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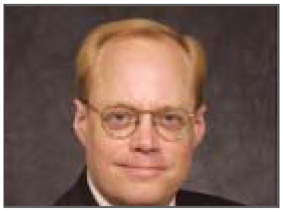

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Excuse Me Apple, Google, Starbucks & H-P: IRS Wants To Tax Stateless Income

If you pay taxes to the IRS and your state government every year, the idea of 'stateless' income may sound fanciful. Sure, individuals living outside the U.S. can have a kind of stateless income. They have to file federal tax returns, but as they don't reside in any state, they don't have *state* income. But this isn't what the IRS means by 'stateless income.'

Instead, the IRS is referring to global companies like Apple, Starbucks and Hewlett-Packard. Such companies aggressively put income in pockets around the world in ways the IRS doesn't like. The IRS isn't alone in not liking it. The G20 countries and the Organization for Economic Co-operation and Development (OECD) have been calling it tax manipulation.

The OECD, which advises the G20 on tax and economic policy, says existing national tax enforcement regimes just don't work. See G-20 Nations 'Fully Endorse' OECD Action Plan on Tax Evasion. The OECD plan claims that companies like Apple and Google avoid billions in taxes. The G20 is made up of 19 leading world economies plus the European Union. It too has voiced support for a fundamental reassessment of the rules on taxing multinationals.

Global companies have big incentives to source income in tax havens. Even more manipulative, they may have income that is sourced nowhere at all. Professor Edward Kleinbard of the University of Southern California Law School is generally credited with coining the "stateless income" phrase in 2007. He was formerly the Chief of Staff to the Congressional Joint Committee on Taxation. Since then, a lot of income has become stateless and many companies say they have it.

And that means scrutiny from the IRS. Today, the IRS is seeking new ways to pursue stateless income and profits offshore. In May 2013, the Senate Permanent Subcommittee on Investigations released a report finding that Apple avoided $9 billion in U.S. taxes in 2012. The key was offshore units with no tax home. Apple's CEO Tim Cook testified that companies engaged in this high stakes game are doing nothing illegal.

Taxes are complex and companies are arguably obligated to their shareholders to take advantage of tax breaks offered by governments to create jobs and business. Some companies say they would like nothing better than repatriating profits to the U.S. if they could only do it in a way that won't be taxed. And the amounts at stake are staggering.

U.S. companies are said to have more than ***$1.5 trillion*** sitting offshore. Most claim that they must keep the money there to avoid the taxes they would face by bringing it back to the U.S. "We must address the persistent issue of 'stateless income,' which undermines confidence in our tax system at all levels," U.S. Treasury Secretary Jack Lew has said. See IRS pursuing 'stateless income' tax enforcement.

Confidence, yes, but Secretary Lew might well note the impact on the Treasury too. In any event, it is not clear how far the IRS will go with its new push. It's also not clear how the IRS hopes to get there. The IRS hasn't done especially well in transfer pricing cases.

Besides, the money at stake is enormous. Plus, the companies involved have treasure troves of cash for many war chests. Big and protracted battles seem inevitable. Still, some big companies may be in for battles that are even larger than they think. They may even need to think different.

You can reach 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.