# CORPORATE INVERSIONS: THE FLEEING NOTION OF AN AMERICAN CORPORATION

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ABSTRACT

This paper was created to explore the phenomenon of corporate expatriation, more commonly known as corporate inversion. Many corporations created and incorporated in the United States reincorporate in a foreign jurisdiction to avoid paying high corporate taxes. Under American law, multinational corporations (MNCs) are required to pay 35% of their income[1] in taxes, whether it is foreign-based income or domestic. In addition, if these corporations are publicly traded, they are subjected to double taxation.[2] These, among other reasons, have become strong incentives for companies to reincorporate in countries that offer lower corporate tax rates, such as Ireland. These tax havens encourage inversion and result in the loss of millions of dollars in tax revenue for the federal government.[3] This paper will investigate the legal methods companies use to reincorporate offshore, explore their reasons for it, and argue for a possible solution. Lastly, this paper will also examine current legislative developments and recently enacted laws that seek to address a solution to inversion.

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1 26 U.S.C. § 11 (2012) (Assuming said MNC has an annual income in excess of 10,000,000 dollars).

2 26 U.S.C. § 61 (2012).

3 JANE G. GRAVELLE, CONG. RESEARCH SERV., R40623, INTERNATIONAL TAX AVOIDANCE AND EVASION 2 (2013), *available at* http://www.fas.org/sgp/crs/misc/R40623.pdf.

## I. INTRODUCTION

Corporate inversions have become an attractive option for MNCs incorporated in the United States. However, for corporations whose income is mainly generated in the United States, inversion is not necessarily an option and tax liability has a straightforward application.[4] The United States has a worldwide tax system; a company's income is taxed whether it was generated abroad or in the United States.[5] The United States also has one of the highest corporate tax

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[4] DONALD J. MARPLES & JANE G. GRAVELLE, CONG. RESEARCH SERV., R43568, CORPORATE EXPATRIATION, INVERSIONS, AND MERGERS: TAX ISSUES 1 (2014), *available at* http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/CRS%20report%20on%20inversions.pdf.

[5] *Id*. at 2.

rates in the world, subjecting corporations to a high 35% tax rate.[6] As a result, corporate inversions have increasingly become a manner by which MNCs escape the high and stringent taxation system created by the revenue code. Amidst their millions in revenue, these corporations are left with one simple question: to subordinate to the tax system and pay the taxes or flee abroad to tax havens. With not much to incentivize them to stay, MNCs often answer with the latter and save millions in the process, despite the high costs of relocating abroad.[7] Taxes are of paramount importance when MNCs contemplate inversion.[8] For instance, in 2012 Eaton Corporation, a power management giant valued at $32.55 billion[9], acquired Cooper Corporation, an Irish corporation, and successfully reincorporated in Ireland, resulting in estimated savings of $160 million per year due to a reduction in its tax liability.[10] Like Eaton Corporation, other MNCs can use these cross border mergers and acquisitions to reincorporate in countries like Ireland, that offer much lower tax rates.[11] As these MNCs achieve a more favorable tax condition, the federal government permanently loses billions of dollars annually.[12] As many as 47 corporations expatriated within the last decade.[13] If these MNCs achieved results similar to Eaton Corporation's, they could have saved an estimated $160 million per year in taxes - and cost the federal government as much as $7.2 billion in potential tax revenue. By expatriating, these MNCs avoid paying the high corporate tax rates in the United States. This results in the loss of billions of dollars by the federal government. While this loss of revenue is known to the federal government, the strict system that created high corporate taxes has also provided the tools to avoid paying them. These tools are the legal methods MNCs utilize to reincorporate abroad via inversion transactions. These methods include cross border mergers, stock transactions,

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[6] Jacob J. Lew, *Close the tax loophole on inversions*, WASH. POST, (July 27, 2014), http://www.treasury.gov/press-center/press-releases/Pages/jl2586.aspx.

[7] David Gelles, *New Corporate Tax Shelter: A Merger Abroad*, N.Y. TIMES DEALBOOK, (Oct. 8, 2013, 5:44 P.M.), http://dealbook.nytimes.com/2013/10/08/to-cut-corporate-taxes-a-merger-abroad-and-a-new-home/?_php=true&_type=blogs&_r=1.

[8] Rachelle Y. Holmes, *Deconstructing the Rules of Corporate Tax*, 18-19 AKRON TAX J. 1, 8 (2010).

[9] Overview of Eaton Corporation, N.Y. TIMES DEALBOOK, http://dealbook.on.nytimes.com/public/overview?symbol=ETN&inline=nyt-org (accessed on Nov. 2, 2014).

[10] *Id.*

[11] *Id.*

[12] *The U.S. Tax Code: Love It, Leave It, or Reform It!: Hearing Before the Senate Committee on Finance*, 113th Cong. (2014) (testimony of Robert B. Stack, Deputy Assistant Sec'y for Int'l Tax Affairs, U.S. Dep't of Treas), *available at* http://www.treasury.gov/resource-center/tax-policy/Documents/OTPTest-2014-7-22-Stack-SenFin.pdf.

[13] Alexandra Thorton, *The Skinny on Corporate Inversions*, CENTER FOR AMERICAN PROGRESS, (Sept. 25, 2014), https://cdn.americanprogress.org/wp-content/uploads/2014/09/CorporateInversions-brief.pdf.

assets transactions, drop down transactions, earnings stripping, and transferring of foreign subsidiaries.[14]

To some, inversions by American MNCs is an issue of equality. While many MNCs have the option to leave the United States due to high taxes, small businesses and private individuals do not have that choice. American citizens have to endure high taxes and ultimately pay the price of these inversions.[15] By reincorporating abroad, corporations shift the burden of high taxes to small business and citizens who have to cover the deficit inverted MNCs create.[16] Corporate inversion has raised questions of patriotism and fairness.[17] Many MNCs unfairly extricate themselves from the high taxes, but still reap the benefits of conducting their business operations in America.[18]

## II. Background

### A. Defining Corporate Inversion

Corporate inversion is a transaction where the corporate structure of an American based multinational corporation reincorporates abroad, moving to an offshore jurisdiction that offers much lower taxes.[19] In essence, these corporations move their residence overseas to avoid having to pay high taxes at home.[20] Expatriating to a foreign jurisdiction does not involve the physical move of the corporation, but rather the transaction takes place only on paper.[21] After the MNC has inverted, its management and business operations often remain in America.[22]

Generally a corporate inversion begins when an American corporation creates a foreign corporation in a country with low tax rates (a "tax haven").[23]

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[14] *See* James Mann, Note, *Corporate Inversions: A Symptom of a Larger Problem, the Corporate Income Tax*, 78 S. Cal. L. Rev. 521, 526-532 (2005).

