shows the inversion in diagrammatic form.

The above diagram shows how the shareholders of the previous US parent company maintain control of the new non-US holding company. For the non-US subsidiaries beneath the former US parent there will continue to be controlled foreign company (CFC) issues. It is also possible, if in most cases unlikely, that there could be CFC issues for the other non-US parts of the structure including the potential for subpart F income, which creates deemed dividends with resepect to several types of foreign income for those foreign entities other than active trade or business income.

Government attention has been drawn to inversions and its potential to reduce US corporate tax bills and the politicians are very concerned about the drain on tax revenue. Prior legislation introduced the requirement that not more than 80% of the value of the foreign corporation, represented by the shareholding of the owners of the previous US parent corporation, should remain with those shareholders. There are now legislative proposals to reduce that level from 80% to 50%, effectively limiting inversions to pure takeover situations, but Congress cannot agree on this proposal (nor on many others!). Democrats wanted to reduce the level to 50% with a retroactive effect, but the Republicans have refused to accept this and it now appears that anti-inversion tax legislation is unlikely to be enacted this year when Congress returns for its post-election "lame duck" session.

Following several legislative proposals to prevent inversions (or at least make them harder to achieve) and to limit the tax benefits, Treasury has recently issued Notice 2014–52 on 22 September 2014, proposing to issue regulations under five Internal revenue Code sections identifying changes that it considers should:

- Make invertions harder to achieve; and
- deny a number of the benefits of corporate inversions (see below for more details),

Thus, despite the fact that there may be a double tax treaty between the US and the country of the new non-US parent company, in which the place of effective management determines tax residence (which may well be in the non-US country), the Treasury regulations would seek to override this specific provision. Robert finalised his introduction by identifying how companies have in the past sought to keep below the 80% threshold, for example by the old US parent company distributing dividends to its shareholders prior to the inversion, so that the value of the company is reduced on acquisition by the new non-US company; or perhaps fattening up the foreign company through a cash raising exercise.

Bernhard Gilbey looked at the issue from a UK point of view in the event that the new non-US holding company would be a UK target company. He questioned how likely it is that the US Treasury will actually release regulations and how likely it is that they will have legal effect. It is possible that changes proposed by these regulations may go beyond the authority of the US Treasury. If the US Treasury does introduce regulations that reflect the proposals in Notice 2014–52, will they be challenged by US corporations? He explained that it was quite easy to understand the benefits of moving the headquarters of the business from the US to the UK which, in recent years, has created a corporate tax regime which is probably better than any other high tax jurisdiction. Not only are corporate tax rates being reduced to 20% from 1 April 2015, but the UK introduced an excellent participation exemption for UK parent companies, firstly in 2002 by exempting capital gains on the sale of subsidiary companies which form part of a trading group; and secondly in 2009

exempting dividends from foreign subsidiaries under certain conditions. Moreover, there is no withholding tax on dividend distributions from a UK company to its shareholders wherever they are resident. Thus, the entity, through a corporate inversion, can receive dividends from non-US subsidiaries in perhaps low tax countries, without the additional US corporate tax rates that would otherwise be imposed, and can pass these dividends without any further UK tax through to the ultimate shareholders. Although the Labour government of previous years wanted to introduce a broader CFC regime, the current government has made the CFC regime somewhat benign, encouraging to some extent the use of low tax subsidiaries of UK parent companies.

Mitch Thompson, Cleveland partner of Squire Patton Boggs, was asked to explain the current thinking in the US on corporate inversions as a result of Treasury Notice 2014-52. Mitch explained that the main attack is pitched at the shareholder identity or "continuity" after the inversion, and explained that besides the 80% rule, under current law if shareholder control after the inversion is only between 60% and 80% certain post-inversion transactions will be taxedfor up to 10 prior years. Under the proposals set forth in 2014-52, unusual distributions made before an inversion that have the effect of "skinnying down" the US parent could be ignored if they are too inconsistent with distributions over three year period prior to the inversion.. Other pre-inversion transactions that either "fatten up" the new non-US parent or that use a tax-free spin off to adjust the transaction to fit under the 80% threshold will be similarly thwarted under rules to be promulgated under the Notice.

