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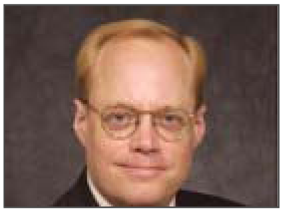

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Trending Now: Inversions & Hating Them

Inversions are not new. Inversions reduce U.S. taxes on *foreign* income—*not* on U.S. based income. Yet in a short period they have undergone a startling metamorphosis.

Once they were interesting transactions for a few companies with the right facts and international ambitions. Then almost out of the blue, these deals became one of the hottest trends in years. Equally suddenly, inversions—and those perpetrating them—became pariahs. They carry hard to quantify negative press and investor relations backlashes.

They even carry the possibility of a retroactive legislative fix, although that seems increasingly unlikely. The information, misinformation, and invective is also hard to quantify. Although inversions probably commenced in the 1980s, there were few even through the 1990s.

The U.S. flag from close up and at an angle. (Photo credit: Wikipedia)

There was the inversion into Panama of McDermott International in 1982, followed by the inversion into Bermuda of Helen of Troy in 1994. Tyco International, which would later become infamous over the criminal conviction of CEO Dennis Kozlowski, inverted into Bermuda in 1997. Other inversions followed, including Fruit of the Loom into the Cayman Islands in 1998, Ingersoll Rand into Bermuda in 2001, and Transocean into Switzerland in 2008.

As the trend became something Congress thought was abusive, it put the brakes on inversions. In 2004, the tax code started requiring inversions to have more than 20% foreign ownership. One of several 2014 proposals to stem the new inversion tide would increase this 20% rule to 50%. The controlling buyer would *really and truly* have to be a foreign company.

Even under existing law, a domestic company can be classified as a surrogate foreign company if the domestic company's shareholders own at least 60 percent of the inverted company after the transaction. If there is continuity of ownership between 60 and 80 percent, the provisions restrict the inverted company's ability to use historical tax attributes.

If there is continuity of ownership of 80 percent or more, the surrogate foreign company is treated as domestic. Having 60 percent continuity of ownership can also trigger excise taxes to officers. However, this may not be a significant deterrent. Some companies will pay excises tax for their officers, grossing up their compensation.

Notable 2014 inversion developments may help explain some of the hysteria:

- Mallinckrodt (an Irish pharma company) announces an all cash acquisition of Cadence Pharmaceuticals to be based in Ireland (Feb. 11, 2014).
- Actavis PLC (another Irish pharma company) announces the stock and cash acquisition of Forest Labs (Feb. 18, 2014).
- U.S. electronics company Applied Materials Inc. and Japanese Tokyo Electron Ltd. receive approval for proposed merger in which both will become Dutch companies (Feb 24, 2014).
- U.S. based Endo Health Solutions Inc. completes purchase of Paladin Labs Inc. with new Irish parent, Endo International PLC (Feb. 28, 2014).
- Chiquita Brands International Inc. and Fyffes PLC of Ireland agree to a merger with a new Irish parent (March 10, 2014).
- U.S. based Horizon Pharma Inc. announces intent to acquire Vidara Therapeutics International Ltd of Ireland, with resulting parent company in Ireland (March 19, 2014).
- Mallinckrodt (the Irish pharma company) and Questor Pharmaceuticals Inc. announce merger, with Mallinckrodt to be the survivor (April 7, 2014).
- Valeant Pharmaceuticals International of Canada opens a cash and stock bid for Allergan Inc. (April 22, 2014).
- Pfizer Inc. makes offer for U.K. based Astra-Zeneca worth $118 billion, but offer is rejected (April 28, 2014).
- Mylan Laboratories Inc., which has been bidding for Meda AB of Sweden, is rejected again (April 28, 2014).
- Abb-Vie of the U.S. makes it first bid for Shire which is rejected (May 2, 2014).
- Merck & Co. Inc. announces partial sale to Bayer AG (May 6, 2014).
- U.S. based Mondelez International Inc. and D.E. Master Blenders of the Netherlands announce combination with new Dutch headquarters (May 7, 2014).

- Pfizer keeps trying for U.K. based Astra-Zeneca, is rejected again (May 16, 2014).
- Destination Maternity Corp. of the U.S. makes second unsuccessful pitch to Mothercare PLC of Britain for new U.K.-based combination (June 1, 2014).
- Medtronic announces intent to acquire Irish based Covidien with new Irish parent (June 15, 2014).
- TE Connectivity Ltd. of Switzerland announces deal to acquire Measurement Specialties Inc. of the U.S. (June 18, 2014).
- Walgreen Co. ceases inversion talks over completing its transaction with Alliance Boots GmbH (June 24, 2014).
- C&J Energy Services Inc. of the U.S. announces merger with Nabors Industries Ltd., the new company to be based in Bermuda (June 25, 2014)
- Auxilium Pharmaceuticals Inc. of the U.S. agrees to merge with Canadian based QLT Inc., the new parent to be based in Canada (June 26, 2014).
- Salix Pharmaceuticals Ltd. of the U.S. announces a combination with a Cosmo Pharmaceuticals SpA (Italy) subsidiary, the new company to be based in Ireland (July 8, 2014)
- After 3 prior offers, Abb-Vie finally succeeds with Shire, the latter announcing agreement under which Abb-Vie becoming based in Jersey (July 14, 2014).
- Mylan Laboratories Inc. of the U.S. announces purchase of Abbott Laboratories and move to Netherlands (July 14, 2014).
- Candy maker Lindt & Sprungli AG of Switzerland announces acquisition of Russell Stover Candies Inc. (July 14, 2014).

Inversions aren't over. Congress and the President aren't done. Yet neither are American–and foreign–dealmakers.

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.