



# Why We Need A Minimum Tax on U.S. Corporations' Foreign Profits

## First Task in Corporate Tax Reform Should Be Addressing the Offshoring of Corporate Profits

By Seth Hanlon | February 2012

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### Introduction

Two of the most important challenges in tax reform will be reorienting our tax code toward domestic job creation and closing loopholes that drain revenues. Currently incentives embedded in the tax code encourage U.S. companies to invest and create jobs overseas rather than here at home. Among the main reasons the U.S. tax code rewards offshore investment are the loopholes and porous rules that allow multinational companies to avoid U.S. taxes by reporting much of their profits in tax havens such as Bermuda and the Cayman Islands. Shifting profits into tax havens costs the U.S. Treasury tens of billions of dollars in revenue every year.

The Obama administration is expected soon to release proposals for reforming the corporate income tax code.<sup>1</sup> In his State of the Union address last month, the president unveiled one such proposal—a minimum tax on corporations' overseas profits. “No American company should be able to avoid paying its fair share of taxes by moving jobs and profits overseas,” he told a joint session of Congress.

The president's annual budget is expected to be released February 13. It will likely provide more details about the minimum tax proposal. But the idea behind it is simple: U.S. multinationals should not be allowed to pay zero taxes, or close to zero taxes, by reporting income in tax haven countries when other companies investing and reporting profits here in the United States are paying normal levels of corporate taxes. A corporate minimum tax would directly combat such profit shifting and lessen the tax code's bias toward foreign investment.

That is a critical starting point for a broader corporate tax overhaul aimed at boosting investment in our economy, leveling the playing field among competing businesses, and shoring up the government's revenue base. A global minimum tax would also be

an improvement to the corporate tax code even without other fundamental changes because it addresses one of the most serious flaws in our current system.

This issue brief summarizes the need for a minimum tax on U.S. multinationals' foreign profits. It emphasizes the following key issues:

- The shifting of corporate profits into tax havens bleeds tens of billions of dollars in revenue out of the U.S. Treasury every year, undermining the domestic tax base.
- This profit shifting largely occurs on paper, but the consequences are very real because of the negative incentives for actual investment and job creation in the United States.
- A minimum tax would combat profit shifting and tax haven abuse, would not harm U.S. economic competitiveness, and would bring the U.S. tax code's anti-tax haven rules closer in line with those of other major economies.

Let's examine each of these points in turn.

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## The shifting of corporate profits into tax havens results in tens of billions of dollars in lost revenue

It is often said that the United States has a “worldwide” tax system—that is, a system where U.S. corporations pay U.S. taxes on their profits wherever in the world they earn them. If we actually had such a purely “worldwide” corporate tax system, then U.S. corporations would pay the same level of taxes whether they report their global profits in the United States or elsewhere. They would pay their U.S. taxes, less any foreign taxes owed, and it would not matter for bottom-line tax purposes where the income was located.

But the reality is much more complicated. Even though the United States nominally has a “worldwide” tax system, foreign profits are taxed very differently—and often much more favorably—than domestic profits. Because of a feature in our tax system known as deferral, U.S. multinationals can delay paying U.S. taxes on overseas profits indefinitely, whereas they must pay taxes on domestic profits in the year they are earned. Overseas profits are taxed only when and if they are returned to the United States—and often not even then.<sup>2</sup>

Deferral can be extremely valuable because it allows U.S. companies to reinvest profits overseas indefinitely without paying U.S. corporate taxes. It is all the more valuable for companies that are able to avoid foreign taxes by reporting profits in low-tax or no-tax countries.

It is surely no coincidence, then, that U.S. multinationals consistently report their largest profits in a handful of relatively small countries that impose little or no corporate tax. One analysis found that in 2008 six of the seven countries where U.S. multinationals reported their largest profits had effective corporate tax rates of 4 percent or lower: the Netherlands, Luxembourg, Ireland, Bermuda, Switzerland, and Singapore.<sup>3</sup> (see Figure 1)

**FIGURE 1**  
**Where U.S. multinational profits are**

Top 10 countries where subsidiaries of U.S. multinational firms report profits, 2008