Mitch went on to explain that several post-inversion planning techniques are also addressed in Notice 2014-52. For example, loans from the foreign subsidiaries from the old parent US corporation to the new non-US parent will now result in taxable deemed dividends to the former US parent. In addition, transactions designed to decontrol the CFCs under the former US parent or to transfer them to other parts of the group in tax-efficient sales will now be treated as fully taxable transactions. Lastly, the Notice asks for comments (and suggests that rules will also be coming) with respect to post-inversion "earnings stripping" of the US group by attacking the interest deductions on related party loans made to the US group.

Don Moorehead, Washington D.C. partner of Squire Patton Boggs, was then invited to share his views from a public policy perspective. He stated that, while most people in the US understand that the US is a great place to do business "in", an increasing number believe that, from a tax standpoint, the US is not a good place to do business "from". Turning to Notice 2014-52, he also questioned whether Treasury regulations promised in the Notice would in fact be issued as promptly as stated, and reminded us that previous Notices announcing that anti-abuse regulations would be issued (such as those regarding certain US real estate transactions in Notice 2007-55), were never ultimately promulgated, so it's possible Notice 2014-52 could similarly languish for a period of time. With respect to legislation, given the general difficulty Democrats and Republicans have had in moving tax legislation, it appears currently to be only a remote possibility that legislation could be brought in this year as described by the other panellists. This could of course change and, if it does, any such legislation may include provisions to address the earnings stripping concept explained by Mitch, as both Democrats and Republicans have expressed concerns about that. He suggested that some key legislators believe corporate inversions are not the disease, merely the symptom of a tax system characterized by exceptionally high corporate tax rates and the absence of a territorial approach to business taxation For these legislators, general tax reform is the proper legislative vehicle to address inversions. He cautioned, however, that the current climate for general tax reform is problematic at best, but efforts will be undertaken in 2015-16 to develop and enact such legislation.

The final panellist was Saumyanil Deb, Director of Transfer Pricing at Thomson Reuters, who kindly hosted the discussion group at their offices in Times Square. Saumyanil reflected that transfer pricing has been on the agenda for the past 20 years, specifically as it relates to profit shifting methods such as corporate inversions. In fact, the main area of interest has been the migration of intellectual property from US corporations to subsidiaries in say Switzerland, Ireland or even the Cayman Islands. Thus, the relevant Section 482 of the Internal Revenue Code would adjust the values at which IP is transferred from US corporations, and also review any resultant royalties that are payable.

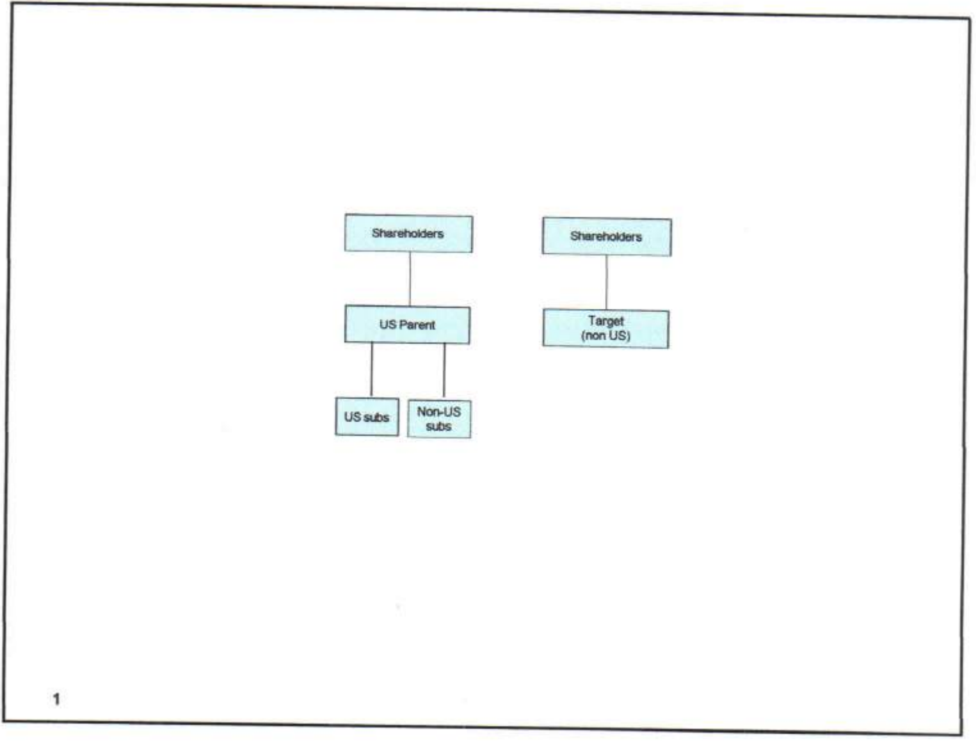
Saumyanil then went on to reflect on the OECD BEPS initiative, which started with countries of G20 realising that they are losing tax revenue due to base erosion, with the BRICS countries agreeing that they are also losing tax revenue as a result of cost plus agreements where the profit margins are limited to cost plus 5%, as opposed to more realistic levels.