[15] Press Release, U.S. Dep't of Treas., Treasury Announces First Steps to Reduce Tax Benefits of Corporate Inversions (Sept. 22, 2014), *available at* http://www.treasury.gov/press-center/press-releases/Pages/jl2647.aspx.

[16] Lew, *supra* note 6.

[17] *See Corporate Inversion: Hearing Before the Subcomm. On Treas. & Gen. Gov't of the S. Comm. on Appropriations*, 107th Cong. 1 (statement of Sen. Byron L. Dorgan, Chairman, S. Subcomm. on Treas. and Gen. Gov't).

[18] Holmes, *supra* note 8.

[19] Jon Weiner, *Corporate Inversions and Section 7874-Provisions, Predecessors, and Policies*, PRACTICAL TAX LAWYER, Winter 2010, at 27, 27.

[20] STATEMENT BY THE PRESIDENT (Sept. 22, 2014), *available at* 2014 WL 4678075, at *1.

[21] Mann, *supra* note 14, at 521.

[22] *Id.*

[23] DAVID L. BRUMBAUGH, CONG. RESEARCH SERV., RL31444, FIRMS THAT INCORPORATE ABROAD FOR TAX PURPOSES: CORPORATE "INVERSIONS" AND "EXPATRIATION" (2007), *available at* 2007 WL 1834576, at 1.

This results in the reorganization of the American corporation's structure.[24] The foreign corporation becomes the parent, while the former American parent corporation is merged into the new foreign corporation and becomes a subsidiary of the parent foreign corporation.[25] At this point, the American Corporation ceases to be incorporated in America and becomes part of the parent corporation abroad and thus, has expatriated to a lower tax jurisdiction.[26]

For an MNC, the place of incorporation is significant because of the potential tax savings. In the United States a corporation's tax rate not only depends on its amount of

income, but is also determined by place of incorporation. A domestic corporation is subject to higher tax rates than foreign corporations.[27] Where a corporation incorporated in America is taxed on all of its earnings, whether generated in the United States or abroad, a foreign-based corporation is taxed only on the income it generated by business connected to the United States.[28] This is the main reason MNCs reincorporate abroad, so as to avoid having to pay high taxes on both their domestic and international sales.[29]

In summary, a corporate inversion changes "a U.S. corporation's residence to a foreign country."[30] Once a corporation renounces its American citizenship and becomes foreign, its income is no longer subject to the United States' worldwide tax regime, and may be subject only to the territorial tax regime of the foreign country it expatriated to.[31]

### *B. Explaining the Reasons for Corporate Inversion*

#### i. Lower Tax Rates Resulting in Large Savings

While there may be many reasons MNCs invert, the main reason for an inversion is the 35% corporate tax rate imposed on American (domestic) corporations. In 2002, a treasury report recognized that the cause for corporate inversions is the high tax levels imposed on corporations by the United States.[32]

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[24] *Id.* at 2.
[25] *Id.* at 3.
[26] *Id.*
[27] 26 U.S.C. § 11(d) (2012).
[28] 26 U.S.C. § 882(a) (2012).
[29] BRUMBAUGH, *supra* note 23.
[30] Derek E. Anderson, *Turning the Corporate Inversion Transaction Right Side Up: Proposed Legislation in the 108th Congress Aims to Stamp Out Any Economic Vitality of the Corporate Inversion Transaction*, 16 FLA. J. INT'L L. 267, 269 (2004).
[31] *Id.* at 274 (only taxed on income generated in the foreign country).
[32] U.S. DEP'T OF TREAS., OFFICE OF TAX POLICY, CORPORATE INVERSION TRANSACTIONS: TAX POLICY IMPLICATIONS 1 (2002).

Corporate inversions are a symptom of the burden placed on MNCs by the United States tax system.[33]

Many MNCs that expatriate to more forgiving tax jurisdictions do not acknowledge tax savings as a reason for inversion.[34] Instead, other reasons are offered including creating greater "operational flexibility, improved cash management, and an enhanced ability to access international capital markets."[35] Nevertheless, the tax benefits resulting from inversion evidence avoidance of the high American corporate tax rate as the reason for inversion. For example, in 2014 Burger King inverted to Canada by merging with Tim Horton. It is estimated that Burger King will avoid "$400 million to $1.2 billion in taxes between 2015 and 2018 from [this] merger."[36]

Canada has a 26% corporate tax rate. This is significant to Burger King because of the tax liability. For example, if Burger King makes $1 billion in a year it would pay $260 million in taxes in Canada rather than the $350 million it would pay in the United States. For Burger King, changing jurisdictions will generate close to $100 million in savings per year. When Burger King announced its cross border merger with Tim Horton, it never mentioned tax savings as a reason for the merger.[37] However, many are viewing it as a tax savings strategy by Burger King because of the tax savings the merger will create.[38]

Corporate inversions are the result of the high corporate tax rate in the United States. Even though many corporations refuse to publicly acknowledge tax savings as a reason for expatriation, the savings generated by moving abroad evidence this is the case. Furthermore, many foreign countries only tax on earnings generated within their territory and do not tax revenues earned from international sales. The tax savings created by going abroad provide a strong incentive to many MNCs to change domiciles and pay millions of dollars less in taxes on their income, especially when they are trying to remain globally competitive.

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[33] *Id.*

[34] Gelles, *supra* note 7.

[35] For a summary of these reasons, see Press Release from Stanley Works (Feb. 8, 2002). *See also* Proxy Statement by Ingersoll Rand (Nov. 2, 2001), *available at* http://crs.wikileaks-press.org/RL31444.pdf (citing "a variety of potential business, financial and strategic benefits").

[36] Harry Gurral, *Report Find that Burger King "Inversion" will enable Company to Dodge up to $1.2 billion in U.S. Taxes over Four Years*, AMERICAN FOR TAX FAIRNESS, (Dec. 11, 2014), http://www.americansfortaxfairness.org/report-finds-that-burger-king-inversion-will-enable-company-to-dodge-up-to-1-2-billion-in-u-s-taxes-over-four-years/.

[37] Trefis Team, *Burger King-Tim Hortons Cross-Border Merger Much More than Tax Inversion*, FORBES (Aug. 29, 2014, 1:49 PM), http://www.forbes.com/sites/greatspeculations/2014/08/29/burger-king-tim-hortons-cross-border-merger-much-more-than-tax-inversion.