Country	Effective tax rate
1. Netherlands	2.1%
2. Luxembourg	0.4%
3. Ireland	4.0%
4. Canada	13.2%
5. Bermuda	0.6%
6. Switzerland	3.4%
7. Singapore	3.4%
8. Germany	17.8%
9. Norway	38.4%
10. Australia	20.1%

Source: Bureau of Economic Analysis data from Kimberly A. Clausing, *The Revenue Effects of Multinational Firm Income Shifting*, Tax Notes, March 28, 2011

U.S. multinationals claim extraordinary levels of profitability in these and other low-tax countries.<sup>4</sup> They reported \$2.6 million in profit per employee in Bermuda in 2008 and \$5.4 million per employee in 2007, compared to a total worldwide ratio of about \$40,000 per employee.<sup>5</sup> Something is wrong with this picture.

It is clear from the observable measures of economic activity—location of customers, employees, tangible assets—that most of these profits aren’t actually being earned in these small countries in any meaningful sense. The obvious explanation is that they are moved there on paper for tax-motivated reasons.

**FIGURE 2**  
**The offshoring of corporate profits**

How six multinational corporations reduce their U.S. tax bills, as detailed by the congressional Joint Committee on Taxation, 2010

Company	Sector	Observable measures of business activity in the United States	Share of profits reported in the United States	Location of affiliates
“Alpha”	Consumer products	60 percent of sales to customers in the United States; majority of R&D performed in the United States	Less than 30 percent of earnings reported in the United States	Netherlands; China; unnamed Asian country with no corporate tax
“Bravo”	Industrial technology products and services	50 percent of sales in the United States and Canada; 97 percent of U.S. workforce; substantially all R&D performed in the United States	Less than half of taxable income reported in the United States	Bermuda, Switzerland, Netherlands
“Charlie”	Industrial products	More than 60 percent of product sales to U.S. customers	10 percent of income reported in the United States	Puerto Rico, Switzerland, Cayman Islands
“Delta”	Technology-based consumer products	Approx. 45 percent to 55 percent of revenue from U.S. operations; substantially all R&D performed in the United States.	10 percent of earnings reported in the United States	Netherlands, Ireland, Singapore
“Echo”	Technology-based consumer products	Sales to U.S. customers declined to 60 percent from 67 percent of total sales over the years studied	Earnings reported in the United States declined to 25 percent from 50 percent of total earnings	Switzerland, Cayman Islands
“Foxtrot”	Consumer products	50 percent of total sales to U.S. customers; substantially all R&D performed in the United States.	Less than 5 percent of global income reported in the United States.	Netherlands, Bermuda, Hong Kong

Source: Joint Committee on Taxation, Present Law and Background Related to Possible Income Shifting and Transfer Pricing, July 20, 2010 (JCX-37-10)

How is it possible for tens of billions of dollars in corporate profits to migrate to places like Bermuda? Recent press reports shed light on the complex legal and accounting maneuvers that companies use to ensure that large amounts of income are transplanted offshore and ultimately reported in low-tax jurisdictions.<sup>6</sup>

Indeed, the congressional Joint Committee on Taxation in 2010 published a study detailing similar strategies actually used by six real but anonymous multinational corporations.<sup>7</sup> (see Figure 2) These strategies include:

- Moving valuable intangible property to low-tax affiliates
- Aggressive “transfer pricing”
- Expense allocation
- Profit stripping

Each of these profit-shifting strategies is worth exploring in more detail.

### Moving valuable intangible property to low-tax affiliates

It is common practice for U.S. multinationals to transfer valuable intangible property developed in the United States such as drug patents and software licenses to countries where the income stream from these assets will be lightly taxed or even untaxed. Multinationals typically accomplish this transfer of assets through licensing or cost-sharing agreements between the U.S. parent and the affiliate in the low-tax country.

This is accomplished, for example, when ownership of a software license is transferred to a tax-haven subsidiary, and affiliates in non-tax haven countries pay royalties to the tax-haven subsidiary for its use. The royalties are deductible in the non-tax haven countries, while the royalty income is taxed at a nominal or zero rate in the tax haven.