The OECD BEPS initiative extends the transfer pricing concept from IP as an asset, to the reality of where a business operates through offices, personnel, etc. It appears that all countries agree that there should be more transparency, but out of all of the attempts of the OECD to introduce provisions to prevent profit shifting which can be agreed by all OECD countries, it is likely that there will only be three elements which have general consensus. The first one relates to country by country reporting (cbc reporting) where a multi-national group has to disclose the accounting profits and tax computations submitted to each country in which the group operates. The second and third elements represent the transfer pricing memoranda that will need to be created, being a Master File describing the operations of the business as a whole, and Local Files explaining inter-company transactions and methodologies.

Saumyanil concluded that although countries in G20, and perhaps China and India, may agree on cbc reporting and transfer pricing memoranda being prepared, it is extremely unlikely that the US will introduce legislation to this effect in the foreseeable future, and indeed the adoption of cbc reporting must have legislative power before its adoption. Many US corporations may baulk at sharing information relating to its business operations which may enter the public domain.

The meeting concluded by reflecting the uncertainties of current initiatives being introduced in a divided Congress, and although FATCA legislation has been very swiftly and successfully implemented worldwide, and was indeed a US initiative, other issues such as OECD BEPS and also State Aid within the EU and so called 'sweetheart' deals, and indeed also corporate inversions as discussed at the meeting, are still being bandied about by politicians and civil servants creating uncertainty for taxpayers and their professional advisors.

Prepared 10 October 2014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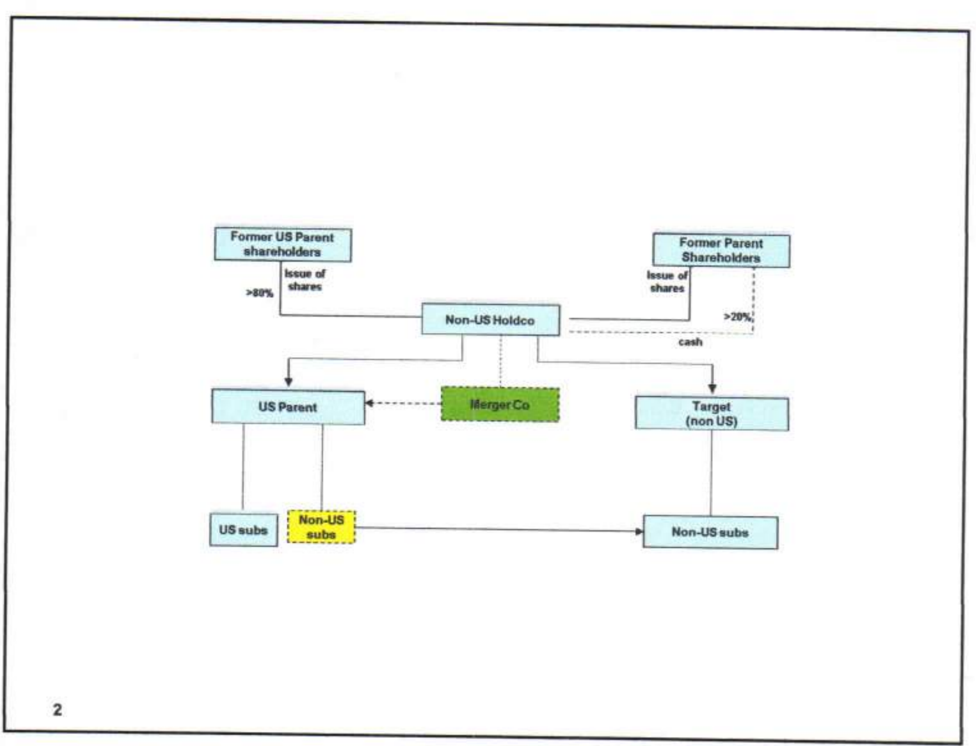
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Merger Co
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EXHIBIT E