[38] *Id.*

ii. Earnings Stripping Made Easier

Inversions also facilitate the ability to conduct earnings stripping.[39] Earnings stripping occur when a foreign parent corporation lends money to its American subsidiary unit.[40] The subsidiary in return, can deduct interest payments made to the foreign parent corporation from its taxable income.[41] This reduces the tax liability of the subsidiary in the United States.[42] The result of earnings stripping is the shifting of income generated in the United States by the subsidiary out of the U.S. to the foreign parent company in the form of interest payments.[43] The United States taxes foreign corporations only on the income generated within the United States.[44] Because the interest payments made to the parent company are tax deductible, this is an opportunity to shift income generated in the United States in the form of interest payments to the newly created foreign parent company.[45] The inverted company, which is now the parent company, is provided with another layer of opportunity to further reduce its tax liability in the United States in the form of interest payments to itself.[46]

*C. The Effects of Corporate Inversion*

i. The Loss of Tax Revenue By The Federal Government

Corporate inversions have negative implications in the U.S. economy. Inversions erode the U.S. tax base and lower the revenue generated by tax collections.[47] The federal government is most affected by these inversions. The United States taxes corporations chartered in the U.S. on their worldwide income,

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39 BRUMBAUGH, *supra* note 23, at 3.
40 Damian Palleta, *Treasury Could Target 'Earnings Stripping' in Inversion Hunt*, WALL ST. J., (August 6, 2014 at 1:06 p.m.), http://blogs.wsj.com/washwire/2014/08/06/treasury-could-target-earnings-stripping-in-inversion-hunt/.
41 *Id.*
42 *Id.*
43 *Id.*
44 Hale E. Sheppard, *Fight or Flight of U.S.-Based Multinational Businesses: Analyzing the Causes for, Effects of, and Solutions to the Corporate Inversion Trend*, 23 NW. J. INT'L L. & BUS. 551, 552 (2003).
45 Palleta, *supra* note 40.
46 *Id.*
47 Eloine Kim, *Corporate Inversion: Will the American Jobs Creation Act of 2004 Reduce the Incentive to Re-Incorporate?*, 4 J. INT'L BUS. & L. 152, 159 (2005).

foreign as well as domestic.[48] Because a corporation's place of incorporation determines whether it is treated as domestic or foreign for tax purposes, having "foreign" status results in a much more favorable tax treatment.[49] This is because the United States exempts "foreign" corporations from taxation on their foreign-sourced income.[50] As a result of this tax structure, when a corporation reincorporates in a foreign country, the United States loses the ability to tax on an inverted MNC's foreign income and taxes only on the income it generated in the United States.[51] This loss adds up to billions of dollars. A study conducted in 2002 estimated that corporate inversions eroded tax revenue by as much as $70 billion dollars.[52] The loss of tax revenue is likely to be higher a decade later. There are estimates of 40 or more corporate inversions taking place in the last decade or so. In 2013 alone, as many as 20 companies reincorporated in foreign countries.[53]

As previously mentioned, Eaton corporation estimated a savings of $160 million dollars annually as a result of reincorporating in Ireland.[54] Similarly, New York based advertising group Omnicorn reincorporated in Netherlands and saved over $80 million per year in taxes due to the lower corporate tax offered in Netherlands. Another company who reaped the benefits of inversion was Perrigo, which reincorporated in Ireland and estimated savings of $150 million per year due to reduced tax liability.[55] New Jersey based Actavis, has estimated $75 million per year in savings by reincorporating in Ireland.[56] While these are the tax savings of only four corporations, there are many more corporations that inverted in the same year. Estimating the loss generated by the reincorporation of these four corporations alone, it is a loss of close to half a billion dollars of tax revenue that could have been collected by the federal government in 2013.[57] As many as 20 companies moved their legal residence abroad in 2013. If each of those 20 companies saved an average of $100 million in taxes, then in 2013 alone the United States would have lost as much as $2 billion dollars in tax revenue. This loss would obviously be greater if these companies have higher earnings. In the

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48 BRUMBAUGH., *supra* note 23, at 4.
49 Sheppard, *supra* note 44.
50 Kim, *supra* note 47.
51 *Id.*
52 Glen Johnson, Congress Looks to Plug Tax Loophole: Bill Targets Advantages Sought by U.S. Firms that Incorporate Offshore, BOSTON GLOBE, Mar. 12, 2002, at D1.
53 *See* Gelles, *supra* note 7.
54 *Id.*
55 *Id.*
56 *Id.*
57 This calculation is speculative and is found based on numbers provided by the New York Times. In order to find the estimate of half a billion loss in revenue, the tax savings of each of the companies were added.

last decade, four oil companies inverted and each saved an estimated $4 billion in taxes.[58]

Inversion negatively affects the U.S. economy because of the loss in ability to collect billions of dollars in tax revenue.

ii. A Positive Effect of Corporate Inversion: Ability to compete and maintain lower prices

Corporate tax rates partly influence the price a corporation charges for its products. The price at which a corporation may sell its products and still generate profit not only depends on the costs of production, but also how much tax it would have to pay on its revenue.[59] Naturally, the higher costs of production and higher tax burdens are shifted to the consumer in the form of higher prices for the goods sold. If foreign companies offer the same product as the American company for a lower price, the consumer will be inclined to buy the lower priced product than the one sold by the American company, which is higher priced. As a result of being a domestic corporation and paying a higher tax rate, the American company is at a disadvantage compared to the other foreign corporations.[60] To successfully compete with foreign corporations, the American corporation may choose to reincorporate in a foreign jurisdiction to lower its tax burden and alleviate the need to charge more on its products.[61] A domestic corporation that expatriates will have a lower tax burden and higher profits. This higher profitability may be conveyed on to the consumers in the form of lower prices.[62] This provides an incentive for the domestic corporation to invert so it can be on equal footing with the foreign corporation, which has higher profitability corresponding to its lower tax liability.[63] As illustrated in Figure 1, while other countries have reduced their corporate tax rates, the United States has kept its tax rate more or less constant – at one of the highest corporate tax rates in the world.[64]