### Aggressive “transfer pricing”

When a U.S. multinational controls affiliates in various countries, it can set the terms for transactions between them, ultimately determining how much of the corporate group’s global profit is reported in each country. Here’s an example, exaggerated to highlight the basic issues at stake:

A U.S. parent company spends \$5 on research and development to develop a patent for making widgets. It then licenses that patent for exactly \$5 to its affiliate in low-tax Singapore. The Singaporean subsidiary manufactures the widgets at an additional cost of \$5 and sells them back to the U.S. parent for \$20. The U.S. parent then sells them to U.S. customers for \$20. In this example, the company will have \$10 in net profit—all of which will be booked by the Singaporean subsidiary and none by the U.S. parent company—even though the company’s management, R&D, and customers are in the United States.

Under Internal Revenue Service rules, related companies are required to set prices for such transactions by reference to a hypothetical price that would be agreed to by two unrelated

companies dealing at “arm’s length.” But some of the most complex and important transactions simply aren’t done between unrelated parties, so comparable transactions do not provide a reference point. And because of inadequate rules and enforcement in the face of a huge volume of highly complex transactions, U.S. multinationals enjoy wide latitude to price intragroup transactions in such a way to minimize their tax bills. Typically this means favoring affiliates in low-tax jurisdictions at the expense of U.S. parents, so that as little income as possible is reported in the United States.<sup>8</sup>

### Expense allocation

The current U.S. tax code permits companies to take immediate deductions for interest on debt and other expenses that give rise to tax-deferred overseas profits. As a result multinationals often try to ensure that deductible expenses are incurred in the United States (for example by taking on debt in the United States), while income flows to offshore affiliates, where it is taxed at low rates or not at all.

A U.S. company subject to the 35 percent marginal corporate rate, for example, can borrow funds in the United States and contribute those funds to an affiliate in a country with a 10 percent tax rate. The U.S. parent company is allowed an immediate deduction (saving it 35 percent of the interest paid in the current year), while the resulting income is only taxed at 10 percent until repatriated to the United States.<sup>9</sup>

### Profit stripping

Our existing tax system also encourages and enables U.S. multinationals to strip profits from other countries where they do business internationally and move it to tax havens. This is important because it increases the inducement to move jobs overseas. A U.S. multinational, for example, might strip profits from France and move them to no-tax Bermuda by establishing a Bermudan subsidiary that lends money at interest to its French subsidiary. In this way the French subsidiary’s taxable income is reduced by the interest payments, while the Bermudan interest income is not taxed (similar to the royalty strategy described above).

The U.S. tax system used to make such avoidance of foreign taxes less profitable—providing somewhat of a backstop for loopholes in other country’s tax codes. But U.S. policy changes over the past two decades have accelerated these kinds of techniques.<sup>10</sup> These types of profit-stripping strategies do not directly reduce U.S. tax but they permit U.S. multinationals to shift income from relatively high-tax foreign countries to low-tax foreign countries. In so doing, they enhance the rewards for moving investment outside the United States in the first place, even to high-tax countries.

Profit shifting erodes the corporate revenue base, draining the United States of tens of billions of dollars in revenue every year. And it is getting worse. The U.S. government was estimated to have lost about \$90 billion in revenue in 2008 from profit shifting, up from \$60 billion in 2004.<sup>11</sup> To put that figure in perspective, the corporate income tax only raised an average of \$300 billion per year during the 2004-08 timespan, suggesting that profit shifting is draining the U.S. Treasury of a significant share of corporate tax revenues. (see Figure 3)

Ultimately, that worsens the U.S. fiscal situation and increases the tax burden on individuals and domestic businesses. Worse still, it drives U.S. multinationals to shift U.S. jobs abroad, as explained in the next section.

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This profit shifting largely occurs on paper, but the consequences are very real

In addition to the revenue loss, corporate profit shifting has other, indirect effects that are harmful to the U.S. economy and domestic job creation. As discussed above, the U.S. tax code's deferral regime means that foreign investment is effectively taxed less than domestic investment given existing tax rates. That means the U.S. tax code rewards companies for making investments abroad—and leads to them shifting offices, factories, and jobs abroad even if similar investments in the United States would be more profitable absent tax considerations.

