Comments of the FACT (Financial Accountability and Corporate Transparency) Coalition on The Department of Treasury's Notice 2014-52.

The FACT Coalition unites civil society representatives from small business, labor, government watchdog, faith-based, human rights, anti-corruption, public-interest, and international development organizations. We seek an honest and fair corporate tax code, greater transparency in corporate ownership and operations, and commonsense policies to combat the facilitation of money laundering and other criminal activity by the legitimate financial system.

The FACT Coalition was founded to specifically advocate for measures to halt a corporation's ability to avoid paying their U.S. tax on U.S. profits through the abuse of offshore tax havens and corporate tax loopholes. The Department of Treasury's Rules Regarding Inversions and Related Transactions (Notice 2014-52) is a significant step forward in curbing corporate inversions, a corporate tax-avoidance tactic that has been much more widely utilized recently. However, broader reform is necessary.

Inversions provide companies with the opportunity to exploit offshore tax loopholes. While maintaining a U.S.-based headquarters and ownership, a company can use these loopholes to disguise domestic profits as having instead been generated overseas in a tax haven. U.S. firms must pay U.S. taxes on those profits so that it can use them to pay dividends to shareholders or make other investments. But once a corporation is "foreign," the profits it books offshore for tax purposes are exempt from U.S. tax, increasing the reward for taking advantage of these loopholes. Since 1983, more than 75 companies have utilized a corporate inversion to "flee the country," according to the Congressional Research Service, and many more attempt to do so. An estimate by the Joint Committee on Taxation places the price tag for corporate inversions at $33 billion over the next decade.

The Treasury Department deserves credit for taking action in issuing rules to limit the incentives for corporations to invert. Specifically addressing decontrolling and hopscotching, as well as bolstering the requirement that the former owners of the U.S. entity own less than 80% of the new combined entity through passive income have been significant positive steps. Indeed, the guidance has already had what we would deem to be a positive effect as several companies have halted plans to invert, most notably AbbVie and Shire.

The Treasury Department clearly stated that it plans to continue addressing the problem of inversions, specifically issuing rules to block earnings stripping. We urge the Treasury Department in the strongest terms possible to follow through on this. Earnings stripping allows companies to avoid U.S. corporate tax by shifting domestic earning to low- and no-tax jurisdictions. In the process, the U.S. part of the company is saddled with debt which is owed to the foreign entity. The interest payments on the debt are often deducted from taxable income, reducing U.S. profits on paper and essentially shifting them to the foreign subsidiary.

To tackle this issue, we offer the Treasury Department two potential remedies. First, the IRS already has broad authority to reclassify debt as equity under Section 385, however they are forced to do so on a case-by-case basis with limited resources. Allocating the IRS more resources for this purpose offers one way to curb earnings stripping. Second, the Treasury Department should consider adopting some bright line tests on the debt to equity ratio that would automatically disallow the interest deduction without the IRS having to challenge it. Disallowing the interest deduction when the U.S. company's debt-to-equity ratio exceeds that of the entire worldwide corporate group would resolve the problem of earnings stripping, restrict this tax avoidance tactic, and curb one of the biggest incentives for corporations to invert in the first place.

However, many other incentives for American companies to invert still exist. Here too, we urge the Treasury Department to address some of these, including the ability of American corporations to use deferral to avoid paying U.S. taxes they owe on the profits that have been "booked" offshore. Those earnings should subject to U.S. tax at the time when the inversion is completed, similar to the tax that individuals pay on their unrealized capital gains when they renounce their U.S. citizenship. Corporations should be held to the same standard when they too renounce their corporate ownership in the U.S., change their headquarters, and reincorporate in another country by requiring them to pay the taxes that they owe.

Additionally, the Treasury Department should prohibit the federal government from awarding contracts to an American corporation that has changed the address of its headquarters to a foreign country for tax purposes. The use of federal tax dollars to contract with these firms runs counter to common sense as these companies do not really leave the U.S. in any shape or form and their actions instead indicate that they seek to enjoy the rights, privileges, and protections of this country without paying their share.

Inverted companies continue to benefit from access to America's largest consumer market, a well-educated work force trained by our school systems, strong private property rights enforced by our court system, and American roads and rail to bring products to market – all supported by our tax dollars. It should be noted that Congress has already shown support for such action by passing bipartisan amendments in the appropriations process that barred companies from receiving federal contracts if they've reincorporated in Bermuda or the Cayman Islands.

Since 2004, bipartisan leaders in Congress have worked together to stop inversions, but those measures have significant loopholes and do not address some of the issues raised here, or if they do fail to meet what we view as a high enough standard. Although there are major prospects for corporate tax reform in the coming year, in no way should that dissuade the Treasury from taking action. With corporate tax loopholes costing

American taxpayers close to $90 billion every year, it is imperative that the federal government stops corporations from being able to avoid their U.S. taxes on U.S. profit, and the Treasury Department remains a crucial actor in this process. These steps would help restore the long-standing ban on inversions that companies have only recently figured out how to get around. We urge you to include these steps in future guidance.

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