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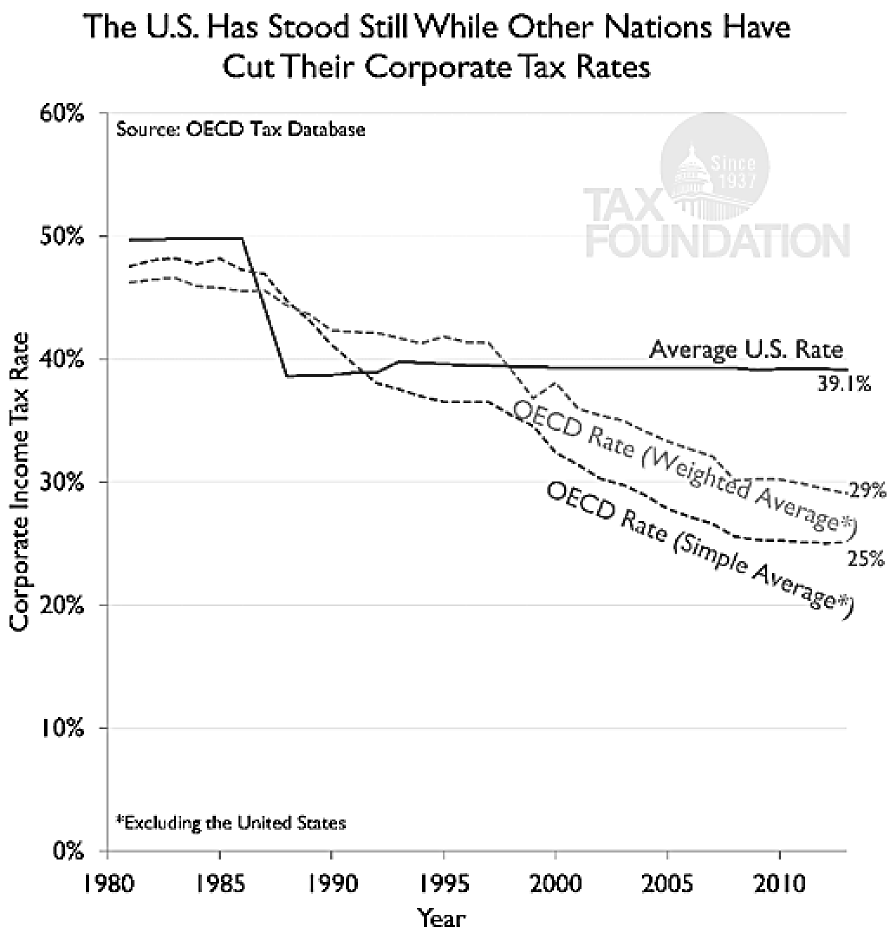
58 Gelles, *supra* note 7.
59 *See* Sheppard, *supra* note 44, at 563-65.
60 *Id.* at 563.
61 *See Id.*
62 *Id.*
63 *Id.*
64 Holmes, *supra* note 8, at 15.

Figure 1. Copied from Kyle Pomerleau, *Everything You Need to Know About Corporate Inversions*, TAX FOUND. (Aug. 4, 2014), http://taxfoundation.org/blog/everything-you-need-know-about-corporate-inversions




While some may argue the tax system does not create an anti-competitive environment for corporations, it should be noted that the pressures and ability to compete with foreign corporations may also provide an incentive for MNCs to reincorporate abroad.[65]

iii. Section 367 and Shareholders

[65] *See* Sheppard, *supra* note 44, at 563.

Shareholders play an important role in corporate inversions.[66] Corporations must obtain shareholder approval before engaging in an inversion transaction.[67] Shareholders are entitled to approve the transaction if they believe it is in their best interest or reject it if they believe the opposite.[68] In obtaining approval, the American corporation must strictly adhere to the disclosure requirements imposed by the Securities and Exchange Commission (SEC).[69] Disclosure requirements include disclosing details of the inversion to the shareholders.[70] These details include the probable effects of the inversion and the costs involved.[71] The SEC disclosure requirements together with the shareholder voting requirements act as a safeguard against inappropriate corporate action.[72] Not all shareholders are protected, however. The "disclosure-approval safeguard may not adequately protect unsophisticated or naive shareholders."[73] The proxies disclosed to shareholders are many pages in length and can easily lead to confusion.[74] Unsophisticated shareholders may fail to understand the legal significance of the inversion, and only see it as a technique that will result in a favorable tax treatment for the corporation.[75]

One of the possible pitfalls an unsophisticated shareholder may face as a result of an inversion is triggering section 367 of the tax code.[76] Section 367 directly affects shareholders in a corporation that chooses to invert by forcing them to recognize a capital gain. This capital gain is based on the difference between the fair market value of the shares of the new foreign parent received and value of the stock possessed in the American corporation prior to the merger.[77] However, this tax liability only applies if there is an appreciation in the value of the stock since a gain would have been generated.[78]

Some have argued that as a result of section 367 shareholders are, more often than not, financially injured by inversions.[79] However, these assertions have been largely refuted.[80] Corporate officers have fiduciary duties to follow, including maximizing the corporation's profitability and stock value.[81] Studies

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66 *Id.* at 565.
67 *Id.* at 560.
68 *Id.* at 566.
69 *Id.* at 560.
70 *Id.*
71 *Id.* at 566.
72 *Id.*
73 *Id.*
74 *Id.*
75 *Id.*
76 *See* 26 U.S.C. § 367(a)(1) (2012).
77 *See* Sheppard, *supra* note 44, at 557.
78 *Id.*
79 *Id.* at 560.
80 *Id.*
81 *Id.* at 561.

have shown that officers will decide to invert only if the projected benefits to the shareholders outweigh the costs of inverting.[82] Furthermore, even though stock price maximization is considered, corporate officers are not likely to consider inversion "unless future tax savings more than compensate for the current capital gains (and corresponding tax liabilities) incurred by shareholders."[83]

Another effect of inversion is the possibility of weakened shareholder rights.[84] The place of incorporation dictates the laws that govern the rights and obligations of a corporation.[85] These rights and obligations change as the jurisdiction of incorporation changes in an inversion.[86] Some foreign countries may be less concerned with shareholders rights, thus weakening shareholder power and reducing shareholder legal protections as compared to the laws of the United States.[87]

## III. Legal Evasion of Taxes: How Corporate Inversion is Achieved

The decision to invert is usually made by an American corporation having multinational operations.[88] After the inversion, the MNC denounces its American citizenship and becomes foreign for tax purposes.[89] According to the Department of the Treasury: "A corporate inversion is a transaction . . . through which a U.S.-based multinational [corporation] restructures its corporate group so that the ultimate parent corporation of the group becomes a foreign entity."[90] Generally, after the MNC has inverted, its headquarters remain in the United States.[91] In many cases, the inversion is mostly a transaction taking place only on paper because the United States determines tax liability on place of incorporation and not where a corporation's business operations are or where the corporation is managed.[92] Therefore, for an inversion to be valid, a corporation does not need to move its headquarters to its place of reincorporation.

Corporate inversions can be achieved in three different forms: substantial business presence, U.S. corporation acquisition by a larger foreign corporation, or

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[82] *Id*. at 560.
[83] *Id*. at 560-61.
[84] *Id.* at 566.
[85] *See Corporate Inversions: Hearing Before the Subcomm. on Select Revenue Measures of the House Comm. on Ways and Means*, 107th Cong. (2002) (statement of Richard Blumenthal, Att'y Gen., Conn.), *available at* http://waysandmeans.house.gov/legacy/srm/107cong/6-25-02/107-75final.htm#blumenthal.
[86] *Id.*
[87] *See* Sheppard, *supra* note 44, at 566.
[88] 26 U.S.C. § 7701(a)(4) (2012).
[89] *Id.* at § 7701(a)(5).
[90] Office of Tax Policy, Dept. of the Treasury, Corporate Inversion Transactions, Tax Policy Implications 3 (2002).
[91] Weiner, *supra* note 19.
[92] *Id.*

a smaller foreign corporation acquisition by a larger U.S. corporation.[93] These forms can be achieved by applying one of three different techniques.[94] These techniques are "stock transactions (the majority), asset transactions, or drop-down transactions."[95] At the end of the transaction, the "domestic company [becomes] the subsidiary of the new foreign corporation."[96]