DJIA 17674.76 0.91% Nasdaq 4961.15 1.05% U.S. 10 Yr -21/32 Yield 2.269% Crude Oil 53.08 2.77% Euro 1.1023 -0.48% EXPAND

Robert Kiggins

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MARKETS

The Tax Inversion Wave Keeps Rolling

Proposed acquisition of Depomed shows how companies that move to lower-tax jurisdictions overseas use this advantage in corporate takeovers

Bridges span the River Liffey as commercial property stands beyond in Dublin, Ireland, on Thursday, Dec. 12, 2013. Ireland is set to exit a 67.5 billion-euro ($92.4 billion) three-year bailout on Dec. 15 with more than 20 billion euros of reserves that can fund the exchequer into 2015. *PHOTO: AIDAN CRAWLEY/BLOOMBERG NEWS*

By LIZ HOFFMAN

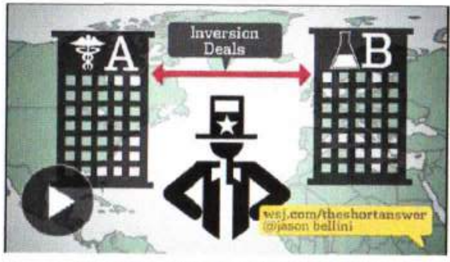
Updated July 7, 2015 7:05 p.m. ET

116 COMMENTS

When Horizon Pharma PLC completed its takeover of a small, closely held Irish drug company last fall, its timing was fortuitous.

Horizon, formerly of Illinois, closed its deal with Dublin-based Vidara Therapeutics International Ltd. in September three days before U.S. regulators cracked down on these tax-beneficial corporate migrations known as inversions. Had the pair been slower to the altar, they would have been subject to tighter rules that make such overseas mergers more difficult and less lucrative.

Related Video



Drug companies and medical device makers are making multi-billion-dollar merger deals to avoid high U.S. corporate taxes. How do so-called "inversion deals" work? WSJ's Jason Bellini has The Short Answer.

Having squeaked through where others failed— AbbVie Inc., for example, abandoned its $54 billion takeover of Shire PLC in the wake of the new rules— Horizon is now pressing its tax advantages through deal making, following a well-worn path laid by other corporate inverters before it.

Their deals show that, despite Washington's efforts last year to protect the U.S. corporate tax base, revenue keeps trickling out. Since the Treasury rules went into effect last fall, 55 U.S. companies have been sold to or targeted by foreign buyers, many of those acquirers formed by inversions themselves, according to FactSet.

On Tuesday, now-Dublin-based Horizon, which makes drugs for rare diseases, joined the club, going public with a $1.75 billion, all-stock takeover bid for Depomed Inc., a California-based maker of pain treatments. Shareholders of Depomed, which earlier rejected two private overtures from Horizon, would own about 25% of the combined company.

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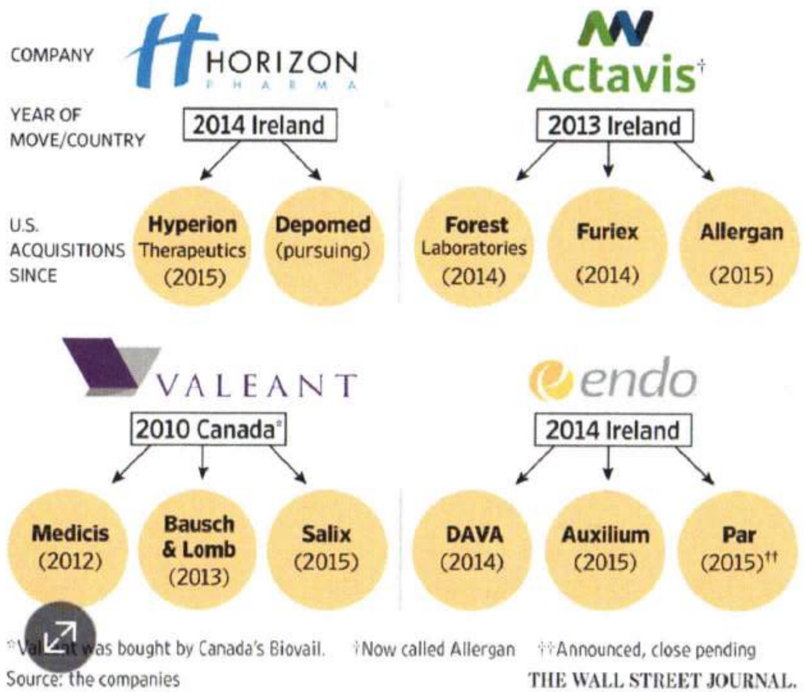
VIDEOS

