



FACTCOALITION

Financial Accountability & Corporate Transparency

March 28, 2016

The Honorable Jacob J. Lew
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, I am writing to urge the Department of the Treasury to take all measures within its authority to curtail the ability of corporations to avoid paying taxes by engaging in corporate inversions. Explicitly, FACT believes that the Treasury Department could take further steps to prevent inversions through the use of its regulatory authority under Sections 956 and 7701 of the U.S. Tax Code.ⁱ

The FACT Coalition unites over 100 different U.S. civil society representatives from small business, anti-corruption, faith-based, government watchdog, human rights, investor, labor, public-interest, and international development organizations, working to create a more honest, transparent, and fair international tax system.ⁱⁱ

We believe that Treasury should expand its prior Notice 2014-52 limiting the ability of expatriating firms to use so-called “hopscotch loans” and to de-control their controlled foreign corporations to avoid paying taxes that they owe on untaxed offshore earnings.ⁱⁱⁱ This can be accomplished by not limiting the prior notice only to firms covered by Section 7874 and instead using your authority under Section 956 and Section 7701 to apply the limitations to all foreign ownership cases. Even lowering the threshold for applying Notice 2014-52 to 50 percent ownership by the original shareholders of the former U.S. firm (rather than 60 percent as under Section 7874) could have the effect of curbing a significant amount of inversion-driven tax avoidance.

While legislation to curb these inversions would be ideal, the political reality is that Congress is unlikely to act before next year. Unfortunately, the many planned inversions—such as those by Pfizer, IHS, and Johnson Controls—show that immediate action is needed to prevent a significant erosion in the corporate tax base. In fact, analysts at Citizens for Tax Justice (CTJ)—a FACT Coalition member—estimate that Pfizer alone could use an inversion to avoid \$40 billion in taxes on the \$194 billion that the company has in untaxed offshore earnings.^{iv}

To be clear, these actions are not just about one company. Pfizer could just be the tip of the iceberg as other companies (like IHS and Johnson Controls) seek to imitate its tax strategy. A recent study by CTJ, found that U.S. companies likely owe as much as \$695 billion on the \$2.4 trillion in earnings they hold offshore.^v Given the substantial sum owed in taxes by these companies, allowing them to avoid taxes entirely through hopscotch loans or de-controlling could have negative implications on the tax base moving forward.

The gaming of our international tax system exacerbates economic inequality; drains revenue out of both developed and developing countries; hurts legitimate businesses, families, and communities; and undermines our country's ability to govern. It is time we eliminate this egregious offshore loophole to make sure that the corporations that benefit from all of the resources, protections, and markets in the United States pay their fair share of taxes.

Thank you for your careful consideration of this matter.

Sincerely,

Clark Gascoigne

*Interim Executive Director
FACT Coalition*

ⁱ See: *Americans for Tax Fairness*, "Letter to U.S. Treasury Secretary Jacob J. Lew," dated March 21, 2016 (accessible at <http://www.americansfortaxfairness.org/files/ATF-Sign-on-Letter-to-Jack-Lew-on-Pfizer-Merger-55-signers-FINAL.pdf>).

ⁱⁱ *FACT Coalition*, "Coalition Members and Supporters" (accessible at <http://thefactcoalition.org/about/coalition-members-and-supporters/>).

ⁱⁱⁱ *Internal Revenue Service*, "Notice 2014-52: Rules Regarding Inversions and Related Transactions," October 14, 2014 (accessible at https://www.irs.gov/irb/2014-42_IRB/ar07.html).

^{iv} Richard Phillips, "How Treasury Could Take Action to Prevent Inversions," *Citizens for Tax Justice*, March 23, 2016 (accessible at http://www.taxjusticeblog.org/archive/2016/03/how_treasury_could_take_action.php).

^v Jenice Robinson, "Fortune 500 Companies Hold a Record \$2.4 Trillion Offshore," *Citizens for Tax Justice*, March 3, 2016 (accessible at <http://ctj.org/pdf/pre0316.pdf>).

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