### *A. Paths to Inversion*

#### i. Section 7874 and the Substantial Business Activity Exemption

In 2004 Congress enacted The American Jobs Creation Act [hereinafter Jobs Act].[97] The Jobs Act amended the tax code by adding section 7874 and introducing anti-inversion provisions to make expatriation more difficult.[98] The purpose of section 7874 was to reduce the number of inversions by eliminating or minimizing most or all of the tax benefits of an inversion.[99]

Section 7874 deters inversion transactions by indirectly taxing the "inversion gain" of the corporation if the foreign parent corporation could be considered a "surrogate foreign corporation."[100] These anti-inversion provisions apply only if the foreign parent company is a surrogate foreign corporation. This is determined by certain ownership percentages established in section 7874.[101] Inversion gain is the income or gain "recognized by reason of the transfer" during a period of ten years after the last property is acquired as part of the merger.[102] Tax treatment of the American corporation differs based on whether the corporation owns at least 60% of the foreign parent or 80% of the foreign parent.[103] If ownership of the foreign parent company after the acquisition is at least at 60% but less than 80%, then the taxable income of the U.S. corporation will be at least as much as the inversion gain generated from the date of the acquisition until ten years after.[104] Section 7874 also established a threshold requirement of ownership percentage that makes a newly created foreign parent corporation "domestic" for tax purposes. Inversions where the U.S. Corporation

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93 *See* MARPLES & GRAVELLE, *supra* note 4, at 2-3.
94 *Id.* at 3, n. 18.
95 Weiner, *supra* note 19, at 28.
96 *Id.*
97 *See generally,* Joseph A. Tootle, *The Regulation of Corporate Inversions and "Substantial Business Activities"*, 33 VA. TAX REV. 353, 373 (2013).
98 *Id.*
99 *Id.* at 368.
100 26 U.S.C. § 7874(a)(1) (2012).
101 Tootle, *supra* note 98, at 368.
102 26 U.S.C. § 7874(d)(1)-(2) (2012).
103 Tootle, *supra* note 98, at 369.
104 *Id.*

owns 80% or more of the foreign corporation after the inversion are irrelevant for tax purposes and the foreign parent corporation is taxed as a "domestic corporation" regardless.[105]

Corporations domiciled in the United States that own 80% of the parent foreign corporation after the cross-border merger may still get around section 7874 if they have substantial business activity in the targeted foreign country.[106] This exemption, also known as the "substantial business activity" exemption, enables a company to reap the tax benefits of an inversion if it has substantial business activity in the country of reincorporation.[107] Prior to the Act, corporations were free to invert without any concerns for the ownership percentage of the new foreign parent corporation or business activity in the targeted foreign jurisdiction.

By relying on this exemption, an American MNC that has substantial business activities in a foreign country may create a foreign subsidiary in order to merge with such subsidiary in the form of stock exchange between the two companies.[108] After the exchange of stock, the American corporation becomes the foreign corporation's subsidiary and the foreign corporation becomes the parent.[109] At this point the U.S. corporation has successfully inverted and its place of incorporation is now in the foreign country. This form of inversion is referred to as "naked inversion" because there is no effective change in control of the corporations.[110]

### ii. A U.S. Corporation Acquired by a Larger Foreign Corporation

When a larger foreign corporation acquires a smaller American corporation, the U.S. MNC's primary incentive for the inversion is not necessarily a lower tax jurisdiction, but it may instead seek to bolster its foreign operations.[111] In this form of inversion, the American corporation is merged with a larger foreign corporation resulting in the American corporation having a minority ownership of the new merged company.[112] Unlike the other forms of transactions, this form of inversion is more than just a paper transaction since management is moved abroad to where the larger foreign parent company is domiciled.[113]

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105 26 U.S.C. § 7874(b) (2012).
106 Tootle, *supra* note 98, at 371.
107 *Id.*
108 MARPLES & GRAVELLE, *supra* note 4, at 4.
109 *Id.*
110 *Id.*
111 *Id.* at 4.
112 *Id.*
113 *Id.*

iii. A Smaller Foreign Corporation Acquired by a Larger U.S. Corporation

In this form of inversion, a large U.S. corporation will merge with a smaller foreign corporation in order to reap the tax benefits present in the foreign jurisdiction.[114] This merger results in the U.S. Corporation having a large ownership percentage and control of the smaller foreign corporation.[115] An example of this transaction is when Eaton Corporation merged with the smaller Irish corporation Cooper, and successfully reincorporated itself in Ireland, which has a corporate tax rate of 12.5%.[116] Generally once the two corporations are merged, the newly formed corporation will have a name uniting the two names of the merged corporations.[117] Furthermore, the American corporation will have a majority ownership percentage in the new merged company and management will often remain in the United States.[118]

*B. Techniques Applied in Inversions*

The forms of inversion previously described may be accomplished through one of three different techniques: stock transactions, asset transfers, or drop-down transactions.

i. Stock Transaction

In a stock transaction shareholders of the American MNC exchange their stock for those in a foreign corporation.[119] After the inversion, the shareholders receive stock in the foreign corporation.[120]As a result of the transaction, the former American shareholders will own the newly formed foreign parent corporation, who in return owns the American corporation that is now a subsidiary.[121] Due to tax incentives, the parent corporation is usually located in a country with a low corporate tax rate.[122] A stock transaction is not a merging of the two corporations; rather, it is the creation of a parent-subsidiary relationship where the U.S. corporation has changed its place of incorporation to that of the foreign parent company.[123]

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[114] *Id.*
[115] *Id.*
[116] Gelles, *supra* note 7.
[117] *See* MARPLES & GRAVELLE, *supra* note 4, at 4-5.
[118] *See generally id.*
[119] Mann, *supra* note 14, at 525.
[120] Tootle, *supra* note 98, at 363.
[121] *Id.*
[122] *Id.*
[123] *See generally id.* at 363.

ii. Asset Transfers

Asset transfers are typically used for smaller inversions.[124] An asset transfer is a merger transaction where the American corporation merges with the foreign parent and the foreign parent survives.[125] In this type of transaction, the American corporation moves all of its assets into the new foreign parent corporation.[126] Similar to stock transactions, the American shareholders will receive shares of stock of the foreign corporation.[127]

iii. Drop Down Transactions

Drop down transactions combine the elements of asset transfers and stock transactions.[128] In a drop down transaction the U.S. corporation transfers its assets to a foreign corporation, who in return will contribute some of those assets to a U.S. subsidiary.[129] Here, the foreign corporation will transfer a portion of the assets of the U.S. corporation to the American subsidiary.[130] As a result of this transaction, the U.S. corporation will survive as a subsidiary of the foreign corporation.[131]

