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THE TAX LAWYER

Whopper? Microsoft Skirts Billions In Taxes, Google, HP & Apple Have It Their Way Too

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With all the talk about inversions and America's Burger King Going Canadian, it's easy to ignore even more prevalent tax savings by numerous American companies. Take Microsoft, which admits in its 2014 SEC filing that it avoids $30 billion in U.S. taxes. The trick? Keep about triple that amount, $93 billion in Microsoft's case, outside the U.S., says The International Business Times.

Microsoft is hardly alone. In fact, in taxes, Apple doesn't really Think Different. Before a Senate committee turned to Apple, it fingered Microsoft for using offices in Singapore, Puerto Rico, Bermuda and Ireland for taxes. For years, Microsoft has kept a lot outside the U.S., but its offshore hoard is growing. Maybe a new reality show should be called Offshore Hoarders.

Map of tax havens, using the 2007 proposed "Stop Tax Haven Abuse Act", US Congress, list of tax havens (Photo credit: Wikipedia)

A Citizens for Tax Justice (CTJ) report says from 2007 to 2013, Microsoft increased its money offshore from $6.1 billion to $76.4 billion. The Senate's Permanent Subcommittee on Investigations explained in a 2012 report that Microsoft uses Singapore, Puerto Rico, Bermuda and Ireland to handle its funds. That report cited other companies using tax shelters, including Apple, General Electric, Pfizer, Johnson & Johnson, Google and Exxon Mobil.

Company after company has been showcased by the Senate Permanent Subcommittee on Investigations. Recently, even earthbound Caterpillar sidestepped $2.4 billion in U.S. taxes over 13 years by shifting profits to Switzerland, claims this Senate report. Sen. Carl Levin (D-MI) grilled

Caterpillar execs over an offshore move, calling it a sweetheart “tax deal pure and simple to shift profits between related parties.”

But Caterpillar defended the deal as legit, echoing others who have appeared before Levin, including Apple’s Tim Cook. Increasingly, companies—and some Republicans—say the tax code is to blame. Taxes are terribly complex, runs a common theme. So is the mantra that multinational companies must move things around to save.

In contrast, offshore banking scandals and FATCA make it clear that individuals can’t escape worldwide income. What a difference for multinational companies! Even “stateless” income is possible, though it has become an awkward phrase. “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.

Tax havens like Ireland are favored by global giants like Apple, Google, HP, Facebook and Twitter. In May 2013, the Senate Permanent Subcommittee on Investigations said Apple avoided $9 billion in U.S. taxes in 2012 alone via offshore units with no tax home. Calling it the “holy grail of tax avoidance,” Sen. Levin claimed that Apple saved billions by claiming companies registered in Ireland are not tax resident anywhere. Apple’s CEO Tim Cook testified it was nothing illegal.

Everyone seems to do it. Facebook flipped more than $700 million to the Cayman Islands as part of a Double Irish tax reduction strategy. Google used the Double Irish and the Dutch Sandwich, saving billions in U.S. taxes. The Double Irish involves forming a pair of Irish companies to transform payments on intellectual property into tax-deductible royalty payments.

Google and Microsoft cut their overseas tax rates to single digits with Dublin-registered subsidiaries designated as tax resident in Bermuda. Google and Apple have Irish-registered and tax resident subsidiaries that make sales to customers. Bottom line, global companies like Apple, Starbucks and Hewlett-Packard put income in foreign pockets in ways the IRS doesn’t like.

And the IRS isn’t alone in its criticism. The G20 and the OECD call it tax manipulation, saying existing national tax enforcement regimes don’t work. The OECD says companies like Apple and Google avoid billions in taxes. Some companies claim 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.

U.S. companies are said to have more than $1.5 trillion offshore. They keep the money there to avoid taxes they would face on bringing it back to the U.S. But retooling the law, even if there were agreement in Congress—which there is not—will take time.

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.