Member Companies

Abbott
Alcoa Inc.
Bank of America Corp.
Boston Scientific Corp.
Caterpillar Inc.
Cisco Systems, Inc.
Dell Inc.
E. I. du Pont de Nemours and Company
Eli Lilly and Company
EMC Corporation
Emerson Electric
FedEx Corporation
General Electric Company
General Mills Inc.
Google Inc.
Honeywell International Inc.
International Business Machines Corporation
International Paper Company
Johnson & Johnson
Johnson Controls, Inc.
JPMorgan Chase & Co.
Kellogg Company
Kimberly-Clark Corporation
McCormick & Company, Inc.
McGraw Hill Financial, Inc.
Morgan Stanley
Nike, Inc.
Oracle Corporation
PepsiCo, Inc.
Pfizer Inc.
Prudential Financial Inc.
QUALCOMM, Inc.
State Street Corporation
Texas Instruments Incorporated
The Coca-Cola Company
The Dow Chemical Company
The Procter & Gamble Company
United Parcel Service Inc.
United Technologies Corporation
Verizon Communications Inc.
Wal-Mart Stores, Inc.

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**Submission by the Alliance for Competitive Taxation to the Senate Committee on Finance International Tax Working Group**
**April 15, 2015**

EXECUTIVE SUMMARY

This document contains comments to the Senate Finance Committee's Bipartisan Working Group on International Taxation by the Alliance for Competitive Taxation ("ACT") regarding the 19-percent foreign minimum tax included in the Administration's FY 2016 Budget. These comments are being submitted in response to the Committee's March 11, 2015, request for input on bipartisan tax reform.

ACT is comprised of leading American businesses that employ millions of American workers from a broad range of industries, including technology, manufacturing, services, and retail. ACT members support comprehensive tax reform that lowers the corporate tax rate to 25 percent and establishes a modern globally competitive tax system that aligns the United States with the rest of the world.

We believe tax reform should simplify the tax code and promote economic growth, and should be fully paid for by ending tax breaks and preferences. Specifically, the cost of the reduction in the corporate tax rate should be fully paid for by domestic corporate base broadening, while ensuring that small businesses are protected, and the cost of an internationally competitive tax system should be fully paid for through a balanced approach that protects the US tax base. All revenues raised from corporate taxpayers should be dedicated to achieving these tax reform objectives.

Chairman Hatch has identified seven goals for tax reform:

1. Economic growth,
2. Fairness,
3. Simplicity,
4. Permanence,
5. Competitiveness,
6. Savings and investment, and
7. Revenue neutrality.

ACT believes the Administration's proposal to penalize US companies that fail to pay a minimum tax to foreign governments would impede progress toward achieving these goals. In particular, ACT believes that adoption of the foreign minimum tax would (1) make it more difficult for US-based companies to succeed abroad, adversely affecting their domestic employment and investment, (2) accelerate the loss of US-headquartered companies through cross-border mergers and acquisitions, and (3) substantially increase complexity and compliance burdens. The proposal would impose a tax on US headquarters that would be both economically damaging and inconsistent with the stated goals of tax reform.

## DESCRIPTION OF ADMINISTRATION'S FOREIGN MINIMUM TAX PROPOSAL

The Administration's FY 2016 Budget includes a proposal for a new 19-percent per-country minimum tax on the foreign income of US corporations and their controlled foreign corporations (CFCs).[1] The practical effect of this proposal would be to create a new US Headquarters Tax (USHQT). For each country, the USHQT rate would be the excess of 19 percent over 85 percent of the average foreign effective tax rate.

The average foreign effective tax rate would be determined for each country based on foreign earnings (measured under US principles) and foreign income taxes over a 60-month period. The foreign earnings taken into account would exclude related-party dividends and include payments currently disregarded under hybrid arrangements if deductible in another country. The foreign income taxes taken into account would be the same taxes that are creditable under present law.

Assignment of income and taxes to countries for purposes of the minimum tax calculation would be based on tax residence determined under foreign law. Each CFC would be required to allocate earnings and taxes among all the countries in which it has operations. Where the same earnings of a CFC are taxed by more than one country, the earnings and all the foreign taxes associated with those earnings would be assigned to the highest-tax country.

For each country, the base of the minimum tax would be earnings allocated to the country for the taxable year reduced by an allowance for corporate equity (ACE).[2] The ACE allowance would be determined by multiplying the risk-free rate of return for the taxable year by equity invested in active assets (i.e., assets of a type that do not generate foreign personal holding income).[3]

Income subject to the current subpart F regime apparently would be taxed as under present law (i.e., at the regular corporate tax rate with a credit for associated foreign taxes) and apparently would be excluded from the foreign minimum tax base.

The foreign minimum tax would be the final US tax on foreign income. CFC income not taxed currently under subpart F or the foreign minimum tax would be exempt from US tax, and no foreign tax credits would be allowed with respect to this income. Thus, there would be no tax collected on repatriated CFC income.

