May 13, 2014

Dear Senator,

We urge you to **refuse to renew two egregious and expensive corporate tax loopholes for companies that shift profits and jobs offshore:**

- **The "active financing exception," which would cost $58.8 billion if extended for ten years.**
- **The "controlled foreign corporation (CFC) look-through rule," which would cost $20.3 billion over ten years.**

These two tax breaks – up for renewal as part of the EXPIRE Act (S. 2260) – are not free. Subsidizing highly profitable corporations comes at the expense of ordinary American taxpayers, who shoulder their cost through cuts to programs or higher taxes.

The "active financing exception" and "CFC look-through rule" allow U.S. multinational corporations to park their earnings offshore and avoid paying tax on them. If Congress refuses to extend these provisions – both of which expired at the end of 2013 – some U.S. companies will have much less incentive to send their profits and jobs offshore.

A U.S. multinational corporation generally cannot defer paying tax on the income of its foreign subsidiaries that is considered "passive" (even if it is not repatriated), such as interest, dividends, rents, and royalties. Congress has determined that deferral is not appropriate for this type of income because it is highly fungible and the entities that earn it are very mobile, making it a prime vehicle for making profits show up on the books of tax haven subsidiaries.

The "active financing exception" is an exception to this general rule that passive income earned by a foreign subsidiary must be recognized for tax purposes when earned. The "active financing exception" was repealed in the 1986 Tax Reform Act but reinstated in 1997 as a "temporary" measure after fierce lobbying by corporations. In 1998 it was expanded to include foreign captive insurance subsidiaries. This provision has been extended every year since 1998, usually for only one or two years at a time.

The exception creates two harmful incentives. First, it encourages American corporations to lend, invest and create jobs in foreign countries rather than in the U.S., because it provides a break from U.S. taxes on financial income generated offshore. Second, it encourages American corporations to engage in "financial engineering" to make their U.S. profits appear to be generated by a "captive" foreign financing subsidiary or other type of offshore subsidiaries, in order to avoid U.S. taxes.

The active financing exception is one of the primary reasons General Electric has paid, on average, only a 1.8% effective U.S. federal income tax rate over a ten year period. G.E.'s federal tax bill is lowered dramatically with the use of the active financing exception provision by its subsidiary, G.E. Capital, which Forbes noted has an "uncanny ability to lose lots of money in the U.S. and make lots of money overseas."

In addition, this exception allows large U.S.-based financial institutions to pay low effective rates. As a group, the financial industry has one of the lowest effective rates of all corporations, averaging only 18.8% for the years 2008-2012.

The ten year cost to taxpayers of extending the active financing exception is $58.8 billion, according to the Joint Committee on Taxation.

Another exception to the general rules requiring taxation of passive income, the CFC look-through rule allows a U.S. multinational corporation to defer tax on passive income, such as royalties, earned by a foreign subsidiary (a "controlled foreign corporation" or "CFC") if it is paid to that subsidiary by a related CFC and can be traced to the active income of the payer CFC.

The CFC look-through rule allows multinationals to create transactions purely for "earnings stripping" – to create dividends, interest, rents, and royalties to strip active income out of high-tax countries and move it into low-tax or no-tax countries without incurring any U.S. tax liability (or any tax liability anywhere).

The Joint Committee on Taxation estimates that the CFC look-through rule would cost taxpayers $20.3 billion over ten years.

In summary, these rules allow U.S. multinationals to create "stateless income": income that is treated, for tax purposes, as earned in a low- or no-tax country instead of in the country where the employees and assets are located.

Transactions enabled by these rules are a reason for the low effective tax rates of companies with highly-valued intangibles. High-tech companies like Apple and Google and pharmaceutical companies like Pfizer and Forest Laboratories are easily able to shift income from the U.S. (or other countries with a meaningful corporate income tax) to low- or no-tax countries.

Public outcry against tax loopholes for large corporations has never been louder. News reports about the way companies such as G.E., Apple, Pfizer and Facebook are able to legally game the system continue to outrage your constituents and the country as a whole. These tax giveaways come at the expense of critical programs and the fiscal health of our government. Congress needs to stand up for ordinary taxpayers and stop giving these corporations a free pass. **That is why we urge you to reject the active financing exception and the CFC look-through rule.**

Sincerely,

The Financial Accountability and Corporate Transparency (FACT) Coalition

AFL-CIO
Alliance for a Just Society

Americans for Democratic Action
Americans for Tax Fairness (a coalition of 400 organizations)
American Sustainable Business Council Action Fund
Campaign for America's Future
Center for Effective Government
Center of Concern
Citizens for Tax Justice
Domini Social Investments LLC
Fair Share
Global Financial Integrity
Jubilee USA Network
Main Street Alliance
National People's Action
New Rules for Global Finance
Public Citizen
Service Employees International Union (SEIU)
U.S. Public Interest Research Group (U.S. PIRG)
Voices for Progress