New Economy and Doing Business Overseas

DENNY COATES, DENNY COATES LAW PLLC
DENNY@DENNYCOATESLAW.COM
206-780-7954

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I. INTRODUCTION

The U.S. federal income tax rate applicable to corporations is 35 percent and among the highest in the world.[1] Taking into account the imposition of tax at the state level, the top effective corporate tax rate in the United States can reach 39.2%.[2] The global average corporate income tax for 2012, as reported by the KPMG Global Tax division, is 24.39 percent, and some jurisdictions impose little or no tax on corporations. It is, therefore, not surprising that corporations attempt to shift income abroad in an attempt to lower tax costs. What is surprising, however, is how effectively some corporations are able to completely bypass U.S. taxation for significant portions of their revenue.

In spite of the existence of U.S. tax provisions designed to combat tax deferral and avoidance through transfer of U.S. business operations offshore, many large multinational technology companies head-quartered in the United States still manage to shift significant portions[3] of their taxable profits permanently out of the United States. Google managed to pay a rate on 2.4% on overseas income, income which represents one third of the corporate group's overall profit.[4] Microsoft, similarly, shifted close to half of its revenue out of the United States by transferring rights to its intellectual property to subsidiaries in Puerto Rico, Ireland and Singapore, formally articulating a strategy of lowering taxes this way on its Form 10K for fiscal year 2012. [5]

There is a basic assumption that even if some company operations and revenue are shifted offshore, eventually the money will make its way back into the United States in the form of taxable dividends to the U.S. parent corporations or reinvestment in the United States. However, multinational corporations have found ways to access their capital on a regular basis without having to pay tax on it, as described below.

II. GENERAL U.S. TAX FRAMEWORK

In order to understand how these U.S. based technology companies are able to so effectively evade U.S. tax, it is first necessary to understand the U.S. taxation of multinational corporations. The United States employs a worldwide approach to taxation rather than the territorial approach followed by many countries.[6] Therefore, a corporation headquartered in the United States generally is taxable on all income "from whatever source derived," [7] and the foreign source of

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[1] In April 2012, Japan, reported as the country with the highest corporate income tax rate, reduced its rate, such that the U.S. was left as having the highest rate, taking into account potential state and local income taxes. *See* CNNMoney, March 27, 2012.

[2] Taxation of American Companies in the Global Marketplace: A Primer | 5, prepared by The Business Roundtable. California taxes corporations at a rate 8.84% (as published by the CA Franchise Board), New York State at a rate of 7.1%, with potential 8.85% tax possible on net income allocable to New York City, as published on New York City Dept. of Finance.

[3] *See* New York Times, Business Day, *How Apple Sidesteps Millions in Taxes (April 28, 2012)*, reporting 70 percent of Apple's operations shifted offshore.

[4] *See* Bloomberg, *Google 2.4% Rate Shows How $60 Billion Lost to Tax Loopholes* by Jesse Drucker (Oct 21, 2010)

[5] *"Our effective tax rates for fiscal years 2012 and 2011 were approximately 24% and 18%, respectively. Our effective tax rates were lower than the U.S. federal statutory rate primarily due to earnings taxed at lower rates in foreign jurisdictions resulting from producing and distributing our products and services through our foreign regional operations centers in Ireland, Singapore, and Puerto Rico, which have lower income tax rates." See* Form 10K filed with the Securities and Exchange Commission (July 26, 2012).

[6] Most countries, including most OECD countries, such as Canada, France, Australia, Spain, the United Kingdom and Japan, tax on a territorial basis. *See* "Territorial vs. Worldwide Taxation," Report prepared by the Senate Republican Policy Committee (Sept. 19, 2012).

[7] *See* section 61(a), defining gross income as "all income from whatever source derived." *See also* section 11 imposing tax on corporations. All section and tax code references are to the Internal Revenue Code of 1986, as amended.

income earned is generally irrelevant in determining whether the United States has jurisdiction to tax such income.[8] Under a territorial approach, a corporation generally would only be taxed in the United States on income earned within the U.S. borders.

The United States imposes tax income when realized, and as a general rule, an increase in value by itself does not trigger taxation.[9] This policy results in current taxation of service income and allows for potential deferral of gain on the sale of property, as the taxpayer essentially chooses when to realize the appreciation inherent in a piece of property by selling or otherwise disposing of it in a taxable transaction. Corporate profits are subject to a two tier system of taxation in the United States, with tax occurring first at the corporate level[10] and then on dividends when paid out to shareholders.[11] In the domestic context, where there are entity structures which allow for limited liability and only one level of taxation,[12] the two levels of tax can be a disincentive for operating in corporate form.