The purpose of corporate inversion transactions is to legally change the place of incorporation of the corporation to a foreign jurisdiction that offers a lower corporate tax rate.[132] In many inversions, the American corporation remains physically in the United States. These transactions mainly change ownership and incorporation of the multinational company to a more tax forgiving jurisdiction.[133]

## IV. The Road Ahead – Stopping Inversions

### *A. The American Jobs Creation Act of 2004 (AJCA) – A Partial Solution to Corporate Inversion*

While the statutory framework allowing corporations to invert has long been in place, it was not until the late 1990s and early 2000s that America

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[124] Mann, *supra* note 14, at 525.
[125] Tootle, *supra* note 98, at 363.
[126] *Id.*
[127] *Id.*
[128] Mann, *supra* note 14, at 525.
[129] Tootle, *supra* note 98, at 363.
[130] Brumbaugh, *supra* note 23, at 3.
[131] *Id.*
[132] Tootle, *supra* note 98, at 364.
[133] *Id.*

became concerned with inversions.[134] During this time heavy media coverage and criticism took place and inversions became deeply criticized as "unpatriotic."[135] Criticism of inversions was heightened by the fact that United States was fighting a war against terrorism and recession at this time.[136] These concerns resulted in Congress enacting The American Jobs Creation Act of 2004.[137] The Jobs Act anti-inversion provision, section 7874, was Congress' attempt to address corporate inversion and deter it.[138] Section 7874 sought to deter inversion by taking away the tax benefits of an inversion in two ways.[139] First, if after the inversion the shareholders of the American corporation own at least 80% of foreign parent corporation then the tax code will treat the foreign parent corporation as a domestic corporation.[140] This eliminates the tax benefits created by the inversion. Second, if ownership of the new foreign parent corporation is between 60% but less than 80%, the U.S. corporation will be taxed on the inversion gain[141] (previously defined).[142]Almost a decade after the creation of section 7874, inversions continue to take place with as many as 20 occurring since 2013.[143] Corporations successfully avoid section 7874 by relying on the business activity exemption and/or by merging with smaller foreign companies.[144] European countries such as Ireland are increasingly becoming target nations for inversions for companies relying on the substantial business activity exemption.[145] This exemption requires corporations to have at least 25% of employees by number, employees by compensation, assets and income in the foreign target country.[146] An MNC relying on this exemption may easily meet this requirement by using a European nation as its target jurisdiction of reincorporation.

The business activity exemption made it difficult to eliminate corporate inversions.[147] As a result of this exemption, corporations were initially able to effectively get around section 7874 by having at least "10% of its employees, assets, and sales . . . located in the foreign country."[148] However, in 2012 the

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[134] MARPLES & GRAVELLE, *supra* note 4, at 5.
[135] Sheppard, *supra* note 44, at 560.
[136] *Id.*
[137] MARPLES & GRAVELLE, *supra* note 4, at 6.
[138] *Id.*
[139] *Id.*
[140] *Id.*
[141] *Id.*
[142] *Supra* note 103.
[143] Gelles, *supra* note 7.
[144] MARPLES & GRAVELLE, *supra* note 4, at 6.
[145] *Id.* at 5.
[146] *See*, T.D. 9592, 2012-28 I.R.B. 41, http://www.irs.gov/irb/2012-28_IRB/ar10.html.
[147] *See* Tootle, *supra* note 98, at 372, 383.
[148] *Id.* at 379.

Treasury Department responded by issuing temporary regulation 9592 and redefined the substantial business activity test from 10% to 25%.[149] Regulation 9592 has been successful at limiting the use of the substantial business activity exemption to invert.[150]

A recent report by the Congressional Research Service recognized that the Jobs Act has been successful at eliminating some corporate inversions, but not all.[151] As a result of the Jobs Act "naked inversions"[152] have been stopped completely.[153] Furthermore, regulation 9592 reduced the use of the substantial business activity exemption and curtailed the number of corporations inverting by relying on this exemption.[154] But the Jobs Act did not completely stop inversions, and recent inversion activity shows that mergers are now becoming more frequent vehicles for inversions.[155]

### *B. Legislative Proposals: Stop Corporate Inversions Act of 2014*

In May, 2014 the Stop Corporate Inversion Act of 2014 (H.R. 4679 – May, 2014) [hereinafter "The Inversion Act"] was introduced to restrict corporate inversions by limiting the ability of American corporations to invert by merging with foreign businesses.[156] If approved, the Inversion Act will amend section 7874 of the tax code.[157] H.R. 4679 will treat a foreign parent corporation as a domestic corporation for tax purposes if shareholders of the U.S. corporation own 50% or more of the foreign parent corporation after the inversion has taken place.[158] The proposed legislation amends the tax code by lowering the percentage of stock ownership needed to treat the new foreign parent corporation as domestic, from 80 percent to 50 percent.[159] Moreover, contrary to the Jobs Act, management control and business activity in the United States would become relevant for tax purposes. The Inversion Act would also consider the foreign parent entity as domestic if management and control of the U.S. merged company

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149 *Supra*, note 147.
150 MARPLES & GRAVELLE, *supra* note 4, at 1.
151 *See id.*at 2.
152 *See id.* at 7 (Naked Inversions are inversions in which little activity or presence in the new jurisdiction is required and the new parent is domiciled in a tax haven).
153 *Id.*
154 *Id.* at 6.
155 *Id*. at 8.
156 H.R. 4679, 113th Cong. (2014). : Stop Corporate Inversions Act of 2014, DEMOCRATS.WAYANDMEANS.HOUSE.GOV, http://democrats.waysandmeans.house.gov/bill/hr4679-stop-corporate-inversions-act-2014 (last visited December 20, 2014).
157 H.R. 4679, 113th Cong. § 7874(b)(2)(B) (2014), http://democrats.waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/LEVIN_013_xml.pdf.
158 *Id.*
159 Cory Hester, *Pending Legislation Could Thwart Corporate Inversions*, WESTLAW CAPITAL MARKETS DAILY DEBRIEFING, (July 1, 2014), *available at* 2014 WL 2932692.

remains in the United States and a portion of its employees or sales or assets are located in the United States as well.[160]

Potentially, if this legislation becomes law, it would place a heavy restriction on mergers. For instance, if a U.S. based corporation mergers with a foreign corporation but its shareholders own more than 50 percent of the shares in the post-merger entity, the tax code would treat the post-merger entity as if it were based in the United States. Most of the tax incentives resulting from the merger would be eliminated and would put into question the benefits of a merger.

