AbbVie Cancels Shire Deal, But Can Deduct $1.64 Billion Fee

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President Obama's anti-inversion guidance has already cratered at least one large transaction. President Obama had asked Congress to act, but when it did not, he tasked his Treasury Secretary with coming up with administrative guidance designed to make inversions harder and more expensive. The move was controversial, and some say it goes beyond IRS authority.

But it is already having a key impact, causing AbbVie to back out of its planned $55 billion deal with Ireland-headquartered Shire. The AbbVie board recommended to its AbbVie shareholders that they vote against the takeover. This adverse recommendation came on the heels of comments from AbbVie that despite the recent IRS attacks on inversions, the companies were still joining to achieve synergies.

The deal still looked good, but no longer. AbbVie's second thoughts on the deal and recent nixing of the transaction surprised Shire investors. Although the companies had indicated that they were going ahead despite the IRS moves, it now turns out the tax issues may have been the main benefit after all. So much for synergies.

Some are already calling this particular uncoupling a major victory for Mr. Obama's Treasury Department. It keeps Chicagobased AbbVie as an American company. Yet, AbbVie has also made its displeasure clear, noting the unilateral nature of the U.S. government's move against inversion deals. AbbVie even complained about what it called the unexpected nature using administrative authority to impact what it called longstanding tax principles.

But in an ironic twist, as a consequence of backing out of the deal (even over tax reasons) AbbVie must now pay a large break-up fee of $1.64 billion to Shire. And guess what? That payment is fully tax deductible against AbbVie's U.S. taxes. The U.S. tax law is clear that break-up fees are tax deductible as long as they are not paid to facilitate another transaction.

And this very healthy $1.64 billion tax deduction is not the end of AbbVie's tax write-offs either. The idea of deductible deal fees may sound odd, since in general, transaction fees cannot be deducted. Instead, they must be capitalized as part of the cost of a successful deal. However, a deal that is cancelled is different.

The death of AbbVie's deal with Shire means tax deductions are available, and not just for the break-up fee. Other transaction expenses in the likely deduction column include fees paid to AbbVie's tax advisers and bankers. The tax deduction just on the break-up fee could net AbbVie approximately $650 million in tax savings.

Fees paid to AbbVie's lawyers and bankers, including an expected $137 million fee to secure a short-term loan, should also be deductible. And the nice injection of cash into Shire that the generous $1.64 billion break-up fee could make Shire more attractive to another potential suitor.

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