Use of foreign corporate subsidiaries, on the other hand, can present possibilities for U.S. tax planning. Foreign individuals and corporations are not taxable in the United States unless they earn income which is effectively connected with the conduct of a trade or business in the United States[13] or, if not engaged in a U.S. trade or business, have income derived from U.S. sources such as dividends and interest payments from U.S. issuers.[14] With some exceptions, a U.S. multinational corporation conducting active foreign operations through corporate subsidiaries which have no sales, services or other active presence in the United States can avoid tax indefinitely on the income generated by those foreign affiliates.[15]

U.S. Tax Rules Designed to Curb Tax Deferral and Tax Avoidance

Conduct of operations through a foreign corporate entity potentially allows a U.S. business to accrue profits free from U.S. tax until such time as the earnings are repatriated into the United States. The U.S. tax code contains a number of provisions aimed at transactions and structures designed to shelter U.S. profits offshore. However, there is also ample opportunity for corporations to "offshore" large portions of their operations, with the idea that the U.S. still retains the ability to tax earnings when repatriated or the U.S. stock is sold. Nonetheless, many corporations are able to defer repatriation indefinitely and have devised ways to access the capital for use in U.S. based operations free of tax.

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[8] The Code does, however, allow a credit against tax owed for foreign taxes paid on the same income. *See* section 902 *et. seq.* Because of certain limitations, the foreign tax credit may not fully offset the amount of tax paid to the foreign jurisdiction.

[9] *See Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955) in which the Supreme Court held that punitive damages received were "instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." As a policy matter, the U.S. doesn't tax an increase in value without the happening of some kind of realization event.

[10] §11.

[11] §§301 and 61(a)(7).

[12] A single level of tax is assessed at the investor/owner level for S corporations, partnerships and LLCs taxed as S corporations or partnerships.

[13] §§871(b) and 882.

[14] §§871(a) and 881.

[15] Once there are sales or other business activities in the United States, there is much more likelihood that any such activity will be treated as effectively connected with the parent corporation's business. *See* section 864(c).

Anti-Deferral Regime

Subpart F of the Code[16] contains provisions designed to counteract the use of controlled foreign subsidiary corporations to accumulate earnings offshore and defer U.S. income tax. A large focus of the anti-deferral rules is passive income earned through controlled foreign subsidiaries. These rules also target income received through related party transactions which separate active business earnings, such as profits from service or sales income, from the direct business activity creating value, generally moving the income to a lower tax jurisdiction.[17] A U.S. parent of a foreign subsidiary which is a "controlled foreign corporation" ("CFC") [18] generally is required to pay current tax on passive income earned by the CFC subsidiary[19] and as well as certain other types of more active income, such as sales and service income, earned by the subsidiary in transactions with related parties.[20] Current tax inclusion is not generally required for active business operations involving unrelated parties.

Under section 956 of the Code, a U.S. shareholder in a CFC is also taxable on amounts considered to be reinvested in U.S. property. These amounts are treated as a deemed dividend, whether or not they are actually distributed. Loans from a CFC subsidiary to the U.S. parent corporation generally are considered to be taxable investments in U.S. property for this purpose. There is, however, an exception for short-term loans made by a CFC to its U.S. parent. Loans made by a CFC to a related U.S. entity are not treated as reinvested n U.S. property if they are repaid within 30 days, and all loans made by the CFC for the year are not outstanding for more than 60 days today during the year.[21] The IRS has indicated that the deemed dividend analysis for U.S. reinvestment exists only for loans to a related U.S. entity which are outstanding at the end of a quarter, and that, therefore, the 30 day repayment requirement and the 60 day total limit would not apply to loans initiated and concluded before the quarter end. [22] The IRS has also indicated that the 30 day and 60 day limits apply separately to each CFC of a company. Some companies are making very aggressive use of this exception.

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[16] Sections 951 through 965.

[17] *See* definitions of foreign base sales income and foreign base service income in sections 954(d) and (e), respectively, which focus on sales and service transactions involving related parties and occurring outside the country in which the CFC is organized.