While the legislation is in the proposal stages, corporations contemplating mergers have showed concern. For instance, in the recent merger between Walgreens and Alliance Boots, it was decided that the newly merged corporation would remain headquartered in the United States.[161] One of the reasons provided by Walgreens in its decision not to invert to Switzerland, who offers a lower corporate tax rate, was concerns over the Internal Revenue Service (I.R.S) and fear of being seen as unpatriotic.[162] Other companies, including International Game Technology and Chiquita, have also raised concerns about pending anti-inversion legislation and potentially losing their post-merger qualifications as foreign corporations for tax purposes.[163]

The Inversion Act is the right step towards a much needed change. However, it does not eradicate the cause for inversions: a high corporate tax rate. While the Inversion Act could deter mergers and inversions, many have criticized "the U.S. tax code [as] outdated" causing "global U.S.- based companies [to be] at a disadvantage to foreign competitors."[164] This continuous criticism by business leaders evidences the need for a tax reform providing a more forgiving tax rate for corporations.

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[160] *Id.*

[161] Mike Gofrey, *Walgreens Complete 'Non Inversion' With Alliance Boots*, TAXNEWS (Jan. 2, 2015), http://www.tax-news.com/news/Walgreen_Completes_NonInversion_With_Alliance_Boots____66859.html.

[162] Alexandra Stevenson & Chad Bray, *Walgreens Shies Away from Moving Its Tax Base to Britain*, TIMES DEALBOOK, (Aug. 6, 2014 at 6:27 a.m.), http://dealbook.nytimes.com/2014/08/06/walgreen-to-pay-5-27-billion-plus-shares-for-alliance-boots.

[163] Cory Hester, *IG-GTECH Deal Latest to Disclose Risks of Pending Anti-Inversion Rules*, WESTLAW CAPITAL MARKETS DAILY (Oct. 8,2014), *available at* 2014 WL 4977565.

[164] David Gelles, *After Tax Inversion Rules Change, AbbVie and Shire Agree to Terminate Their Deal*, TIMES DEALBOOK, (October 20, 2014 at 6:05 p.m.), http://dealbook.nytimes.com/2014/10/20/abbvie-and-shire-agree-to-terminate-their-deal.

### *C. Addressing The Causes of Inversions In Order To Find a More Effective Solution*

The high corporate tax rate in the United States is one of the primary reasons a MNC decides to reincorporate in a foreign jurisdiction.[165] Two aspects of the tax system become relevant in a corporation's relocation decision: "the corporate tax rate and the taxation of foreign-source earnings."[166] Even after the Jobs Act was enacted, corporate inversions continued. Corporations found loopholes in the tax code and continued escaping the strict corporate tax system in the United States.[167] While the Jobs Act was successful at eliminating "naked" inversions, the substantial business exemption became a loophole to get around section 7874, invert, and obtain the tax benefits of an inversion.[168] MNCs relied heavily on this exemption until 2012, when Regulation 9592 increased the safe harbor for substantial business activity test from 10% to 25%.[169]

In order to stop or decrease the number of corporate inversions, the root cause for this phenomenon needs to be addressed. Business leaders have emphasized the impact that taxes have on U.S. corporations' competitiveness and their ability to compete in world markets.[170] For example, AbbVie's Chief Executive recently stated:

> The U.S. tax code is outdated and is putting global U.S.- based companies at a disadvantage to foreign competitors in an area of critical importance, specifically investing in the United States. Comprehensive tax reform is essential to create competitiveness and to stimulate investment in the economy.[171]

In order to produce effective change, corporations need to be heard and their concerns addressed. Most corporations are renouncing their American corporate citizenship because of the high corporate taxes. Fifteen of the largest economies in the world have lower tax rates than those in the United States.[172]

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[165] MARPLES & GRAVELLE, *supra* note 5, at 6.
[166] *Id.* at 11.
[167] *Id.* at 1.
[168] *Id.*
[169] *Id.* at 7.
[170] BRUMBAUGH, *supra* note 23, at 7.
[171] Dan Primack, *AbbVie Finally Admits It was Trying to Dodge U.S. Taxes*, FORTUNE, (Oct. 22, 2014, 12:39 P.M), http://fortune.com/2014/10/22/abbvie-finally-admits-it-was-trying-to-dodge-u-s-taxes/.
[172] *See* JANE G. GRAVELLE, CONG. RESEARCH SERV., R41743, *INTERNATIONAL CORPORATE TAX RATE COMPARISONS AND POLICY IMPLICATIONS* 3-5, 28 (2014), *available at* https://www.fas.org/sgp/crs/misc/R41743.pdf.

The most effective way to address and end inversion is by lowering the corporate tax rate, shifting to a territorial tax system, or lowering the rate at which foreign earnings are taxed.

i. Adopting a territorial tax system

A territorial tax regime taxes income generated within the country of incorporation, it does not levy a tax on foreign earnings.[173] Some argue that adopting a territorial tax system would place American based MNCs on the same tax footing as other foreign entities.[174] This is because a territorial tax system creates a lower tax burden on the corporation.[175] The United States has a worldwide income tax system. In contrast, some corporations domiciled in foreign countries are subject to taxes on income derived only in that country, while their international earnings are not taxed.[176] American corporations are at a disadvantage due to the high tax burdens in the United States and find inversions to be a way "to escape the grasp of the U.S. worldwide tax regime."[177] Adopting a territorial tax system would increase tax revenues and improve economic efficiency.[178]

On the other hand, some argue that because corporations can claim foreign tax credits, the United States tax system is similar to a territorial tax system and American companies essentially "enjoy exemption on any additional foreign source income."[179] These proponents argue instead that the United States could be better served by exempting specific categories of foreign direct income from taxation.[180] Adopting a territorial tax system will not completely stop inversions. The United States allows domestic corporations to claim foreign tax credits to alleviate a corporation's tax burden, which functions similarly to a territorial tax system.[181] The ability to claim foreign tax credits is a reason advocating for a territorial tax regime would fail and not provide the best solution.

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173 *See* MARPLES & GRAVELLE, *supra* note 4, at 9.
174 BRUMBAUGH, *supra* note 23, at 7.
175 Elizabeth Chorvat, *You Can't Take It with You: Behavioral Finance and Corporate Expatriations*, 37 U.C. DAVIS L. REV. 453, 462 (2003).
176 Derek E. Anderson, *Turning the Corporate Inversion Transaction Right Side Up: Proposed Legislation in the 108th Congress Aims to Stamp Out Any Economic Vitality of the Corporate Inversion Transaction*, 16 FLA. J. INT'L L. 267, 269 (2004).
177 *Id*. at 269-70.
178 Michael J. Graetz, *The David R. Tillinghast Lecture Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 54 TAX L. REV. 261, 329 (2001).
179 *Id.*
180 *Id.*
181 Michael S. Kirsch, *The Congressional Response to Corporate Expatriations: The Tension Between Symbols and Substance in the Taxation of Multinational Corporations*, 24 Va. TAX REV. 475, 485 (2005).

