AMERICANS FOR TaxFairness

BIGGEST REVENUE RAISERS IN SENATOR LEVIN'S "STOP TAX HAVEN ABUSE ACT"

The Stop Tax Haven Abuse Act (S. 1533) would raise about $220 billion over 10 years by ending tax breaks that encourage multinational corporations to ship profits and jobs overseas.[1] The legislation has been introduced by Sens. Carl Levin (D-MI), Sheldon Whitehouse (D-RI), Mark Begich (D-AK) and Jeanne Shaheen (D-NH).

Below are four major reforms proposed in S. 1533 with Joint Committee on Taxation 10-year revenue estimates.

1. **Eliminate tax incentives for U.S. companies to move jobs and operations offshore – $60 billion.** Companies would not be allowed to deduct the cost of expenses from moving jobs and operations overseas if the profits earned from those activities remain offshore and untaxed by the United States.
2. **Stop manipulation of foreign tax credits – $55 billion.** U.S. corporations would no longer be able to bring income from low- or no-tax jurisdictions back home without paying U.S. taxes.
3. **Repeal rules that allow U.S. companies to avoid U.S. taxes by making offshore subsidiaries "disappear" for tax purposes – $78 billion.** U.S. corporations would no longer be able to check a box on an IRS form to make offshore subsidiaries and their taxable income "disappear" when calculating their U.S. taxes.
4. **Limit incentives to move intellectual property and related marketing rights offshore – $23 billion.** Companies would no longer be able to avoid U.S. taxes by transferring property – such as patents and trademarks – to a subsidiary in a tax haven. Also, companies would no longer be able to avoid U.S. taxes on windfall profits made by underestimating the value of those assets.

DETAILED DESCRIPTION OF THE REFORM PROPOSALS

1. **Eliminate tax incentives for U.S. corporations to move jobs and operations offshore (Section 301) – $60 billion.** U.S. corporations can defer paying U.S. taxes *indefinitely* on profits made overseas by never bringing the money home (known as repatriation). Yet, corporations are allowed to *immediately* deduct the expenses incurred in creating those profits. For example, all the costs associated with offshoring production and jobs can be written off in the year they are paid, even as the profits from the new offshore business accumulate U.S.-tax free.[2] Costs include shuttering the U.S. location, shipping materials abroad, severance packages for laid-off employees, interest costs of borrowing to build a plant offshore and operating abroad. The Levin bill would stop favoring U.S. businesses that go offshore: Until the offshore profits have been repatriated and taxed in the United States, the company would not be able to deduct the associated offshore expenses from its tax bill. President Obama has a similar proposal.[3]

1726 M Street NW • Suite 1100 • Washington, D.C. 20036 • 202-350-0144
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2. **Stop manipulation of foreign tax credits (Section 301) – $55 billion.** Multinational corporations can avoid being double taxed on repatriated foreign profits by claiming credits for taxes paid to other countries. Some companies abuse these foreign tax credits by taking the credits generated from paying taxes in one country and applying them to profits generated in another country, such as a tax haven. The Levin bill would close this loophole by requiring corporations to "pool" their foreign tax credits and limit the amount to the percentage of foreign income a company repatriates that year.[4] For example, a company could only use 20 percent of its foreign tax credits if it repatriated 20 percent of its foreign income that year. This would remove tax incentives for locating offshore income in low-tax jurisdictions. President Obama has a similar proposal.[5]

3. **Repeal rules that allow U.S. companies to avoid U.S. taxes by making offshore subsidiaries "disappear" for tax purposes (Section 304)–$78 billion.** Corporations are allowed to defer paying U.S. taxes on "active" income earned overseas until those funds are brought home. However, if the overseas income is "passive" – from interest, dividends, royalties, licensing fees and other sources not requiring active management – it is supposed to be taxed immediately, even while offshore. One egregious rule lets a company avoid paying taxes by checking a box on an IRS form to make offshore subsidiaries and their passive income invisible for tax purposes.[6] The Controlled Foreign Corporations look-through rule similarly excludes from taxation certain passive income transferred between related offshore entities. The Levin bill would close these two loopholes.
CASE STUDY: Between 2009 and 2012, three companies used the "check the box" rule to defer paying U.S. taxes on at least $119 billion in offshore passive income – Apple ($74 billion), Google ($24.2 billion) and Microsoft ($21 billion).[7]

4. **Limit incentives to move intellectual property and related marketing rights offshore (Sections 302 and 303) – $23 billion.** Corporations can lower their overall tax bill by artificially creating big profits in low- or no-tax havens and large expenses in higher-tax jurisdictions.[8] Example: XYZ Corp. sets up a subsidiary in a tax haven, then "sells" to it at a discount the right to market its patented products. The subsidiary then "sells" back to the parent corporation at a steep markup the right to sell its products in the United States. The parent pays a licensing fee from every U.S. sale to the subsidiary, which pays no taxes to the United States until the profits are repatriated. The parent lowers its own U.S. tax bill by deducting the self-created expenses from its income. While these types of transfer pricing abuses are already illegal, the Levin bill would make it easier to stop them. President Obama has a similar proposal.[9]
CASE STUDY: Microsoft avoided paying $4.5 billion in U.S. corporate income taxes over three years by "selling" its intellectual property distribution rights to a subsidiary in Puerto Rico. Microsoft then "bought" back the U.S. distribution rights. It dodged U.S. taxes on nearly half of its U.S. sales income in 2011 alone.[10]

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[1] Sen. Carl Levin (Levin), Chairman, U.S. Senate Permanent Subcommittee on Investigations, "Senators Introduce Bill to Close Offshore Tax Loopholes (Sept. 19, 2013). http://www.levin.senate.gov/newsroom/press/release/senators-introduce-bill-to-close-offshore-tax-loopholes/?section=alltypes#sthash.vqK8XYKZ.dpuf
[2] Levin, "Statement on Introducing the Stop Tax Haven Abuse Act" (Sept. 19, 2013), Section 301. http://www.levin.senate.gov/newsroom/speeches/speech/senate-floor-statement-on-introducing-the-stop-tax-haven-abuse-act/?section=alltypes
[3] Joint Committee on Taxation (JCT), "Description of Revenue Provisions Contained in the President's Fiscal Year 2013 Budget Proposal," JCS-2-12, (June 2012), pp. 299-320. https://www.jct.gov/publications.html?func=download&id=4465&chk=4465&no_html=1
[4] Levin, Section 301.
[5] JCT, pp. 321-332.
[6] Levin, Section 304.
[7] Levin, Section 304.
[8] Levin, Sections 302-303.
[9] JCT, pp. 354-371.
[10] Levin, Section 302.