[18] The rules define a CFC as a foreign corporation over 50% of whose total combined stock voting power or value is owned, directly or indirectly, by U.S. shareholders on any day during the entity's tax year. For purposes of the CFC rules, only U.S. shareholders holding at least 10% of the total combined voting power of all stock classes of the foreign corporation are counted. Section 951(b).

[19] However, a look-through rule allows tax deferral on passive income, such as royalties, earned by a CFC if the royalties are paid to the subsidiary by a related CFC and can be traced to the active income of the payer. *See* Section 954(c)(6). Where wholly owned subsidiaries are used, a similar result is achieved by checking the box to have the subsidiary disregarded.

[20] *See* section 954 and applicable regulations. Other types of income are covered by the Subpart F rules as well. *See* sections 952, 953 and 954.

[21] I.R.S. Notice 88-108, 1988-2 C.B. 445.

[22] *See* GLAM 2007-0016 (9/25/2007); I.R.S. Notice 2008-91, 2008-43 I.R.B. 1001; I.R.S. Notice 2010-12, 2010-4 I.R.B. 326; Rev. Rul. 89-73, 1989-1 C.B. 258 and Notice 88-108, 1988-2 C.B. 445, the factual interpretations of which taken together with legislative history and regulatory amendment are read to mean that where the loans are non-recurring, they will not be measured for determining whether there is a deemed dividend if initiated and repaid before the end of a calendar quarter. There

Rules to Capture Gain on Outbound Asset Transfers

Under many circumstances, a domestic corporation is able to transfer business assets to another domestic corporation free of current taxation provided certain requirements are met.[23] The policy is to allow corporations the freedom to restructure their ongoing business operations without taxation while preserving inherent appreciation in the assets and corporate stock through transferred and exchanged basis.[24] Where assets are being transferred out of the United States, on the other hand, different policy considerations apply.

Section 367(a) (1) states a general rule that a foreign corporation shall not be considered a corporation for purposes of determining gain to be recognized on outbound transfers of property by a United States person in connection with transactions described in sections 332, 351 and the acquisitive reorganizations under section 368 of the Code. This has the effect of providing a default rule of taxability for outbound transactions which otherwise would qualify for tax-free treatment under the rules applicable to domestic reorganizations.

Outbound transfers of intangibles are excluded from the general rule of section 367(a) and, instead, subject to special treatment under section 367(d). Section 367(d) deems the outbound transfer of an intangible to be made in exchange for contingent payments tied to its productivity, use or disposition during its useful life, e.g., a deemed royalty payment to be made over the useful life of the intangible. Thus, the gain on transfer of the property rights loses its character as capital gain, and is taxable as ordinary income over the life of the asset.[25] The deemed royalty payments must be commensurate with the income attributable to the transferred intangible.[26]

Ways to avoid section 367(d) might include licensing the rights to the intangible property such that a transfer of the property itself has not occurred. Alternatively, certain rights might be transferred with the idea that more substantial development and creation of the intangible will occur in the foreign jurisdiction. To the extent the property is deemed to be created in the foreign jurisdiction rather than *transferred* abroad, section 367(d) will not apply.[27] Additionally, because intellectual property rights may be difficult, if impossible, to accurately value at the time of transfer,[28] a U.S. transferor is more likely to be able to assign a low value to the property without successful challenge from the IRS.[29]

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[23] *See* sections 351, 368, 354 and 361.
[24] *See* e.g. 358
[25] Transfers of intangibles are ineligible for an exception to section 367(a)(1) provided for assets used by the transferee foreign corporation in an active trade or business conducted outside the United States. Section 367(a) (3)
[26] New rules, applicable after July 13, 2012, apply to transfers of intangible property made in a corporate reorganization where the U.S. transferor receives cash or boot as well as transferee stock. Under these rules, set forth in Notice 2012-19, the cash or boot received is treated as a prepayment of the deemed royalties recognized under section 367(d). In spite of the requirement that the payments be commensurate with the income attributable to the intangible property, the prepayment under this rule is required to be taken into income regardless of actual productivity.
[27] *See* section 367(d)(1) stating its application to the transfer of certain enumerated intangible property rights.
[28] perhaps because new and/or undeveloped technology or some other untested invention is involved.
[29] This has implications under section 482 as well.