Gain from the sale of CFC shares would be exempt to the extent of undistributed earnings (i.e., the sec. 1248 amount). Gain in excess of undistributed earnings would be taxed under subpart F, to the extent attributable to assets that generate subpart F income, and otherwise would be taxed under the minimum tax.

Foreign source royalty and interest payments would be taxable as under present law, but there would be no ability to offset US tax on this income with excess foreign-tax credits on dividends from high-tax CFCs.

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[1] Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals*, February 2015, p. 19-22.

[2] Treasury's description does not indicate whether the minimum tax base may be less than zero and, if so, how losses would be treated.

[3] We understand that (1) the risk-free rate would be based on the long-term applicable federal rate, which is 2.47 percent for April 2015; (2) equity would be measured using tax principles (the date of measurement is unclear); and (3) active assets would be allocated between the tax basis of debt and equity pro rata.

A foreign branch would be treated like a CFC. The tax consequences of treating branches as CFCs are not fully specified; however, royalty payments would be required to be paid to the US owner with respect to intangible property used by the branch (under sec. 367(d)).[4]

Interest expense of US corporations would be allocated and apportioned to foreign source income under the worldwide method that currently is scheduled to take effect in 2021. Domestic interest expense allocated to foreign income would be deductible at the same rate that the corresponding foreign income is subject to US tax. Thus, interest allocable to subpart F income and foreign interest, rent, and royalty income would be fully deductible; interest allocable to exempt foreign income would be nondeductible; and interest allocable to income subject to the foreign minimum tax would deductible at the residual minimum tax rate (i.e., the excess of 19 percent over 85 percent of the per-country foreign effective tax rate).

## ASSESSMENT OF ADMINISTRATION'S US HEADQUARTERS TAX PROPOSAL

This section assesses the Administration's USHQT proposal based on the seven principles set forth by Chairman Hatch.[5]

### 1. Economic growth

Under the USHQT proposal, if a foreign company is acquired by a US company, the US company would be subject to immediate US taxation if the foreign target's effective tax rate is less than 22.4 percent (19 percent divided by 85 percent). By contrast, if acquired by a company based in any of the other OECD countries, the foreign target's income would not be subject to immediate taxation by the home country because no other OECD country has a similar minimum tax that applies to active foreign business income.

For example, consider an Irish manufacturer with a 20-percent pre-tax return on equity that pays Irish tax at the 12.5-percent statutory rate. If owned by a UK parent, there would be no UK tax imposed, either currently or when the income is repatriated to the UK. By contrast, under the USHQT proposal, if owned by a US parent, a 7.5-percent additional US tax would be owed on the Irish subsidiary's income (assuming a 2.2 percent risk-free rate of return), resulting in a combined tax of 20 percent (12.5-percent Irish tax plus 7.5-percent USHQT), which is 60 percent higher than the 12.5-percent rate that would be paid by the UK competitor (see Table 1).

This tax penalty for American ownership of foreign assets would have the pernicious effect of making it more difficult for US employers to compete abroad, hurting their ability to grow, hire workers, and innovate at home and abroad. Moreover, the scope of this penalty would be very wide: 16 of the 28 EU member countries have statutory tax rates below 22.4 percent, and the effective tax rates in these countries generally is less than the statutory rate due to accelerated depreciation and other investment incentives. Moreover, 11 EU member states have patent or innovation box regimes with tax rates far below 22.4 percent, and Ireland is expected to introduce a knowledge development box this year with a rate of 6.25 percent or less (see Table 2).

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[4] A similar approach was included in Chairman Camp's October 2011 discussion draft on international tax reform. However, after careful consideration, The Tax Reform Act of 2014 (H.R. 1), introduced by Chairman Camp in December 2014, does not treat foreign branches of a US taxpayer as controlled foreign corporations.

[5] Office of Sen. Hatch, "Hatch Outlines Seven Principles for Comprehensive Tax Reform," Dec. 16, 2014 (available at: http://www.finance.senate.gov/newsroom/ranking/release/?id=77a6f042-c878-452f-8cd2-747905013ce5)

For activities that qualify for EU patent or innovation box regimes, the USHQT would put US employers at an overwhelming tax disadvantage. For example, both US- and foreign-based multinational companies would pay a 5-percent tax rate on their Netherlands innovation box income; however, if the USHQT were enacted, the US employer would face an additional tax burden of 13.1% on the innovation box income (assuming a 20-percent pre-tax return on equity and a 2.2 percent risk-free rate of return). Thus, the US company would face a 263 percent higher tax burden than its foreign competitor under the proposed USHQT.