ii. Lowering the Corporate Tax rate

One recurring complaint by companies against the United States is its high corporate tax rates.[182] Globalization and high corporate taxes pressure American based MNCs to effectively compete against foreign corporations so they can maximize their profits.[183] The high U.S. corporate tax rate affects a corporation's investment decisions, including where they will be domiciled or headquartered.[184] The American corporate tax system is perceived by many as "being disadvantaged in many aspects, including its relatively high corporate tax rates and complex tax provisions."[185] As a result, while many foreign corporations save millions because they are domiciled in a lower tax jurisdiction, American corporations respond to these pressures by pursuing tax saving strategies, like inversions.[186] The only country with a higher corporate tax rate higher than the United States is Japan.[187] This provides corporations with many inversion location options.[188] For instance, when Cooper Industries expatriated it anticipated tax savings of at least $55 million a year,[189] while Burger King is anticipating tax savings of least $400 million in the next two years by expatriating to Canada.[190]

The possibility of reducing tax liability heavily motivates American MNCs to undertake an inversion. Because the U.S. tax system taxes foreign corporations only on U.S. generated income, those who invert to another jurisdiction and obtain "foreign" status only have to pay a high corporate tax on income generated in the United States and not on foreign income. Therefore, a lower tax rate will eliminate the incentive for American MNCs to invert.[191] Adopting a lower tax rate would increase the United States tax revenue. Although it is difficult to estimate, inversions may be costing the federal government a loss around $100 billion per year in tax revenue.[192]

The Obama Administration and Congress have recognized the need to stop inversions by advocating for a tax reform and a lower corporate tax rate.

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182 Holmes, *supra* note 8, at 16.
183 *Id.* at 7-8.
184 *Id.*
185 *Id.* at 9.
186 *Id.*
187 *Id.* at 15.
188 *Id.* at 18.
189 Kirsch, *supra* note 182, at 480-81.
190 Gurral, *supra* note 36.
191 *See* Kyler Pomerleau & Andrew Lundeen, *The U.S. Ranks 32nd out of 34 OECD Countries In Tax Code Competitiveness*, FORBES, (Sept. 22, 2014, 3:57 P.M.), http://www.forbes.com/sites/realspin/2014/09/22/the-u-s-ranks-32nd-out-of-34-oecd-countries-in-tax-code-competitiveness/.
192 JANE G. GRAVELLE, CONG. RESEARCH SERV., *TAX HAVENS: INTERNATIONAL TAX AVOIDANCE AND EVASION* (2013), *available at* 2013 WL 1401539, at *2.

Two recent proposals advocate for tax reform, S. 727 and the Tax Reform Act of 2014, which would reduce the corporate tax rate from 35% to 24%.[193] Adopting a lower corporate tax rate will contribute to economic efficiency and growth.[194] By charging corporations less in tax liability, the United States would be able to make more by keeping MNCs from inverting. Adopting a "less is more" mentality might not only decrease the number of inversions, but it could also provide incentives for other foreign MNCs to invest in the United States.

Reducing the corporate tax rate would also keep income shifted to a foreign country inside the United States. For instance, consider an American MNC (Corp. A) that generates $100 million worth of world-wide income each year, $30 million of which are generated in the United States. Corp. A would have to pay $35 million in taxes. If this corporation decides to move its residence to a jurisdiction that has a corporate tax rate of 12% it would only pay $12 million or less in taxes. Moving to a different jurisdiction also means that the United States would only be able to tax 35% of $30 million or $10.5 million, instead of 35% of $100 million. This results in tax revenue loss of $24.5 because once inverted, Corp. A would have "foreign" status for tax purposes and only be taxed on its American earnings

The example above relies on assumptions of hypothetical tax rates and does not take into account the possibility that Corp. A could offset some of the income taxed by claiming foreign tax credits. However, the results do highlight (to a much smaller scale) how much revenue is lost by the United States each year when companies expatriate. In the example provided, by moving its residence, Corp. A generated tax savings of about $23 million per year. The MNCs that invert have annual earnings that are substantially higher than $100 million. They are multibillion dollar companies. When corporations with higher annual incomes leave the United States and move into other jurisdictions, the losses in tax revenues are much higher and detrimental.

The incentive to expatriate decreases as the corporate tax rate decreases. One of the main reasons corporations expatriate is because of high corporate tax rates. By eliminating one of the primary causes of inversions and providing a more inviting and competitive environment to corporations, corporations will be more inclined to stay.

iii. Penalties to shareholders in the form of taxes

A proposed solution to decreasing the number of inversions is to penalize the shareholders. Although this has not yet been fully advocated by others, it is worth exploring. Today, those who hold shares in MNCs are institutional

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[193] MARPLES & GRAVELLE, *supra* note 4, at 12.
[194] *Id.* at 13.

investors who are corporations themselves. Therefore, these corporations are the shareholders approving inversion transactions. The government may be able to decrease the number of inversions by giving economic sanctions to those who approve them. These sanctions would be in the form of high taxes paid for the value of the new foreign stock, or loss in the ability in these shareholders/corporations to use deductions or credits to lower their own tax liability. Sanctions could decrease the likelihood of approval by shareholders because it would directly cost them. However, this would require the tax liability to be greater than the gain in stock value from the inversion.

## CONCLUSION

Inversion is a heavily debated topic. As more and more corporations pack their bags and move their residence to foreign countries, the need for a tax reform becomes more apparent. In a recent statement, President Obama highlighted the need for change and stated that "it's time to stop rewarding businesses that ship jobs overseas, and start rewarding companies that create jobs right here in America."[195]

Attempts by Congress have been ineffective. The Jobs Act of 2004 was not successful at eliminating inversions because of the substantial business activity exemption and the 80/20 ownership requirement that qualifies a foreign parent corporation as domestic. The Stop Inversions Act of 2014 is a step in the right direction, but it might only temporarily solve the issue of inversion. Changing the ownership requirement to 50% and amending section 7874 of the tax code might slow down corporations from expatriating, but, as history has proven, MNCs may still find loopholes or ways to expatriate because their incentive to do so is high. To find an effective solution, the cause of the problem needs to be attacked. Corporations that have inverted have saved hundreds of millions of dollars in taxes. High corporate taxes have been recognized as the primary reason for considering an inversion. Therefore, it is these high corporate taxes that need to be addressed. While it is difficult to find a reliable estimate of tax revenue lost to inversions, it is substantial enough to justify a reform in our tax system. Tax reform calling for a lower corporate tax rate is needed. As Senator Max Baucus' stated while advocating for lower taxes: "Tax reform needs to put American businesses in the best position to compete in the global economy while adding U.S. jobs."[196]

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[195] John D. McKinnon & Scott Thurm, *U.S. Firms Move Abroad To Cut Taxes*, WALL ST. J., (August 28, 2012 at 9:38 p.m.), http://www.wsj.com/articles/SB10000872396390444230504577615232602107536.

[196] *Id.*