Transfer Pricing

Because a foreign corporation not engaged in a U.S. trade or business is only taxable on income from U.S. sources rather than worldwide income, there is a strong incentive for U.S. businesses to structure multinational operations through foreign subsidiaries and allocate substantial assets and profits to their foreign bases, particularly if the jurisdictions have more favorable tax rates. Generally, inter-company transfer pricing agreements involve the rights of offshore subsidiaries to sell assets in foreign countries. The U.S. parent generally continues to own the economic rights for the United States, sell the related products, collect the income and pay taxes in the U.S.

Allocations of income and expenses as among members of a multinational group are given close scrutiny by the IRS. The IRS is granted broad authority under section 482 of the Code to adjust intercompany allocations of income, deductions and other tax items where they do not reflect a pattern of arms-length dealings. Transfers of intangibles present significant difficulty because they are often so hard to value. The IRS has an Advance Pricing Agreement Program[30] designed to resolve actual or potential transfer pricing disputes without going through the examination process. The resulting Advance Pricing Agreement or "APA" is a contract, generally for multiple tax years, between the IRS and the taxpayer, which specifies the pricing method that will be applied to the company's intra-group transactions. APAs are not only prospective, but often, in fact, address transfer pricing issues from prior years and can resolve current transfer pricing audits or adjustments.

III. STRATEGIES EMPLOYED

"Simple" Irish Sandwich or "the Double Irish"[31]

As employed by Google, the structure first involves a transfer of the rights[32] to search and advertising technology developed in the United States to a subsidiary incorporated in Ireland for the purpose of distribution throughout Europe, the Middle East and Africa regions. Because its "mind and management" is located in Bermuda, the subsidiary is treated as a taxable resident of Bermuda rather than Ireland under Irish law ("BSub").[33] Under the Irish Sandwich structure, the transferred IP is considered under Irish law to be located in Bermuda for Irish tax purposes, and any profits earned by BSub, itself, from this property are deemed to arise in Bermuda rather than Ireland under laws of these countries. Bermuda imposes no corporate tax and thus, neither Ireland nor Bermuda imposes corporate level tax on the net profits of BSub. BSub acquires the IP rights outright from the U.S. parent and with this change in ownership, all profits and expenses related to the property rights are now attributed to BSub rather than the U.S. parent.

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[30] *See* http://www.irs.gov/Businesses/Corporations/Advance-Pricing-Agreement-Program

[31] It is reported that Apple was a pioneer in developing an offshore sales force to distribute products overseas through foreign subsidiaries in order to avoid U.S. tax on the profits, using the Double Dutch Irish Sandwich strategy and others to shift taxable profit out of the United States. New York Times, Business Day, *How Apple Sidesteps Millions in Taxes* (April 28, 2012).

[32] In some instances the rights may be licensed rather than sold, or the costs of developing the rights may be shared through an intercompany cost sharing agreement, with the participating subsidiary buying into the arrangement. All of these arrangements are subject to scrutiny under section 482, as the U.S. multinational parent has incentive to assign a low value to the intellectual property rights being transferred or otherwise allocate profits, deductions and other items so as to minimize U.S. tax liability.

[33] For Irish purposes, the residence of this corporation is Bermuda, based on a listed post office box address, and named officer, who likely resides in the U.S. *Id.* Under U.S. law, however, it is treated as an Irish corporation because it is organized in Ireland.

This arrangement was essentially blessed by the IRS in the 2006 APA negotiated between Google U.S. and the IRS.

Next, BSub licenses the acquired IP rights it received to a wholly owned subsidiary, which subsidiary is both incorporated and treated as resident in Ireland ("ISub"). [34] At the time Google's use of the Dutch Sandwich strategy was reported, ISub had close to 2000 employees in Ireland, selling advertising for Google worldwide, and revenue from this subsidiary accounted for 88% of Google's $12.5 billion foreign sales in 2009.[35] Profits of ISub from its operations in Ireland are technically subject to Irish tax but they are reduced by hefty royalties paid to BSub, resident in Bermuda. Thus, the amount of revenue ultimately taxed in Ireland is very low.

Payments of royalty fees or other passive income between ISub and BSub as related affiliates of the U.S. parent would generally trigger immediate taxation under the anti-deferral rules of Subpart F applicable to CFCs. However, for U.S. tax purposes, ISub elects to be treated as an entity which is disregarded and essentially a branch of BSub in Ireland, rather than as a separate entity under Treasury Regulation §1.7701-3(a). Thus, the transactions between BSub and ISub are ignored for U.S. tax purposes, and with a wave of the wand the related party transactions involving a CFC under Subpart disappear. This election to disregard the second tier subsidiary is, therefore, a key element of the Irish Sandwich structure.