The ability of US employers to compete abroad may be of little concern to those who believe that the foreign operations of US companies come at the expense of US activities. However, rather than substituting for US operations, the foreign activities of US companies, on balance, are complementary with their domestic activities. Based on 1982-2004 company surveys conducted by the US Bureau of Economic Analysis, Mihir Desai, Fritz Foley, and James Hines find that, on average, a 10-percent increase in foreign subsidiary sales is associated with a 6.5-percent increase in US exports.[6] The study also finds that a 10- percent increase in foreign subsidiary employment is associated with a 6.5-percent increase in the parent company's US employment, resulting in an average increase of 124 US jobs for every 100 jobs added abroad.[7]

The USHQT proposal also would penalize US-headquartered employers that are subject to the interest expense allocation proposal mentioned above. For these companies, a portion of their routine business interest expense would be disallowed. As foreign governments do not allow deductions for US interest expense that is allocated abroad under US tax law, the denial of interest expense deductions would result in double taxation. The interest expense allocation provision would not affect foreign-owned companies doing business in the United States.

Other things equal, the USHQT proposal, including the interest expense disallowance rule, would make a globally engaged US employer more valuable to its shareholders if it were taken over by a foreign company, because other countries do not impose similar tax penalties. Foreign acquisitions of US companies that would occur as a result of the USHQT proposal would not only put at risk domestic headquarters employment but also jobs at the legal, accounting, consulting, and financial services firms that support US headquarters operations.

US-based global employers play an outsized role in the US economy, directly employing 23 million US workers with compensation 25 percent higher than the US average and supporting an additional 21 million jobs through their US supply chains. These companies are key to US innovation, accounting for over 75 percent of all private sector domestic R&D in 2012.

While the United States has not previously imposed a broad-based minimum tax on active foreign business income, certain industries have been subject to this type of tax regime in the past. A notable example is the international shipping industry, a highly competitive industry in which many costs, such as labor, fuel, and repairs, and source country taxes are similar across international competitors.

Prior to the Tax Reduction Act of 1975 ("1975 Act"), foreign shipping income was eligible for deferral, like most other active foreign earnings, and thus not taxed until repatriated. However, effective for taxable years of foreign corporations beginning after 1975, the 1975 Act limited deferral of shipping income to income reinvested in qualified shipping assets of the foreign subsidiary. All other shipping

[6] Mihir Desai, C. Fritz Foley and James R. Hines, Jr., "Domestic Effects of the Foreign Activities of US Multinationals," American Economic Journal: Economic Policy, February 2009.
[7] In 2012, American parent companies had 23.1 million employees in the United States and 12.1 million employees in their majority-owned foreign affiliates.

income was subject to immediate US tax. Subsequently, The Tax Reform Act of 1986 ("1986 Act") repealed the exception for reinvested shipping income, effectively eliminating deferral for the US shipping industry.

The US-owned open registry merchant fleet tonnage declined swiftly following the 1975 and 1986 Acts. Gross tonnage fell by 24 percent from 1975 to 1986 (from 21.8 to 16.6 million gross tons) and dropped by an additional 29 percent from 1986 to 2004 (from 16.6 to 11.8 million gross tons). By contrast, the capacity of the foreign-controlled open registry merchant fleet increased from 63.2 million gross tons in 1975 to more than 298 million gross tons in 2004, an increase of 372 percent. As a result, the US share of the world's open registry merchant fleet tonnage plummeted; falling from 25.7 percent in 1975 to just 3.8 percent in 2004 (see Table 3).

In 2004, US tax policy reversed course. The American Jobs Creation Act of 2004 ("2004 Act") restored deferral for US-controlled foreign shipping companies for tax years beginning after December 31, 2004. Since restoration of deferral for foreign shipping income, the US shipping industry has begun to recover. The capacity of the US-controlled open registry merchant fleet has increased since the 2004 Act, rising by 21 percent to 14.3 million gross tons in 2010, the highest level since deferral was repealed in 1986. One example of the impact of the 2004 Act is the $1.35 billion purchase in January 2005 of Greek shipping company Stelmar Ltd. by New York-based Overseas Shipping Group, which expanded its foreign-flag fleet from 50 to 90 vessels.

As illustrated by the shipping industry example, in situations where the United States imposes substantially larger tax burdens on foreign subsidiary business income than other countries, market forces will shift the ownership of foreign assets from US- to foreign-based companies. The USHQT proposal is an economy-wide version of the international shipping tax rules that Congress experimented with from 1975 to 2004 – a disastrous experiment that should not be repeated.

**2. Fairness**

Two principles that can be applied to judge the equity of corporate tax provisions are (1) "horizontal equity" and (2) the "benefits principle."

Horizontal equity requires that taxpayers in the same economic position pay the same amount of tax. This principle can be applied to two companies with global operations that are identical in all respects, except that the parent of one is incorporated in New York and the parent of the other is incorporated in London. The UK-based company would be subject to US tax on only the income it earns from its US operations and, if enacted, would not be subject to the USHQT or the associated interest expense disallowance rule. By contrast, contrary to the principle of horizontal equity, the US-based company, although economically identical in all respects to the UK-based company, would be subject to the USHQT and interest expense disallowance rule. Thus, the foreign minimum tax proposal can be said to discriminate against global employers that are incorporated in the United States.

