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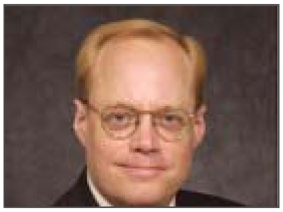

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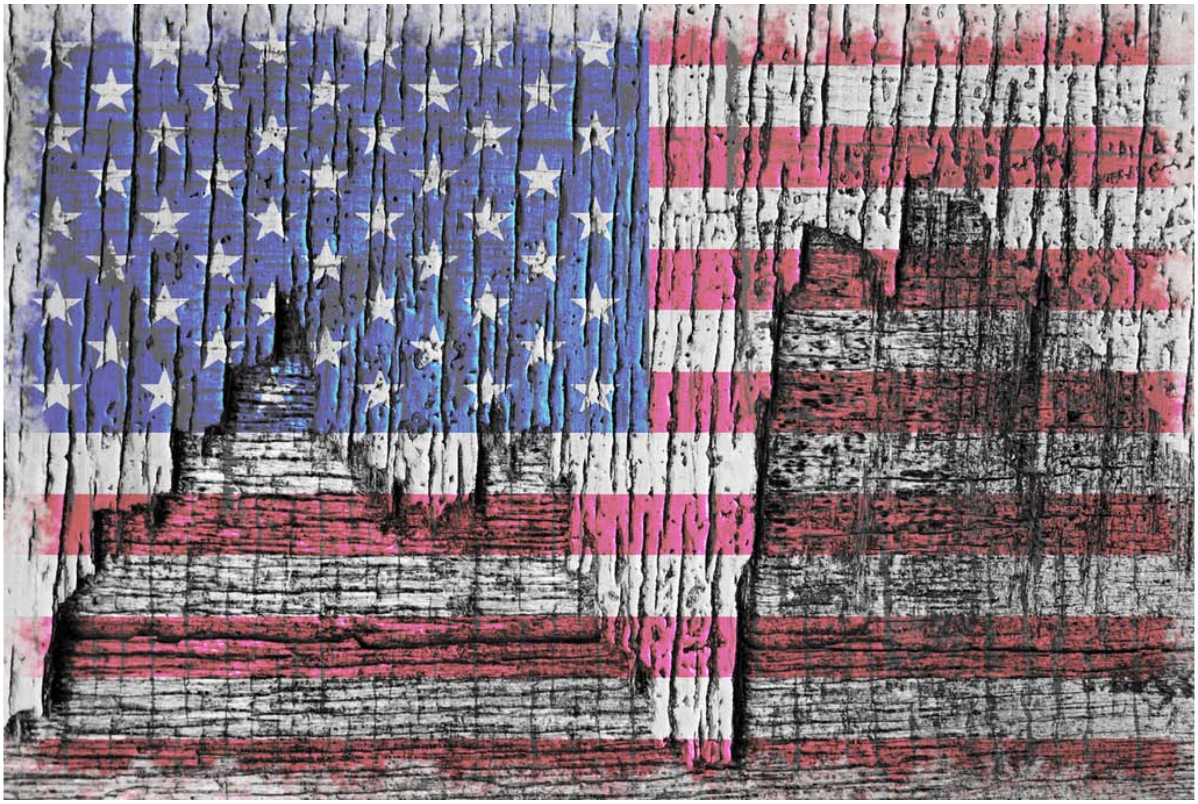
More People - And Now Companies - Exit U.S. Taxes

In 1963, JFK said “Ich Bin Ein Beliner!” showing solidarity with Berlin’s beleaguered citizens. “All free men, wherever they may live,” he said, “are citizens of Berlin.” Words of patriotism are apt today too, though a strange kind of tax patriotism has emerged.

FATCA—America’s Foreign Account Tax Compliance Act—enforces U.S. tax reporting *worldwide*. And there has been a 221% increase in individuals giving up their U.S. citizenship. We know this because there is a quarterly list of Americans, a public outing of those who renounced Citizenship or terminated long-term U.S. residency. Even at that, as Record Numbers Renounce U.S. Citizenship—Many Aren’t Counted.

U.S. companies too are getting increasingly fed up with U.S. taxes. Yet President Obama and some in Congress appear to think that America’s global tax system is as fundamental to our nation as, well, the separation of church and state. It is hard to see how.



Old Glory, Patriotic Rustic Peeling American Flag, The Stars & Stripes, Red, White, Blue, on Wood (Photo credit: Beverly & Pack)

A U.S. company that buys a foreign one and is more than 20% foreign-owned after the deal can move its domicile outside the U.S., thereby avoiding U.S. taxes on foreign earnings. To be clear, all U.S. earnings are still taxed in the U.S., and that will be so forever. But foreign earnings don't all get scooped up by America's tax system.

Is it unpatriotic? President Obama didn't say it was treason but did say such inversion deals are unpatriotic, like giving up citizenship. Mr. Obama wants Congress to prohibit the deals, even retroactively. Under present proposals, current law's 20% foreign rule for inversions would jump to 50%.

President Obama knows the tax law clearly allows these deals, but wants the law changed, as urged in a recent letter from Treasury Secretary Jack Lew. U.S. tax law already addressed inversions in 2004. Since then, Section 7874 of the Internal Revenue Code has covered inversions, requiring that more than 20% of the company must be owned by foreigners when the smoke clears. But that provision hasn't stemmed the tide of deals.

More than 40 large U.S. companies have recently gone foreign this way, which is clearly allowed by U.S. tax law. For example, AbbVie, is buying Shire for $54 billion. Many companies are rushing to sign deals before the law is changed.

One might argue that it is patriotic to force the U.S. tax system to pay attention and to reform. The tax code can't heal itself. Congress has to act, voters need to clamor for reform, and lobbyists should too. At 35%, U.S. corporate tax rates are high, driving some U.S. companies away.

As we strive to be competitive, what might JFK have said? JFK never said, "Ich bin ein Taxpayer," but he might have. He understood that our tax system creates odd incentives and needed reform. In a Special Message to Congress on Taxation on April 20, 1961, he said, ''The slogan—'It's deductible'—should pass from our scene.''

Maybe, but if the tax law allows deductions, shouldn't you claim them? A flat tax could truly make them pass from our scene. But in the meantime, some citizens will renounce. Some may even do so purely for tax reasons.

And there will be counterpart corporate renunciations of U.S. citizenship too. That will rankle, as in the case of Walgreens, ironically 'America's Pharmacy' that might turn Swiss. The Walgreens inversion plan isn't official, and still may not happen. But an Executive Summary by Americans for Tax Fairness says Walgreens' move could cost taxpayers $4 billion over five years. Walgreens won't be alone if it follows through.

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.