A variation of this strategy, used by Google, Apple, Microsoft, HP and others and discussed below, reduces applicable tax even further.

Dutch Variation on Irish Sandwich

A variation on the Irish structure uses a third subsidiary entity organized and resident in the Netherlands ("DSub"), with the result that the U.S. parent company holds 100 percent of a Bermudian corporation which in turn wholly owns a Dutch corporation which owns all of the shares of the lower tier Irish subsidiary. In this variation of the structure, BSub licenses the search and advertising technology rights to DSub instead of ISub, and DSub then sublicenses these rights to ISub. ISub retains a small portion of the revenue it earns and pays the rest to DSub as royalties for the use of the intellectual property rights. DSub, in turn, retains a small portion of what it receives from ISub and transfers most of the proceeds to BSub in the form of royalty payments for its license of the rights from BSub.

Ireland would normally exact a 20 percent withholding tax on royalties paid to an entity outside the European Union, such as Bermuda. However, Ireland doesn't levy withholding tax on certain receipts from European States, such as the Netherlands. Thus, the routing of the royalty payments of ISub through the Netherlands serves to eliminate the Irish withholding tax that would otherwise apply to this income when paid to BSub. The Netherlands has favorable, friendly tax rules applicable to shell corporations used for this purpose, and only imposes a nominal fee on the use of DSub as a conduit for cash received from the operations of ISub.

As with ISub, an election is made to treat the Netherlands subsidiary as an entity disregarded as

[34] Ireland is an appealing jurisdiction because of its low 12.5% tax rate as well as availability of English speaking employees and location in the European Union.
[35] *See* Bloomberg, *Google 2.4% Rate Shows How $60 Billion Lost to Tax Loopholes* by Jesse Drucker (Oct 21, 2010).

separate from BSub under Treasury Regulation §1.7701-3(a). Therefore, payments from ISub to DSub and from DSub to BSub both are ignored for U.S. tax purposes and taxable income is not triggered under Subpart F by any of the transactions described. Thus, there is no current U.S. tax to Google US on the offshore revenue generated, and any taxable revenue of ISub in Ireland is largely offset by the deductible royalty payment made to DSub. Payments made from DSub to ISub are not taxed by Ireland, nor is withholding tax triggered under Netherlands law, and BSub receives the revenue from exploitation of the IP rights throughout Europe, the Middle East and Africa almost largely tax-free.

Corporations Organized in Puerto Rico

Microsoft makes use of Puerto Rico as well as Singapore and Ireland for its offshore tax planning.[36] Although Puerto Rico is a possession of the United States, corporations organized in Puerto Rico are characterized as foreign corporations for U.S. federal income tax purposes, since they are not organized in a state or territory of the U.S. or in the District of Columbia.[37] Thus, a subsidiary organized in Puerto Rico is treated as a controlled foreign corporation for U.S. federal income tax purposes. As with other foreign corporations, active business income largely escapes U.S. taxation, except to the extent amounts are repatriated into the United States. Normal corporate tax rates applicable in Puerto Rico approach 40%, but Microsoft has a pre-negotiated tax rate of 2%,[38] as reported by the Senators Levin and Coburn, Chair and Ranking Member, respectively, of the Permanent Subcommittee On Investigations, Committee on Homeland Security and Governmental Affairs.[39]

As described by Senator Carl Levin (D-Mich.) in the Senate hearing on September 12, 2012 to discuss the offshore profit shifting,[40] Microsoft's tax strategy in Puerto Rico first involved a sale of rights to market certain intellectual property in North and South America to its subsidiary in Puerto Rico. The U.S. Microsoft parent then bought back from Microsoft Puerto Rico the right to distribute the property it just sold throughout the United States. It is reported that Microsoft U.S. paid more for the distribution rights than the entire the price at which it sold the larger bundle of rights to Microsoft Puerto Rico.[41] Under the distribution agreement, Microsoft U.S. agrees to pay Microsoft Puerto Rico a certain percentage of the sales revenues received from distributing Microsoft products in the United States, thereby creating a deduction against U.S. taxable income for such amounts. In 2011, 47% of Microsoft's sales proceeds in the U.S. were shifted to Puerto Rico this way. Through the arrangement, Microsoft U.S. was able to avoid paying U.S. tax on 47% of the taxable income generated from selling products it developed in

