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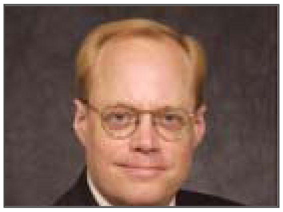

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All Together Now: U.S. Tax Code Is A Rotting Carcass

There seems little that Republicans and Democrats can jointly embrace. There even seems little for them to jointly decry. Few want to speak out in favor of corporate inversions to cut U.S. taxes. Yet Democrats and Republicans can't agree whether we should outlaw inversions or make bigger changes to the tax code that would have the same effect.

Does that mean Democrats and Republicans don't agree the tax code needs fixing? Not necessarily. In a nice sound bite, Sen. Ron Wyden (D, Ore.) has made a good pitch for plugging the inversion loophole now. Sen. Wyden heads the Senate Finance Committee. He emphasizes the need for tax reform, but supports his party's push to close the inversion loophole now. Why wait, he suggests.

Sen. Wyden caustically labels our tax code as a "rotting economic carcass that's infected with chronic diseases like loopholes and inefficiencies." Sen. Wyden has used the rotting carcass line before. It does have a nice ring, conjures up a memorable image, and maybe even a perceived stench. And Sen. Wyden doesn't like inversions.

Jon Stewart and Steven Colbert agree. President Obama called the deals unpatriotic, and Mr. Stewart quipped that the deals were like "gender reassignment" for corporations. Mr. Colbert drolly observed that an inversion is "like me adopting an African child, then claiming myself as his dependent."

President Obama's critique may be more biting. These are public companies, and shareholders can vote with their feet. The biggest inversion involved AbbVie going Irish by buying Shire for $54 billion. But Walgreens, "America's Drugstore" is considering one too. Ironically, the highest profile inversion–Pfizer's attempt to buy Britain's AstraZeneca for almost $120 billion–failed.

An inversion starts when a U.S. company purchases a business overseas, thereafter relocating its headquarters to the target's foreign address. An inversion does not reduce U.S. taxes on *U.S.* income, but allows the company to avoid paying U.S. taxes on *foreign* earnings. Many U.S. companies that expect much of their sales growth outside the U.S. have a special reason to go offshore.

The tax code has restricted inversions since 2004, requiring more than 20% of the post-marriage combination to be owned by foreigners. But Democrats in Congress want to up the 20% to 50%. Democrats want to move quickly given the boom in inversions. Republicans want to hold out for large-scale tax reform.

In a curious twist, Activist Firms are Pushing to get companies into inversion deals to save taxes. What a counterpoint to the patriotism debate! And all of this may make Congress more likely to restrict inversions to make them more foreign.

Patriotism isn't an entirely new word in this field. Walgreens bought a 45% equity stake in Alliance Boots (AB), Europe's largest drug wholesaler and retailer. Walgreens has an option to buy the remaining 55%, which could spell inversion. Some U.S. Activists Slam Possible Walgreen Tax Move as 'Unpatriotic', but AB had its own run-in with being called that, reincorporating from the United Kingdom to Switzerland in 2008.

Many American businesses and legislators say the problem is not patriotism. Many say the U.S. tax code is not competitive and drives U.S. companies to go on the hunt. Scrutiny is coming from abroad too, including calls for increased protection of some British companies. Meanwhile, the U.S. tax code–to paraphrase Sen. Wyden–continues to stink.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.