The benefits principle states that the imposition of tax should have some rational relationship to benefits received from the taxing jurisdiction. Under this principle, income derived from the conduct of a trade or business in the United States may be subject to federal income tax because the business benefits from federal government expenditures for the legal system, infrastructure, education, etc. However, when a US company purchases a foreign company, it is difficult to see what benefits the foreign company receives from the US government that would justify imposition of a USHQT on this income.

At the direction of the G20 leaders, the OECD has developed an action plan to address concerns about certain tax practices of multinational companies – referred to as base erosion and profit shifting (BEPS).

While these tax practices are acknowledged to be lawful under the tax systems of G20 countries, there are concerns about whether they allow companies to avoid paying their notional "fair share" of taxes. Pursuant to a 15-point action plan, the G20 and OECD member countries are reviewing international standards for taxing cross-border income, proposing changes in the OECD model treaty and transfer pricing guidelines, and recommending best practices for national tax systems. One of the stated objectives of the BEPS project is to achieve multilateral agreement on the principles for taxing cross-border income to prevent the chaos that would result from uncoordinated unilateral actions.

ACT is concerned that the Administration's USHQT proposal represents the type of unilateral anti-base erosion action that the BEPS project is intended to preempt. We understand that the Administration has recommended to the BEPS working party on controlled foreign corporation rules (Action number 3) a proposal similar to the USHQT in its FY 2016 Budget; however, no agreement has been reached on this proposal. ACT urges Congress not to adopt unilateral anti-base erosion measures – particularly those that would harm the ability of US employers to compete internationally – ahead of multilateral implementation by the governments participating in the BEPS project.

**3. Simplicity**

In November 1984, the US Treasury Department released a comprehensive tax reform proposal that would have required taxpayers to calculate the foreign tax credit on a per-country basis rather than the overall method then in effect. The same proposal was included in the so-called "White House" tax reform plan released in June 1985.

In the Tax Reform Act of 1986, Congress rejected the proposal for a per-country foreign tax credit limitation, instead requiring the credit to be calculated separately for several categories of income. Congress recognized that in an integrated global economy, where multinational companies may operate in 150 or more countries, it would be excessively burdensome to require every foreign affiliate to allocate its income and expenses among all the countries in which it operates.

Like the White House proposal 30 years ago, the Obama Administration is proposing to tax foreign income earned by foreign affiliates of US companies on a per-country basis. As described by the Treasury Department, this would require every foreign affiliate to: (1) allocate its income and expenses among all the countries in which it does business, (2) determine the foreign effective tax rate it pays in each country based on information for the prior five years (with as yet unspecified adjustments for acquisitions and dispositions during this period), (3) determine its equity investment on a tax basis in each country and the portion attributable to passive assets, (4) allocate and apportion its domestic interest expense among all the countries in which it does business, and (5) treat all branches as if incorporated abroad and determine arm's-length royalties for the intangible property used by these branches.

Rather than simplifying the taxation of foreign income, the Administration's per-country minimum tax proposal would add massive complexity and compliance burdens on globally engaged US employers (a compliance cost that would be eliminated if acquired by a foreign company), providing yet another reason for foreign acquisitions of US companies.

**4. Permanence**

Historically, US corporate income tax policy was formulated with little concern about international norms due to the dominance of US companies in the global economy. That is no longer the case. Fifty years ago, 18 of the world's 20 largest companies ranked by sales were headquartered in the United States – today just 7 are US-based. Indeed, the gap between the US corporate tax system and international norms

is one of the main reasons that Congress and the Administration have committed to undertaking tax reform.

Changes to the corporate tax system that would widen the gap between the US corporate tax system and international norms – such as the proposed USHQT – seem unlikely to stand the test of time. With US and foreign-based companies competing aggressively around the globe, permanence is most likely to be achieved by tax policies that align the US tax system with those of other advanced economies.

### 5. Competitiveness

US tax policy affects the ability of US employers to compete in foreign markets. The US tax system currently diverges in a number of important respects from the policies and practices of other major industrial countries—often to the detriment of US employment and investment. With the one-third decline in the share of US companies in the Forbes Global Top 500 list, dropping from 200 in 1998 to 135 in 2013, it is clear that US companies face an increasingly competitive global environment (Figure 1).

Unlike the United States, 28 of the other 33 OECD member countries and all other G-7 countries have adopted dividend exemption (so-called "territorial") tax systems (see Table 4). Under these territorial tax systems, the active foreign income of foreign subsidiaries generally is taxed only by the country where it is earned, and it can be distributed to the parent company with little or no residual taxation. By contrast, under the US worldwide tax system, foreign income is taxed by the country where it is earned and then by the United States (with a foreign tax credit) when the income is remitted to the United States.

There has been a pronounced shift over the last 25 years toward the use of territorial tax systems. In 1989, only 10 OECD member countries had territorial tax systems and just two of the G-7 countries (Canada and France) had such a system (Figure 2). Today, 28 OECD countries and all other G-7 countries have adopted some form of territorial tax system. Notably, over this period, only two OECD countries switched from territorial to worldwide tax systems (Finland and New Zealand), and both countries subsequently switched back to territorial tax systems.

