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TAX-HAVEN ABUSE SHOWS URGENT NEED FOR CORPORATE TAX REFORM

The use of offshore tax havens and other accounting gimmicks to avoid paying U.S. taxes has become standard and legal by numerous global American companies, including Apple Inc., which recently faced a bipartisan investigation by the U.S. Senate Permanent Subcommittee on Investigations (PSI). **This issue is center stage as key committees in Congress start drafting corporate tax reform legislation.**

U.S.-based multinational corporations have amassed an estimated $1.9 trillion in profits offshore, according to Bloomberg News (http://bloom.bg/XWvpTr), much of it in tax havens. All of this money is shielded from U.S. taxes until it is brought back to the United States. ***Americans for Tax Fairness, a coalition of nearly 300 national and state groups, is asking you to editorialize on the corporate abuse of tax havens and to address overall corporate tax reform policies that are being discussed on Capitol Hill, including***:

-- Corporate tax reform needs to raise significant revenues and not be "revenue-neutral," which would use the savings from closing tax loopholes to reduce rates and expand other corporate tax subsidies; otherwise the burden of additional deficit reduction will fall on working Americans;

-- Revenues raised should be used to meet our long-term fiscal challenges, reverse and prevent further cuts to critical benefits and services, and make needed investments to strengthen our economy and create jobs, not be used for more tax cuts;

-- Tax loopholes that encourage corporations to ship profits and jobs overseas should end. These loopholes must not be expanded by adopting a corporate tax "repatriation" holiday or a "territorial" corporate tax system, which would provide a temporary and permanent tax amnesty on offshore profits, respectively.

THE APPLE CASE STUDY

While Apple is an American success story, the company is an ideal case study showing what is wrong with the current system. As explained by the Subcommittee findings, Apple made profits of $74 billion from 2009-2012 on worldwide sales (excluding the Americas) and paid virtually nothing in taxes to any country. The sales were attributed to Irish subsidiaries, where the companies paid a tax rate of less than 2%.
(Sources: http://1.usa.gov/12pV5HW and http://1.usa.gov/13KMLp3)

"In addition, the subcommittee review discovered an unusual tax scheme: Apple's claim that two key offshore companies are not tax residents of Ireland, where they are incorporated, or of the United States, where Apple executives manage and control the companies. One of those Irish subsidiaries has paid no income taxes to any national tax authority for the past five years." (Source: http://1.usa.gov/12pV5HW)

As noted by the PSI report: "Apple Inc. maintains more than $102 billion in offshore cash, cash equivalents and marketable securities (cash). Apple executives told the Subcommittee that the company has no intention of returning those funds to the United States unless and until there is a more favorable environment, emphasizing a lower corporate tax rate and a simplified tax code." (Source: http://1.usa.gov/16DCmPO p. 5) When questioned at the hearing Apple CEO Tim Cook said that the tax rate on foreign profits would need to be in the "single digits" (Source: http://bit.ly/14O783F) in order for the company to bring them home.

The Subcommittee noted that Apple uses three key tax-avoidance strategies to avoid billions in U.S. taxes: (Sources:http://1.usa.gov/12pV5HW and http://1.usa.gov/13KMLp3):

1) "Using a so-called cost sharing agreement to transfer valuable intellectual property assets offshore and shift the resulting profits to a tax haven jurisdiction."

2) "Taking advantage of weaknesses and loopholes in tax law and regulations to 'disregard' offshore subsidiaries for tax purposes, shielding billions of dollars in income that could otherwise be taxable in the

United States."

3) "Negotiating a tax rate of less than 2 percent with the government of Ireland – significantly lower than that nation's 12% statutory rate – and using Ireland as the base for its extensive network of offshore subsidiaries."

THE ACCOUNTABILITY OF MULTINATIONAL CORPORATIONS

Steven Rattner, a long-time and respected Wall Street financier who led the restructuring of the auto industry in 2009, recently wrote that the "loophole-ridden and counterproductive" tax code is "not entirely Washington's fault." (Source:http://nyti.ms/10VgdHL) He noted:

"Unlike individuals, multinational corporations can shuttle profits — and sometimes even their headquarters — around the globe in search of the jurisdiction willing to cut them the best deal on taxes (and often other economic incentives). Much of this occurs under the guise of 'transfer pricing,' the terms under which one subsidiary of a multinational sells products to another subsidiary. ***The goal is to generate as high a share of profit as possible in the lowest-taxed jurisdictions.***

"A study by the Congressional Research Service found that subsidiaries of United States corporations operating in the top five tax havens (the Netherlands, Ireland, Bermuda, Switzerland and Luxembourg) generated 43 percent of their foreign profits in those countries in 2008, but had only 4 percent of their foreign employees and 7 percent of their foreign investment located there. All in all, it is a race to the bottom on the part of revenue-starved governments eager to attract even a relatively small number of new jobs."