Horizon Chief Executive Officer Timothy Walbert said in an interview that buying Depomed, would generate "significant operating and tax synergies," or savings. Depomed paid 38% of its profits in taxes last year, according to regulatory filings. Horizon is targeting a tax rate in the low 20s over the longer term. Ireland has a corporate tax rate of 12.5%.



Horizon and other inverted companies are using their new, lower tax rates to turbocharge corporate takeovers. Applying those rates, often in the midteens, to profits of companies in the U.S., with a federal corporate rate of 35%, can yield extra savings on top of those traditionally wrung from mergers. Moreover, unlike the U.S., Ireland and most other countries only tax profits earned in-country, giving companies the freedom and incentive to shift income to still-lower-tax jurisdictions.

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Horizon has subsidiaries in Ireland, Luxembourg and Bermuda and engages in "transfer pricing," a legal way of steering profits to lower-tax jurisdictions, to keep its taxes low, according to securities filings.

Over the past couple of years, the combination of low foreign tax rates and creative financial structuring, layered on top of a global mergers-and-acquisitions boom, has been potent. A new class of global companies—identified by corporate suffixes of PLC and Ltd.—are increasingly looking at U.S. companies—Corp.'s and Inc.'s—for takeovers and using their tax edge to help outbid rivals.

A lower tax rate "gives you synergies that allow you to compete when it comes to valuing assets," Mr. Walbert said. "We think about it as leveling the playing field. Endo, Actavis, all these other companies are operating at a lower tax rate."

Two years ago, Actavis was a small New Jersey-based generic-drug maker when it bought Ireland's Warner Chilcott PLC and redomiciled in Ireland. After a series of acquisitions, including Forest Laboratories Inc. for $25 billion and Allergan Inc. for $66 billion, the company, now called Allergan PLC, is one of the largest pharmaceutical firms in the world, with a market value of $120 billion and revenue of $23 billion.

Others to use inversions as a platform for acquisitions include Endo International PLC, which redomiciled in Ireland last year and has since committed more than $11 billion to U.S. acquisitions, including its recent deal for Par Pharmaceutical Holdings Inc. Mylan NV, which inverted to the Netherlands in February, in April launched a roughly $31 billion takeover bid for Perrigo Co.

Pharmaceutical companies are a natural fit for inversions and the deals that follow, given the sector's global reach and reliance on patents, which are more easily transferred among subsidiaries than, say, factories or oil rigs.

But the trend is more widespread. Last week, Willis Group Holdings PLC, the insurance brokerage once domiciled in the U.K. that decamped to Bermuda in 2001 and then to Ireland in 2010, struck a deal to buy Towers Watson & Co., the U.S. professional-services firm. Willis has an effective tax rate of about 22% and Towers Watson's is 35%, according to the most recent filings. CEOs of both companies said taxes were a side benefit and not a driver of the deal.

For Horizon, the tax savings are part of a broader rationale for the deal, Mr. Walbert said. The combined company would have 13 marketed medicines, nearly twice the number Horizon currently sells. Many of Depomed's products have patent protection through at least 2022, according to analysts at Leerink Partners LLC, who wrote in an investor note that buying Depomed would add about 10% to Horizon's 2016 earnings per share.

For now, its target is reluctant. Depomed privately rejected the $29.25-a-share offer in a June 25 letter to Mr. Walbert and did so again publicly Tuesday. Depomed said the bid undervalues its prospects, particularly the unrealized fruits of its April acquisition of the U.S. distribution rights to a treatment for diabetes-related nerve pain.

On Tuesday, Depomed's shares gained 39%, to $28.62, a slim discount to the offer price, suggesting investors are optimistic about an eventual tie-up.