As a result of these trends, US multinationals now confront foreign competitors that overwhelmingly are taxed under territorial systems. Within the OECD, 93 percent of the non-US parented companies on the Global Fortune 500 list in 2012 were located in countries that use territorial tax systems (Figure 3).

One of the consequences of the worldwide US tax system and the high US corporate tax rate is a rise in foreign acquisitions of US companies. In each of the last 10 years, foreign acquisitions of US companies have exceeded US acquisitions of foreign companies as measured by deal value (Table 5). Over the 10-year period 2005-2014, 55 percent of cross-border mergers and acquisitions by deal value have been transactions where the foreign company was the acquirer and the US company was the target.

One academic paper has estimated that if the United States were to switch from a worldwide to a territorial tax system, the number of cross-border mergers and acquisitions where the US company is the acquirer would increase by 17 percent.[8]

The Administration's USHQT proposal would substantially increase the worldwide reach of the US tax system with respect to active business income, making the United States an even less attractive location for the headquarters of a multinational company. As discussed above, under the proposal, income of an

[8] Lars P. Feld, Martin Ruf, Uwe Scheuering, Ulrich Schreiber, and Johannes Voget, "Effects of Territorial and Worldwide Corporation Tax Systems on Outbound M&As," Center for European Economic Research, Discussion paper no. 13-088, 2013.

Irish company with an effective Irish tax rate equal to the statutory rate, is estimated to be taxed at a 60-percent higher rate if owned by a US company as compared to a company resident in a territorial tax country, such as the UK. The competitive disadvantage of US ownership would be far greater for a foreign company eligible for a patent or innovation box regime, such as those in existence or planned in 12 EU member countries. For example, under the USHQT proposal, a US company is estimated to pay a 263-percent higher tax rate on income eligible for the Dutch innovation box.[9]

Thus, rather than promoting the international competitiveness of US employers, the USHQT would weigh down US companies with additional tax on their foreign income – estimated by the Joint Committee on Taxation staff to amount to more than a quarter trillion dollars over the next 10 years. This would accelerate the fall in the US share of companies in the Forbes Global 500 list and would make US multinationals even more attractive to foreign-based companies as takeover targets.

### 6. Savings and Investment

Historically, US international tax policy has sought to assure that foreign income earned by foreign subsidiaries of US companies was taxed at the same rate as domestic investment. The intent of this so-called "capital export neutrality" principle was to prevent lower foreign taxes from causing US companies to shift investment abroad.

While intuitively appealing, the case for capital export neutrality depends on three important assumptions: (1) that foreign and domestic investments of US companies are substitutes rather than complements; (2) that US and foreign managers are interchangeable; and (3) that US savers do not invest in foreign stock. However, none of these assumptions are valid today.

If the United States attempts to impose significant taxes on foreign subsidiary income, the desired increase in US investment is unlikely to occur. Instead, US savers will increasingly invest in foreign headquartered companies – in some cases through foreign acquisitions of US companies – that are not subject to US tax on their foreign income. A further consequence is that US-based companies will lose market share abroad and, because foreign and domestic operations are on balance complementary, they will grow more slowly in the United States. As a result, a larger share of assets will be managed by foreign rather than US firms even though, absent tax considerations, US managers may produce superior results. All of these unintended but foreseeable consequences would reduce US economic welfare.

With US foreign portfolio investment substantially larger than foreign direct investment[10] and a robust global market for corporate control, attempts to raise taxes on foreign subsidiary income are likely to harm the US standard of living. Instead, tax policy should focus on making the United States an attractive investment location for US and foreign investors alike.

### 7. Revenue neutrality

The Administration's USHQT proposal would greatly diminish the incentive for US companies to reduce their foreign tax payments below 22.4 percent because each dollar of foreign tax savings would benefit the company by only 15 cents. As a result, foreign governments would be less inclined to offer tax incentives to US-owned companies and US companies would put less effort into developing tax efficient foreign structures. Thus, over time, an increasing share of the revenue raised by the USHQT would go to

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[9] The anti-competitive impact of the foreign minimum tax proposal is amplified by the calculation of the minimum tax on a per-country basis rather than for all of a company's foreign operations on a combined basis.

[10] According to US Bureau of Economic Analysis statistics, US private portfolio investment abroad was 65 percent larger than US direct investment abroad in 2013.

foreign governments rather than the US Treasury. This is one of the reasons why the Joint Committee on Taxation staff estimates that US revenue from the foreign minimum tax would fall by 24 percent from 2021 to 2025.

ACT supports revenue-neutral tax reform that repeals tax preferences and incentives to pay for a lower corporate rate and a modern international tax system. However, paying for tax reform with the proposed USHQT tax would be self-defeating, as it would leave globally engaged US employers in a less competitive position and much of the additional tax revenue would go to foreign governments rather than the US Treasury.