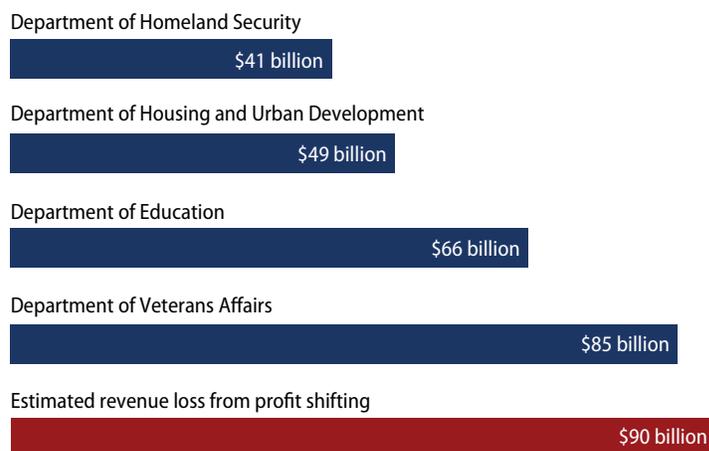
The availability of profit-shifting techniques “turbo-charges” these incentives, in the words of economist Martin Sullivan.<sup>12</sup> When corporations know they will be able to shift profits from the foreign countries where they make some actual investments to sheer tax havens (from Ireland to Bermuda, for example), they have an even stronger financial incentive to locate investment offshore. This is not simply an issue of other countries attracting capital by having lower corporate tax rates. The existing U.S. system even incentivizes companies to invest in foreign countries with relatively high corporate tax rates because common tax planning techniques allow them ultimately to report the resulting income in tax havens.<sup>13</sup>

In 2008 the Government Accountability Office found that corporations pay a 16.1 percent effective tax rate on “foreign-source” income (combining both U.S. and foreign taxes) and a 25.2 percent rate on U.S.-source income.<sup>14</sup> Studies also find that the effective foreign tax rates of U.S. multinationals have declined significantly in recent years

FIGURE 3

### The cost of profit shifting to the U.S. government

Revenue loss from profit shifting exceeds the budgets of major federal agencies



Source: Kimberly A. Clausing, “The Revenue Effects of Multinational Firm Income Shifting,” Tax Notes, March 30, 2011 (estimate for 2008); Office of Management and Budget, “Historical Tables,” Table 4.1 (fiscal year 2008).

partly because of declining corporate tax rates in other countries but also largely due to the tax avoidance strategies described above.<sup>15</sup> That means that the tax bias in favor of foreign investments is getting worse.

Beyond sharpening the bias toward foreign investment, the U.S. tax code's permissiveness toward tax havens is economically inefficient in other ways. It advantages large multinational companies—those best positioned to exploit tax havens—over smaller, domestic companies. And it favors the industries whose core assets are intangible (patents, formulas, computer code) and can be moved offshore on paper over those industries whose assets (equipment, inventory) are planted in the United States. Such tax-code-induced distortions are harmful for long-term economic growth.

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### A minimum tax will directly combat profit shifting and tax-haven abuse and won't harm U.S. economic competitiveness

The Obama administration has not yet released the details of its corporate minimum tax proposal, and so it is not yet known how the proposed rules would work if enacted by Congress. A corporate minimum tax could work in one of several ways. It could include all corporate profits subject to very low foreign tax rates under the tax code's existing "Subpart F" rules, which would mean that they would no longer enjoy the benefit of deferral and would be subject to current-year U.S. tax in the same manner as domestic profits.<sup>16</sup> Or the proposal could tax corporate profits on the difference between some minimum effective tax rate and the actual effective tax rate paid by U.S. multinationals in foreign jurisdictions, if lower. The minimum tax proposal would complement other corporate anti-profit shifting measures previously proposed by President Barack Obama.<sup>17</sup>

The details of the proposal will be important. Yet it is clear that any reforms that are enacted that ensure corporate profits reported in tax havens are subject to any tax will be an improvement over the current system. A corporate minimum tax would:

- Eliminate or reduce the financial benefits of artificial profit shifting
- Lessen the tax code's bias toward foreign investment
- Help level the playing field among multinational and domestic businesses
- Help level the playing field between businesses that produce mobile, intangible assets and businesses that have relatively immobile, tangible assets
- Raise needed revenue

Undoubtedly, any effort to ensure that large U.S. corporations pay at least some minimal level of taxes on foreign profits will be criticized as harming U.S. competitiveness. Large companies often claim that our existing international tax system impedes the ability of U.S. multinationals to compete on a level playing field overseas. And they have criticized previous proposals to close international loopholes as further impeding competitiveness.