Depomed would be Horizon's second large U.S. takeover since completing its inversion. In May, it paid $956 million for Hyperion Therapeutics Inc., whose drugs treat a rare metabolic condition. That deal promises fewer immediate tax savings, though, as Hyperion had paid just a total of $350,000 in taxes over the previous three years, in part by applying past operating losses and tax credits, filings show.

Write to Liz Hoffman at liz.hoffman@wsj.com

EDITORS' PICKS

EXHIBIT F

NEW ARTICLE 10 (DIVIDENDS) PARAGRAPH 9:

"9. In the case of the United States, notwithstanding the other provisions of this Article, dividends paid by an expatriated entity may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed."

TECHNICAL EXPLANATION:

Subparagraph 9 provides, in the case of the United States, an exception to the reductions in dividend withholding provided in paragraph 2 in cases where the company paying the dividends is an "expatriated entity." In such cases, the dividends may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed.

For purposes of applying this provision, the term "expatriated entity" shall mean an "expatriated entity" as defined in Code section 7874(a)(2)(A). The term "domestic entity" shall mean the domestic corporation or partnership referred to in Code section 7874(a)(2)(A)(i). The date on which the acquisition of the domestic entity is completed is the date on which the requirements of Code section 7874(a)(2)(B) are first satisfied.

NEW ARTICLE 11 (INTEREST) SUBPARAGRAPH 2(d):

"d) In the case of the United States, notwithstanding the other provisions of this Article, interest arising in a Contracting State and paid by an expatriated entity may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed;"

TECHNICAL EXPLANATION:

Subparagraph 2(d) provides, in the case of the United States, an exception to the exclusive residence taxation rule for interest of paragraph 1 in cases where the company paying the interest is an "expatriated entity." In such cases, the interest may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed.

For purposes of applying this provision, the term "expatriated entity" shall mean an "expatriated entity" as defined in Code section 7874(a)(2)(A). The term "domestic entity" shall mean the domestic corporation or partnership referred to in Code section 7874(a)(2)(A)(i). The date on which the acquisition of the domestic entity is completed is the date on which the requirements of Code section 7874(a)(2)(B) are first satisfied.

NEW ARTICLE 12 (ROYALTIES) SUBPARAGRAPH 5(b):

"b) In the case of the United States, notwithstanding the other provisions of this Article, royalties paid by an expatriated entity may be taxed in accordance with the domestic law of the

United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed."

TECHNICAL EXPLANATION:

Subparagraph 5(b) provides, in the case of the United States, an exception to the exclusive residence taxation rule for royalties of paragraph 1 in cases where the company paying the royalties is an "expatriated entity." In such cases, the royalties may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed.

For purposes of applying this provision, the term "expatriated entity" shall mean an "expatriated entity" as defined in Code section 7874(a)(2)(A). The term "domestic entity" shall mean the domestic corporation or partnership referred to in Code section 7874(a)(2)(A)(i). The date on which the acquisition of the domestic entity is completed is the date on which the requirements of Code section 7874(a)(2)(B) are first satisfied.

NEW ARTICLE 21 (OTHER INCOME) SUBPARAGRAPH 3(b):

> "b) In the case of the United States, notwithstanding the other provisions of this Article, other income paid by an expatriated entity may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed."

TECHNICAL EXPLANATION:

Subparagraph 3(b) provides, in the case of the United States, an exception to the exclusive residence taxation rule for other income of paragraph 1 in cases where the company paying the other income is an "expatriated entity." In such cases, the other income may be taxed in accordance with the domestic law of the United States for a period of ten years beginning on the date on which the acquisition of the domestic entity is completed.

For purposes of applying this provision, the term "expatriated entity" shall mean an "expatriated entity" as defined in Code section 7874(a)(2)(A). The term "domestic entity" shall mean the domestic corporation or partnership referred to in Code section 7874(a)(2)(A)(i). The date on which the acquisition of the domestic entity is completed is the date on which the requirements of Code section 7874(a)(2)(B) are first satisfied.

EXHIBIT G

Current through Pub. L. 114-19. (See Public Laws for the current Congress.)

(a) Tax on inversion gain of expatriated entities

(1) In general

The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

(2) Expatriated entity

For purposes of this subsection—

(A) In general

The term "expatriated entity" means—

(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

(ii) any United States person who is related (within the meaning of section 267 (b) or 707 (b)(1)) to a domestic corporation or partnership described in clause (i).