CONCLUSION

The Administration's USHQT proposal is a "stick" intended to penalize companies for locating their high-margin businesses in lower-tax foreign jurisdictions. By contrast, many other advanced economies, with world class infrastructure, research centers, and workforces, are using tax policy as a "carrot" to attract the income and operations of innovative companies with significant intellectual property. Twelve EU countries currently have, or are planning, regimes that offer low tax rates, averaging less than 10 percent, for patents and other types of intellectual property income, recognizing the spillover benefits of these companies on innovation, productivity, and wages.

The "stick" approach to capturing the global income of innovative companies cannot succeed in the long run when there are foreign-headquartered companies capable of operating in tax-friendly, "carrot" jurisdictions. As the former Chair of President Clinton's Council of Economic Advisers, Laura D'Andrea Tyson has observed:

> "Ultimately, the minimum tax approach will drive the real economic activity of U.S. companies, including the positive externalities associated with them and their tax base, to these foreign locations and foreign owners. … It would be ill-advised for the United States to adopt unilateral approaches, such as the minimum tax approach proposed by the Obama Administration, that disadvantage U.S. multinational companies, precisely when developed countries are adopting patent boxes and other preferential tax measures to attract the income and activity of these companies."[11]

[11] Testimony of Dr. Laura D'Andrea Tyson, U.S. Senate Committee on Finance Hearing on "Tax Reform, Growth and Efficiency" February 24, 2015, p. 8.

**Table 1. Example of Foreign Minimum Tax: Irish Subsidiary**

| Item | Parameter | Amount |
|---|---|---|
| **Irish income** | | |
| Equity investment in Irish subsidiary | | $500.00 |
| Pre-tax Irish income | 20.0% | $100.00 |
| **Irish tax** | 12.5% | **$12.50** |
| **US minimum tax on Irish income** | | |
| Pre-tax innovation box income | | $100.00 |
| Less, risk-free return on equity | 2.2% | $11.00 |
| Minimum tax base | | $89.00 |
| Minimum tax rate | 19.0% | |
| Less 85% Irish tax rate | 10.6% | |
| **US minimum tax** | 8.4% | **$7.45** |
| **Comparison of US and foreign MNC** | | |
| Total tax paid by US MNC | | $19.95 |
| Total tax paid by foreign MNC | | $12.50 |
| Tax disadvantage of US MNC | | **59.6%** |

**Table 2. EU Intellectual Property Income Tax Regimes**

| Country | Standard Corporate Rate in 2015 | Patent Box Rate in 2015 | Fully Phased-In Patent Box Rate |
|---|---|---|---|
| Belgium | 33.99% | 6.8% | 6.8% |
| Cyprus | 12.5% | 2.5% | 2.5% |
| France | 38.0% | 15.0% | 15.0% |
| Hungary | 19.0% | 9.5% | 9.5% |
| Ireland* | 12.5% | n.a. | 5.0% to 6.25% |
| Italy | 27.5% | 19.25% | 13.75% |
| Luxembourg | 29.22% | 5.84% | 5.84% |
| Malta | 35.0% | 0.0% | 0.0% |
| Netherlands | 25.0% | 5.0% | 5.0% |
| Portugal | 29.5% | 14.75% | 14.75% |
| Spain | 28.0% | 11.2% | 10.0% |
| United Kingdom** | 20.0% | 12.0% | 10.0% |

