



Wood LLP

Tax Alert



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Obama Calls Offshore Deals 'Unpatriotic' Yet Funds, Investors, Boards Jump Aboard

President Obama says Americans can't pick which tax laws to obey. Testily, the President has accused companies doing inversion deals of just that. If those aren't fighting words, he goes on to say that buying a foreign company for offshore tax advantages is unpatriotic, like giving up citizenship. Mr. Obama wants Congress to prohibit the deals.

Yet investors and [Hedge Funds Bet Big on Overseas Tax Deals](#) and seem downright enthused. And it isn't just hedge funds that are stirred up over this. Whether through funds or individual stock picks, people are looking for [Ways Investors Can Play the 'Inversion' Boom](#). And the stock price of eligible players in the U.S. and abroad is on the upswing.

Think of it like marriage, although marrying a foreigner doesn't change your own U.S. tax status. Companies are different, and many U.S. companies are trying to get hitched to spouses abroad. That way a U.S. company can move its domicile outside the U.S., thereby avoiding taxes. The tax avoidance move doesn't work for the U.S. earnings of the company.

However, income sourced outside the U.S. escapes America's high 35% corporate tax rate. U.S. companies arrange it so the foreign company acquires the American one. Alternatively, a holding company is formed to merge the two. More than 20% of the combination must be owned by the foreigners when the smoke clears. That way the company can stop being domiciled in the U.S., cutting taxes.

The President wants Congress to act quickly to make inversions more restrictive. Under present proposals, the 20% foreign rule for inversions would jump to a whopping 50%. A foreign company would have to *really and truly* be the controlling buyer. But the pace of deals under the 20% rule continues, including [AbbVie](#), buying [Shire](#) for \$54 billion.

Other companies doing inversions include Medtronic, buying Covidien, and drugmaker Mylan Inc. buying Abbott Laboratories' non-U.S. business. More than 40 large U.S. companies have recently gone foreign this way. And we are already seeing a rush to get deals done before the law is changed.

Is this unpatriotic? The point can certainly be updated. But it stands to reason that companies that expect sales growth outside the U.S. have special reasons to go offshore. Many say the U.S. tax code is driving U.S. companies away. At 35%, U.S. corporate tax rates are high.

How does the U.S. tax system fare, and specifically, how do U.S. corporate tax rates stack up? Let's take Ireland', which has a tax rate of 12.5%. As a result, many companies take advantage of that Irish bargain through a variety of techniques. Apple may be the most prominent example, not of an

inversion but of Irish operations. According to a Senate report, Apple avoided paying \$9 billion in U.S. taxes in one year.

So are inversions unpatriotic? What do you think?

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.