(B) Surrogate foreign corporation

A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

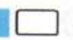
(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic

U.S. Code Toolbox

Wex: Income Tax: Overview
Title 26 USC, RSS Feed
Table of Popular Names
Parallel Table of Authorities



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corporation by reason of holding stock in the domestic corporation, or

(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003, such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

(3) Coordination with subsection (b)

A corporation which is treated as a domestic corporation under subsection (b) shall not be treated as a surrogate foreign corporation for purposes of paragraph (2)(A).

(b) Inverted corporations treated as domestic corporations

Notwithstanding section 7701 (a)(4), a foreign corporation shall be treated for purposes of this title as a domestic corporation if such corporation would be a surrogate foreign corporation if subsection (a)(2) were applied by substituting "80 percent" for "60 percent".

(c) Definitions and special rules

(1) Expanded affiliated group

The term "expanded affiliated group" means an affiliated group as defined in section 1504 (a) but without regard to section 1504 (b)(3), except that section 1504 (a) shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(2) Certain stock disregarded

There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

(3) Plan deemed in certain cases

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If a foreign corporation acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

(4) Certain transfers disregarded

The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(5) Special rule for related partnerships

For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

(6) Regulations

The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

(B) to treat stock as not stock.

(d) Other definitions

For purposes of this section—

(1) Applicable period

The term "applicable period" means the period—

(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

(B) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

(2) Inversion gain

The term "inversion gain" means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section

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1221 (a)(1) in the hands of the expatriated entity.

(3) Foreign related person

The term "foreign related person" means, with respect to any expatriated entity, a foreign person which—

(A) is related (within the meaning of section 267 (b) or 707 (b)(1)) to such entity, or

(B) is under the same common control (within the meaning of section 482) as such entity.

(e) Special rules

(1) Credits not allowed against tax on inversion gain

Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

(A) the amount of the inversion gain for the taxable year, and

(B) the highest rate of tax specified in section 11 (b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

(2) Special rules for partnerships

In the case of an expatriated entity which is a partnership—

(A) subsection (a)(1) shall apply at the partner rather than the partnership level,

(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

(3) Coordination with section 172 and minimum tax

Rules similar to the rules of paragraphs (3) and (4) of section 860E (a) shall apply for purposes of subsection (a).

(4) Statute of limitations

(A) In general

The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-

inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(B) Pre-inversion year

For purposes of subparagraph (A), the term "pre-inversion year" means any taxable year if—

(i) any portion of the applicable period is included in such taxable year, and

(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

(f) Special rule for treaties

Nothing in section 894 or 7852 (d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(g) Regulations

The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.

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EXHIBIT H

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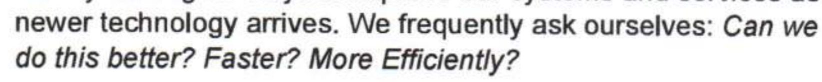

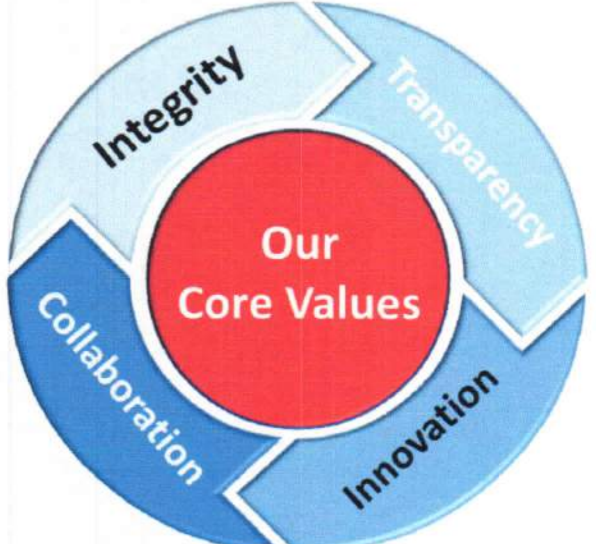

With a management philosophy that emphasizes intentional **collaboration** among our partners located nationwide through the use of technology, we are able to maintain a true partnership culture. We believe that better communication among our partners translates into better and more efficient client service.

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