*Proposed

**UK standard corporate tax rate will be reduced from 21% to 20% effective April 1, 2015

**Table 3. Merchant Shipping Fleet in Select Open Registry Countries, 1975-2010**
[Thousands of Gross Tons]

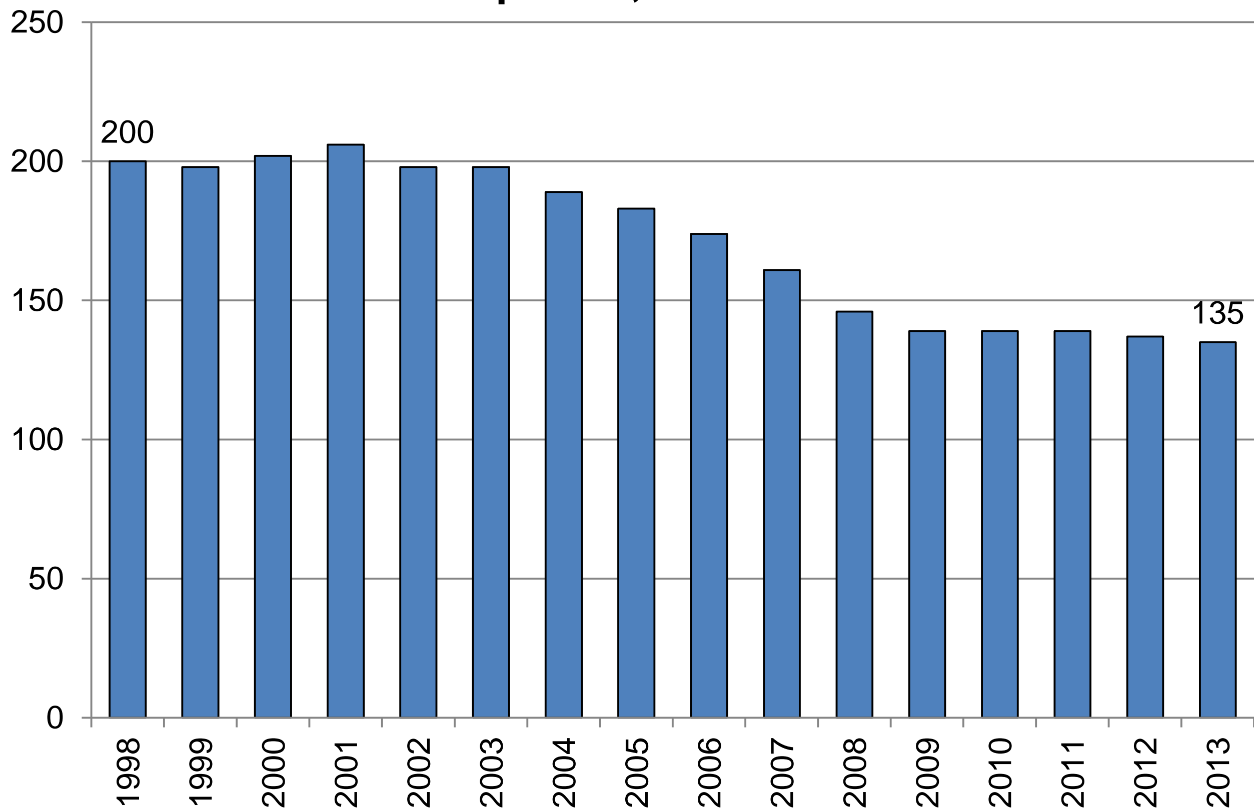
| Owership by Registry | 1975 | 1986 | 2004 | 2010 | Percentage Change | | |
|---|---|---|---|---|---|---|---|
| | | | | | 1975-1986 | 1986-2004 | 2004-2010 |
| ***Total Fleet in Open-Registry Countries:*** | | | | | | | |
| Bahamas | 190 | 5,985 | 34,143 | 49,998 | 3052% | 470% | 46% |
| British Dependent Territories[1] | 1,960 | 12,418 | 28,882 | 60,015 | 533% | 133% | 108% |
| Cyprus | 3,221 | 10,617 | 21,585 | 21,200 | 230% | 103% | -2% |
| Honduras | 68 | 555 | 665 | 628 | 717% | 20% | -6% |
| Hong Kong[2] | n.a. | n.a. | 19,535 | 45,116 | n.a. | n.a. | 131% |
| Liberia | 65,820 | 52,649 | 51,793 | 89,577 | -20% | -2% | 73% |
| Malta | 46 | 2,015 | 26,054 | 34,631 | 4285% | 1193% | 33% |
| Panama | 13,667 | 41,305 | 127,526 | 194,594 | 202% | 209% | 53% |
| **Total Fleet** | **84,973** | **125,544** | **310,182** | **495,759** | **48%** | **147%** | **60%** |
| ***U.S.-Owned Foreign-Flag Fleet in Open-Registry Countries:*** | | | | | | | |
| Bahamas | n.a. | 2,009 | 4,684 | 4,590 | n.a. | 133% | -2% |
| British Dependent Territories[3] | 59 | 161 | 878 | 1,743 | 172% | 445% | 99% |
| Cyprus | n.a. | 2 | 82 | 87 | n.a. | 5019% | 6% |
| Honduras | 47 | 23 | 26 | 37 | -52% | 14% | 42% |
| Hong Kong[2] | n.a. | n.a. | - | 217 | n.a. | n.a. | n.a. |
| Liberia | 19,145 | 11,930 | 2,398 | 3,325 | -38% | -80% | 39% |
| Malta | n.a. | n.a. | 458 | 656 | n.a. | n.a. | 43% |
| Panama | 2,558 | 2,490 | 3,271 | 3,620 | -3% | 31% | 11% |
| **Total U.S-Owned Fleet** | **21,810** | **16,615** | **11,797** | **14,275** | **-24%** | **-29%** | **21%** |
| **U.S.-Owned Share of the Open-Registry Fleet** | **25.7%** | **13.2%** | **3.8%** | **2.9%** | | | |

[1] Includes Anguilla, Bermuda, Cayman Islands, Falkland Islands, Gibralter, Hong Kong (prior to 1997), Monserrat, St Kitts & Nevis, St. Helena, Turks & Caicos Islands, and the British Virgin Islands.
[2] Prior to 1997, Hong Kong was included in the British Dependent Territories.
[3] There may be a break in the data in 1996. Prior to 1996, the British Dependent Territories are as reported by MARAD. For 1996 and beyond, the data are based on the definition in footnote 1.
Sources: Total Foreign Flag Fleet is from Lloyd's "World Fleet Statistics" (1975-1995) and Clarkson Research Services Limited (1996-2010) U.S.-Owned Foreign Flag Fleet is from U.S. Maritime Administration "Foreign Flag Merchant Ships Owned by U.S. Parent Companies" (1975-1995) and Clarkson Research Services Limited (1996-2010)