[36] The initial Puerto Rican entity was created to take advantage of the possessions tax credit under section 936, which credit was repealed in 1996 with a 10 year phase out.
[37] *See* sections 7701(a)(4), (5) and (9).
[38] This negotiated rate may have been offered as an inducement to encourage Microsoft not to relocate the subsidiary after expiration of the possessions tax credit.
[39] *See* Memorandum from Senators Carl Levin and Tom Colburn to Members of the Permanent Subcommittee on Investigations submitted in connection with a hearing entitled *Offshore Profit Shifting and the U.S. Tax Code,* dated September 20, 2012.. http://www.hsgac.senate.gov/subcommittees/investigations/hearings/offshore-profit-shifting-and-the-us-tax-code.
[40] http://www.hsgac.senate.gov/subcommittees/investigations/hearings/offshore-profit-shifting-and-the-us-tax-code.
[41] *Id.*

the United States and sold to U.S. customers. [42] This strategy can be replicated using other low tax jurisdictions to shift income out of the United States under current laws.

Short-Term Loan Repatriation Strategy

The short-term loan exclusions within section 956 make it possible for a U.S. company to structure offshore CFCs with varying tax years and quarter ends and schedule loans from those entities over the year without triggering the 30- or 60-day limits or extending over a CFC's quarter end. A multinational corporation, thus, has the opportunity to structure loans into United States in a way that gives the domestic parent continual access to untaxed profits accumulated offshore without triggering the U.S. tax that would otherwise result under Subpart F.

Hewlett-Packard (HP) has aggressively employed this strategy since 2008 by setting up serial loans into the U.S. specifically for the purpose of providing billions of dollars of ongoing funding for its U.S. operations.[43]

Accounting for Permanently Reinvested Proceeds

Current accounting rules also encourage indefinite deferral of U.S. income tax on foreign earnings. The anticipated federal income and other taxes associated with foreign profits on eventual repatriation are required to be recorded as a deferred tax expense of company with accumulated foreign earnings. However, Accounting Principles Board (APB) Opinion 23 (APB 23)[44] permits a company with offshore profits to designate foreign earnings as "permanently reinvested" ("PRE") and therefore delay recognition of U.S. tax as an expense related to foreign earnings if certain requirements are met. Because significant amounts of profit are being accumulated offshore, the benefit to a company of not having to account for the potential U.S. income tax liability is substantial, perhaps as important as avoiding the taxes themselves.

In order to qualify for this exception,[45] the parent company must demonstrate that the subsidiary has invested, or will invest, its undistributed earnings indefinitely or that it will remit its undistributed earnings in a tax-free liquidation.[46] Using the PRE designation, a company is able to avoid recognizing the deferred tax expense and deferred tax liability, as long as it does not intend to sell the subsidiary and intends to reinvest the foreign subsidiary's earnings indefinitely.[47]

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[42] From 2009 to 2011, by transferring certain rights to its intellectual property to the Puerto Rican subsidiary, Microsoft was able to shift offshore nearly $21 billion, or almost half of its U.S. retail sales net revenue, saving up to $4.5 billion in taxes on goods sold in the United States, or just over $4 million in U.S. taxes each day. *Id.*

[43] *See* Memorandum from Senators Carl Levin and Tom Colburn to Members of the Permanent Subcommittee on Investigations hearing entitled *Offshore Profit Shifting and the U.S. Tax Code,* dated September 20, 2012 and related exhibits.

[44] included within ASC 740 Accounting Standard Codification section 740 (ASC 740)

[45] referred to as "the Indefinite Reversal Exception"

[46] APB 23 Paragraph 12; http://www.fasb.org

[47] *Id.*

IV. Conclusion

The current U.S. tax rules allow multinational corporations, particularly technology companies, to remove substantial portions of their taxable profits out of the country and beyond its taxation. The structuring is deliberate and transparent in its purpose to avoid taxation, but does not violate any explicit rules. Existing tax rules further grant multinational corporations to opportunity to repatriate profits accumulated offshore without triggering current taxation in the form of short term loans, again structured deliberately to avoid current taxation. Accounting rules go a step further and permit a multinational to treat foreign earnings as permanently reinvested out of the country so that potential United States tax liability does not need to be recorded as a deferred tax expense.