It should be emphasized, though, that taxes are only one of many factors affecting a firm's cost of capital, which in turn is only one of many factors bearing on its ability to compete in global markets. More importantly, the ability of U.S. multinationals to compete in global markets is only one aspect of our "competitiveness" as a nation.<sup>18</sup> The tax incentives that favor foreign investment harm our economic competitiveness. And public investments—including education, infrastructure, and scientific research—boost our competitiveness but depend on having an adequate tax base.

Even in the narrower sense of "competitiveness"—the tax code's treatment of U.S.-based multinationals—the picture is more complex than many business groups suggest. It is undoubtedly true that there are specific companies and specific investments that are disadvantaged by the current U.S. structure. But the claims that our corporate tax code hampers the competitiveness of U.S. multinationals almost always focus exclusively on two aspects of our tax system—the statutory rate and the ostensibly "worldwide" nature of the U.S. corporate tax. They ignore other aspects of our system, including its failure to address profit shifting.

The U.S. 35 percent statutory rate for corporations is indeed higher than all other major economies except Japan. It is also true that most other countries have "territorial" systems that generally exempt active business profits earned in other countries from tax. Yet it is also the case that U.S. rules against corporate profit shifting are weaker than those in other countries.<sup>19</sup>

The only way to gauge how the tax code treats U.S. multinationals overall is to look at the combined effect of the tax rate, the tax base, and the gaping holes in the tax base. A 2007 report by the Treasury Department found that despite our relatively high statutory corporate rate, average tax rates for corporations are low compared to other advanced economies.<sup>20</sup> "The contrast between [the U.S.'s high statutory] rate and low average corporate tax rate implies a relatively narrow corporate tax base," the report concluded.

A more recent study examined the effective tax rates paid by the 100 largest U.S. companies and 100 largest EU companies over the past 10 years. The study found that while the U.S. statutory rate is 10 percentage points higher than the average corporate statutory rate in the European Union, the European companies paid higher worldwide effective tax rates in the aggregate than the U.S. companies.<sup>21</sup> The authors of the report explained: "Presumably, the reason for this result is that while EU companies have a lower statutory rate, their tax base is larger because it has fewer exceptions."

One of the major exceptions, they emphasized, is the treatment of subsidiaries in low-tax countries. Many European countries and Japan have antiabuse rules that take into account both the effective tax rate in the foreign country and whether the foreign subsidiary has a real presence in the country when determining whether to tax profits reported there.<sup>22</sup>

Countries employ a variety of specific kinds of rules, but the general approach is similar: Corporate profits reported in jurisdictions with unusually low tax rates are subjected to home-country tax on a current basis (that is, in the year they are earned). While the details may differ, these rules are roughly similar in purpose and effect as the corporate minimum tax expected to be proposed by President Obama. By enacting a rule to address the reporting of corporate profits in tax havens, the United States would bring our antiabuse rules closer in line with those of other countries. (see Figure 4)

## Conclusion

President Obama is not alone in suggesting a minimum tax mechanism to guard against profit shifting by U.S. multinational corporations. Rep. Dave Camp (R-MI), chairman of the House Ways and Means Committee, included a somewhat similar proposal in a “discussion draft” on international corporate tax reform that he released in October. As one of three potential options to address the “erosion” of the corporate tax base, Rep. Camp’s draft suggested subjecting overseas profits to the tax code’s “Subpart F” rules—generally taxing them as if they were domestic profits, if the profits are subject to an effective tax rate of less than 10 percent and the foreign subsidiary fails to meet an “active business” test. Though such a rule may not be strong enough, the inclusion of this option in Rep. Camp’s discussion draft acknowledges the need to address weaknesses in our current antiabuse rules.

Other fundamental questions of corporate tax reform will continue to be debated, including whether corporate tax reform should raise revenue or be “revenue-neutral,” whether we should lower the U.S. corporate rate, and how the U.S. tax code should treat foreign profits generally. But central to any tax reform will be how the corporate tax base should be broadened. The proposed minimum tax on global corporate profits is an excellent starting point for this discussion. It is an essential element of any broader corporate tax reform effort—and a good idea in its own right.

