Corporate International Taxation
Selected Issues

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Panelists

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Agenda

- Background

- Selected Topics:
  - OECD’s Base Erosion and Profit Shifting project (BEPS)
  - US international tax reform
  - Inversions, including new debt/equity rules*
  - Others (Panama Papers, state aid, etc.)

* Proposed debt/equity regulations also impact domestic only businesses
Background
International Tax – Front Page News

- Shifting Income to Tax Havens:
  - G-20 Leaders Communique (Sept. 2013)
  - OECD Base Erosion and Profit Shifting Project (Final reports Oct. 2015)
  - UK, Australia, and EU hearings

- Whistleblower/Information Leaks:
  - Lux Leaks (2014)
  - Panama Papers (2016)

- EU State Aid Investigations and Nationalist Trends

- Inversions and US Treasury’s efforts to make them more difficult (e.g. debt/equity proposals)
US Tax Law

- 35% corporate tax rate – highest in the OECD

- US does not currently tax active income earned by foreign subsidiaries
  - Referred to as *deferral*

- But, US taxes repatriation of the foreign income to US:
  - Often referred to as the *lock-out effect*
  - Other countries do not (i.e., *territorial tax system*)

Note – US tax reform complicated because most small businesses use pass-through form.
Many US MNCs have:
- Aggressively shifted income to tax havens, and
- Obtained financial statement benefit by claiming over $2 trillion of income is indefinitely reinvested (APB 23)

US Parent
- Need foreign income back at US parent to pay dividends, buyback stock, etc…
  - But don’t want to incur US tax on repatriation (i.e., lock-out effect)
- Considering inversion (effectively a self-help measure to obtain territorial system)
Conflicting Views on Lock-Out Effect

- US MNCs - Believe they are at a competitive disadvantage with foreign MNCs and want:
  - Reduced corporate tax rate, and
  - Another 2004/2005 tax holiday or a territorial system

- Others:
  - US MNCs have been *hoisted on their own petard* for shifting so much income overseas
  - Advocate a worldwide system or minimum tax on foreign earnings
  - Support a territorial system, but only if safeguards to prevent income shifting

- Bottom Line – No legislative action yet
Potential Inversion Benefits

Before Inversion

US Parent Corporation

Foreign Subsidiaries

Immediately After Inversion

Foreign Parent Corporation

US Parent Corporation

Foreign Subsidiaries

After Restructuring

Foreign Parent Corporation

US Parent Corporation

Foreign Subsidiaries

Loan

Loan Or Dividend

Note - If US MNC was not aggressive shifting income out of US, inversion may also facilitate income shifting.
Selected Topics
Key Questions

- Short and long-term impact of BEPS and increasing nationalism/protectionism (e.g., EU state aid investigations)?

- Will US enact international tax reform, and if so, what form might it take?

- Will Treasury’s efforts to slow inversions be effective?
BEPS Project

Key Projects:
- Country-by-country reporting
- Multi-lateral instrument
- Treaty abuse
- Others (e.g., transfer pricing and interest expense limitations)

Potential Impact:
- Short-term
- Longer-term
European Union State Aid

- EU investigating rulings granted by EU member states to MNCs on grounds they may confer a selective benefit = state aid
  - Not a tax law, but EU competition law
  - To date, decision Starbucks and Fiat have received state aid from the Netherlands and Luxembourg -- but decision being appealed
  - Many other cases under review (e.g., Apple could have multiple billion $ exposure)

- Application of state aid doctrine to tax rulings is unprecedented
  - US is arguing it is unfair and discriminatory, particularly since most of the investigations are against US companies
  - Could US retaliate?
New Multinational Tax Platform

- New multinational tax platform announced
  - IMF and World Bank joining OECD and UN as international organizations active in international tax policy

- Different model – little precedent for business involvement

- Big push for developing countries to increase revenues from corporate tax
  - Advice to cut back on tax incentives, holidays, treaties, more aggressive audits
US International Tax Reform

- Territorial vs. Worldwide system?
  - If territorial, will there be strong base erosion protections? If so, could cure be worse than disease?
  - Will there be a minimum tax on foreign earnings?

- Will 35% corporate tax rate be reduced?
  - In general
  - Through a patent/innovation box?

- Interrelationship with corporate integration (e.g., Sen. Hatch efforts)?

- Will it be revenue neutral?
Inversions

- Impact of US treasury efforts:
  - Will regulations be successfully challenged?
  - Even if not challenged, will they stop inversions?
  - Is there more to come?

- What needs to be done to stop inversions?
  - Move to territorial system
  - Reduce US corporate tax rate (e.g., integration)
  - Equalize tax between US and foreign MNCs
  - Other???
Questions?