THE IMPACT ON THE UNITED STATES AND EVERYDAY PEOPLE

As summarized by Sen. Carl Levin, Chairman of the Subcommittee: "The offshore tax avoidance tactics spotlighted by the Subcommittee do real harm. They disadvantage domestic U.S. companies that aren't in a position to reduce their tax bills using offshore tax gimmicks. They offload Apple's tax burden onto other taxpayers – in particular, onto working families and small businesses. The lost tax revenue feeds a budget deficit that has reached troubling proportions, and has helped lead to round after round of budget slashing and the ill-advised sequestration now threatening our economic recovery." (Source: http://1.usa.gov/13KMLp3 p. 6)

As explained by the Subcommittee: "[A]s the U.S. federal debt has continued to grow – now surpassing $16 trillion – the U.S. corporate tax base has continued to decline, placing a greater burden on individual taxpayers and future generations. … According to a report prepared [by the Congressional Research Service] for Congress: 'At its post-WWII peak in 1952, the corporate tax generated 32.1% of all federal tax revenue. In that same year the individual tax accounted for 42.2% of federal revenue, and the payroll tax accounted for 9.7% of revenue. Today, the corporate tax accounts for 8.9% of federal tax revenue, whereas the individual and payroll taxes generate 41.5% and 40.0%, respectively, of federal revenue.'" (Source: http://1.usa.gov/16DCmPO p. 3)

This decline in the corporate share of federal tax revenue is one reason Americans for Tax Fairness strongly opposes "revenue neutral" corporate tax reform. To reduce the deficit, President Obama and Congress have cut $1.8 trillion in spending (including interest) and raised just $600 billion in new tax revenues (Source: http://1.usa.gov/1apLmXT). That's $3 in cuts for every $1 in new revenue, an outcome that is neither balanced nor fair. If average Americans have had to contribute to deficit reduction through domestic spending cuts, surely major corporations should contribute their fair share of taxes for deficit reduction and other purposes.

WHAT ABOUT A "TERRITORIAL" TAX SYSTEM OR "REPATRIATION HOLIDAY" AS COMPANIES SUGGEST?

One of the two primary ways corporations dodge paying their fair share of federal taxes is to use loopholes that allow them to shift their income to overseas tax havens that have little or no corporate income tax. U.S. companies then "defer" paying U.S. taxes on their offshore profits until they are brought back home ("repatriated"), which may not ever occur. This provides a huge incentive for companies to shift operations and jobs overseas, or to use accounting tricks to make their profits appear to be generated overseas. It also drives down the wages of U.S. workers.

There are two ways to address the deferral of taxes via loopholes – end deferral or reduce its use:

1) Ending the use of deferral would require companies to pay taxes on their foreign profits, as they do on domestic profits. Companies would continue to receive a credit for foreign taxes paid on their offshore profits (the foreign tax credit) so that they would never pay combined U.S. and foreign taxes at a rate exceeding the U.S. corporate tax rate. This would raise $590 billion over 10 years, according to the Congressional Joint Committee on Taxation (Source:http://bit.ly/129nQ9U). In a recent editorial the New York Times endorsed this reform option. (Source:http://nyti.ms/18rOLnj)

2) Sen. Carl Levin's bill, the Cut Unjustified Tax (CUT) Loopholes Act, S. 268, would raise $190 billion over 10 years by cutting numerous corporate tax loopholes that enable corporations to use tax havens and other offshore accounting gimmicks to avoid paying their fair share of taxes. (Source: http://1.usa.gov/12GYvd1)

Many multinational corporations are pushing Congress to exempt offshore corporate profits from U.S. taxes. Some companies are lobbying for a permanent exemption (or tax amnesty), which is essentially what a "territorial" tax system provides. Others are lobbying for a temporary exemption (or tax amnesty), which proponents call a "repatriation holiday."

As explained by Citizens for Tax Justice, a public policy group, "The tax incentives for job offshoring and profit shifting would increase if Congress adopted a 'territorial' tax system. If deferring U.S. taxes on foreign profits has already encouraged U.S. multinational corporations to favor shifting profits and jobs offshore, then eliminating U.S. taxes on foreign profits would logically increase that incentive." (Source: http://bit.ly/18Jd8wW)

As the Center on Budget and Policy Priorities has noted about a territorial tax system, "[It] would create greater tax incentives for multinational corporations to invest and move profits overseas rather than in the United States, which would risk hurting domestic businesses, boosting deficits over the long run, and weakening the economy." (Source: http://bit.ly/12Ja589)

A "repatriation holiday" provides tax amnesty for offshore corporate profits by allowing U.S. corporations to bring their offshore profits back to the U.S. and pay no U.S. corporate taxes on those profits, or pay U.S. corporate taxes at an extremely low rate.

As explained by The New York Times: ***"A tax holiday in 2005 dropped the rate from 35 percent to 5.25 percent, enticing corporations to repatriate some $300 billion. It was billed as a way to create jobs and boost investment, but it was a total policy failure [Emphasis added]."*** The repatriated money was mostly used for dividend payments, share buybacks (which tend to raise executive pay) and severance pay for employees laid off in corporate restructuring. The holiday rewarded aggressive tax avoidance, with 77 percent of the repatriated profits coming from tax haven countries, according to the Government Accountability Office." (Source: http://nyti.ms/18rOLnj)

Independent studies -- you can read them here: http://bit.ly/nPmdry -- found that companies used the repatriated profits not for investment or hiring, but largely to pay off debt or to buy back shares. Two key reasons why proposals for a second repatriation amnesty should be rejected include:

Citizens for Tax Justice noted two important findings about a repatriation tax holiday:

-- "One reason why the Joint Committee on Taxation concluded that a repeat of the 2004 'repatriation holiday' would cost $79 billion over ten years is the likelihood that many U.S. corporations would respond by shifting even more investments offshore in the belief that Congress will call off most of the U.S. taxes on those profits again in the future by enacting more 'holidays.'

-- "The Congressional Research Service concluded that the offshore profits repatriated under the 2004 tax amnesty went to corporate shareholders and not towards job creation. In fact, many of the companies that benefited the most actually reduced their U.S. workforces." (Source: http://bit.ly/1aW3ne5)

Thanks for considering our views on these important issues.

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