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**FIGURE 4**

### How other countries address low-taxed corporate income

A brief international survey of corporate tax rules providing backstops against profit shifting

<b>Japan</b>	Corporate income taxed at an effective rate of less than 20 percent triggers current Japanese tax unless certain exceptions apply.
<b>United Kingdom</b>	Corporate income taxed at less than three-quarters of the rate that would apply in the United Kingdom triggers current U.K. tax.
<b>Germany</b>	Passive income (including interest and many royalties) are subject to current German tax unless subject to a 25 percent effective tax rate in the foreign country.
<b>France</b>	Corporate income taxed at less than 50 percent of the rate that would apply in France triggers current French tax.
<b>Spain</b>	A foreign subsidiary’s income from passive sources (including interest and financial services income) is subject to current Spanish tax unless the subsidiary pays at least 75 percent of the tax rate that would apply in Spain.

Source: Joint Committee on Taxation, Background and Selected Issues Related to the U.S. International Tax System and Systems that Exempt Foreign Income (JCX-33-11, May 20, 2011).

## Endnotes

- 1 Steven Sloan, "Obama Said to Propose Corporate Tax Overhaul Next Month," Bloomberg, February 2, 2012.
- 2 See, for example, Jesse Drucker, "Dodging Repatriation Tax Lets U.S. Companies Bring Home Cash," Bloomberg, December 29, 2010 (detailing strategies such as the "Killer B" and "Deadly D" that have been used to repatriate foreign earnings without triggering U.S. tax). More commonly corporations can repatriate profits selectively from high-tax countries (which carry with them foreign tax credits that offset the residual U.S. tax) while leaving profits in low-tax countries offshore. They can even use "excess" foreign tax credits from high-tax countries to offset the residual U.S. tax on repatriations from low-tax countries (so-called "cross-crediting"). President Obama has proposed to deny these strategies by requiring corporations to determine foreign tax credits on a "pooling" basis. Legislation introduced by Sens. Carl Levin (D-MI) and Kent Conrad (D-ND), S. 2075, the Cut Unjustified Tax Loopholes Act, would also require determining foreign tax credits on a pooling basis, among other reforms.
- 3 Kimberly A. Clausing, "The Revenue Effects of Multinational Firm Income Shifting," Tax Notes, March 28, 2011. Responding to potential critiques of this particular data, Clausing notes that Bureau of Economic Analysis data on direct investment earnings show similar patterns.
- 4 Studies by the U.S. Treasury Department, the Government Accountability Office, and independent researchers have found an inverse relationship between multinational corporations' profitability in a given country, and that country's effective tax rate. See: Department of the Treasury, Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties (2007); Michael McDonald, "Income Shifting from Transfer Pricing: Further Evidence from Tax Return Data," Technical Working Paper 2 (Department of Treasury, Office of Tax Analysis, 2008); United States Government Accountability Office, U.S. Multinational Corporations: Effective Tax Rates Are Correlated with Where Income Is Reported, GAO-08-950, Report to the Committee on Finance, U.S. Senate, August 2008; Martin A. Sullivan, "Extraordinary Profitability in Low-Tax Countries," Tax Notes, August 25, 2008; Harry Grubert, "Intangible Income, Intercompany Transactions, Income Shifting, and the Choice of Location," National Tax Journal (56) (1) (2003).
- 5 Martin A. Sullivan, testimony before the Committee on Ways and Means, "Hearing on the Current Federal Income Tax and the Need for Reform," January 20, 2011; Martin A. Sullivan, testimony before the Committee on Ways and Means, "Hearing on Transfer Pricing Issues in the Global Economy," July 22, 2010.
- 6 Jesse Drucker, "U.S. Companies Dodge \$60 Billion in Taxes with Global Odyssey," Bloomberg, May 13, 2010; Jesse Drucker, "Google's 2.4% Rate Shows How \$60 Billion Lost to Tax Loopholes," Bloomberg, October 21, 2010; Lynnley Browning, "Insight: Microsoft's Use of Low-Tax Havens Drives Down Tax Bill," Reuters, July 27, 2011; Jesse Drucker, "Biggest Tax Avoiders Win Most Gaming \$1 Trillion U.S. Tax Break," Bloomberg, June 28, 2011; Martin Sullivan, "Apple's High Effective Tax Rate Obscures Foreign Tax Benefits," Tax Notes, August 1, 2011; David Kocieniewski, "Rich Tax Breaks Bolster Makers of Video Games," New York Times, September 10, 2011.
- 7 Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing" (2010). The Joint Committee emphasized that the six firms were not a random selection of U.S.-based multinationals.
- 8 Transfer pricing is a subject of concern with foreign-owned multinationals as well.
- 9 This example is taken from: J. Clifton Fleming, Robert J. Peroni, and Stephen E. Shay, "Worse Than Exemption," Emory L.J. (59) (79) (2009): 117, available at [http://www.law.emory.edu/fileadmin/journals/elj/59/59.1/FlemingPeroni\\_Shay.pdf](http://www.law.emory.edu/fileadmin/journals/elj/59/59.1/FlemingPeroni_Shay.pdf).
- 10 Edward D. Kleinbard, "Stateless Income," Florida Tax Review (11) (699) (2011): 729-734, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1791769](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1791769).
- 11 Kimberly A. Clausing, "The Revenue Effects of Multinational Firm Income Shifting," Martin Sullivan cites \$28 billion annually as a "lower bound" estimate. Sullivan testimony, July 22, 2010.
- 12 Sullivan testimony, January 20, 2011.
- 13 Kleinbard, "Stateless Income."
- 14 Government Accountability Office, "U.S. Multinational Corporations: Effective Tax Rates Are Correlated with Where Income Is Reported."
- 15 Attributing the decline to tax planning strategies developed after the introduction of the U.S. Treasury's "check the box" regulations in 1997), see: Rosanne Altshuler and Harry Grubert, "The Three Parties in the Race to the Bottom: Host Governments, Home Governments, and Multinational Companies," Florida Tax Review (7) (154) (2005); Paul W. Oosterhuis, "The Evolution of U.S. International Tax Policy—What Would Larry Say," Tax Notes International, June 6, 2006: 1119-1128; GAO (2008); Edward Kleinbard also notes two other policy changes that enable U.S. multinationals to shift income to low-tax countries: the 2004 enactment of Internal Revenue Code section 954(c)(6), permitting certain intercompany payments to escape current U.S. taxation under Subpart F, and the "dual consolidated loss" regulations. See: Kleinbard, "Stateless Income."
- 16 James Kvaal, "Removing Tax Subsidies for Foreign Investment," Tax Notes, June 12, 2006, available at <http://www.americanprogress.org/kf/taxnoteskvaal.pdf>.
- 17 International tax reforms in the president's fiscal year 2012 budget included denying deductions for interest expense related to tax-deferred income; determining the foreign tax credit on a pooling basis; taxing "excess returns" from intangible property transferred offshore; and clarifying and strengthening the transfer pricing rules relating to certain types of intangible property. See: Department of the Treasury, General Explanations of the Administration's Fiscal Year 2012 Revenue Proposals (2011). Similar proposals are included in S. 2075 introduced by Sens. Levin and Conrad.
- 18 For more robust discussions of this point, see: Eric Toder, "Who Competes Against Whom and for What" (Washington: Urban Institute, 2012), available at <http://www.urban.org/publications/412477.html>; J. Clifton Fleming, Robert J. Peroni, and Stephen E. Shay, "Worse Than Exemption."
- 19 Reuven Avi-Yonah, testimony before the Senate Committee on Finance Hearing on International Tax Issues, September 8, 2011; Kleinbard, "The Lessons of Stateless Income (draft)" (2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1791783](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1791783).
- 20 Department of the Treasury, Treasury Conference on Business Taxation and Global Competitiveness Background Paper (2007), p. 43, available at <http://www.treasury.gov/press-center/press-releases/Documents/07230%20r.pdf>.
- 21 Reuven S. Avi-Yonah and Yaron Lahav, "The Effective Tax Rate of the Largest US and EU Multinationals," Working Paper 25 (University of Michigan Public Law, 2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1949226](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1949226). This study is consistent with other analyses finding that the existing U.S. tax system often gives more favorable results to U.S. multinationals than the "exemption" or "territorial" systems of other countries. See: Fleming, Peroni, and Shay, "Worse Than Exemption."
- 22 Ibid. "In addition," the authors note, "the EU does not have anything like the U.S. rules that enable U.S. multinationals to shift profits from high-tax to low-tax CFCs without incurring a US tax cost (check the box and IRS 954(c)(6))."