**Table 4.— OECD Countries with Territorial and Worldwide Tax Systems, 2014**

| Taxation of foreign subsidiary income | OECD Member Countries | Dividend exemption percentage |
|---|---|---|
| Territorial tax systems | Australia, Austria, Canada, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Luxembourg, Netherlands, New Zealand, Poland, Portugal, Slovak Republic, Spain, Sweden, Turkey, United Kingdom | 100% |
| | Norway | 97% |
| | Belgium, France, Germany, Italy, Japan, Slovenia, Switzerland | 95% |
| Worldwide tax systems | Chile, Ireland, Israel, Korea, Mexico, United States | none |

Source: PricewaterhouseCoopers, *Evolution of Territorial Tax Systems in the OECD*, The Technology CEO Council, April 2, 2013.




Source: Forbes 500s List, 1999-2003; International 800 List, 1999-2000; International 500 List, 2001-2003;Global 2000 List, 2004-2014.

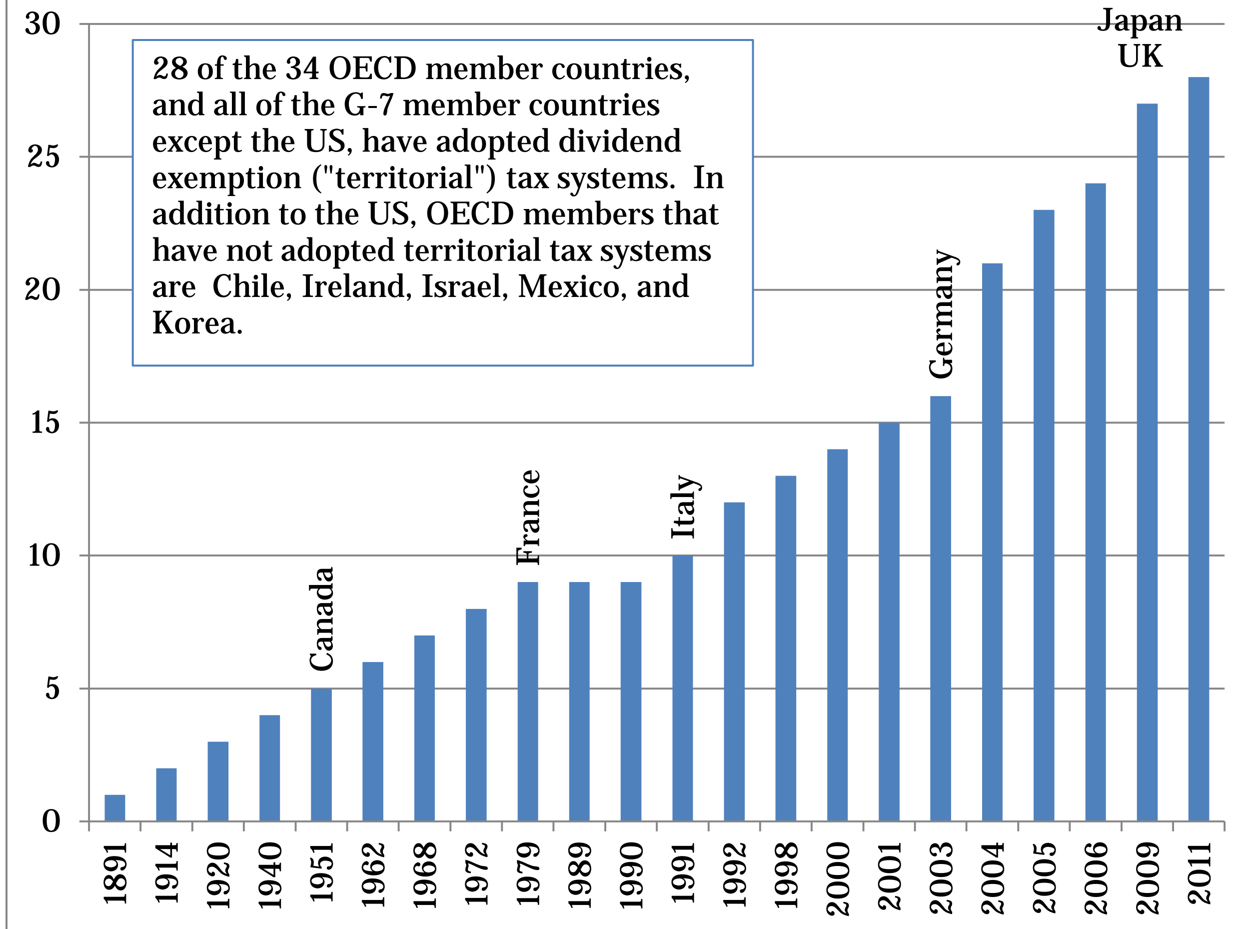
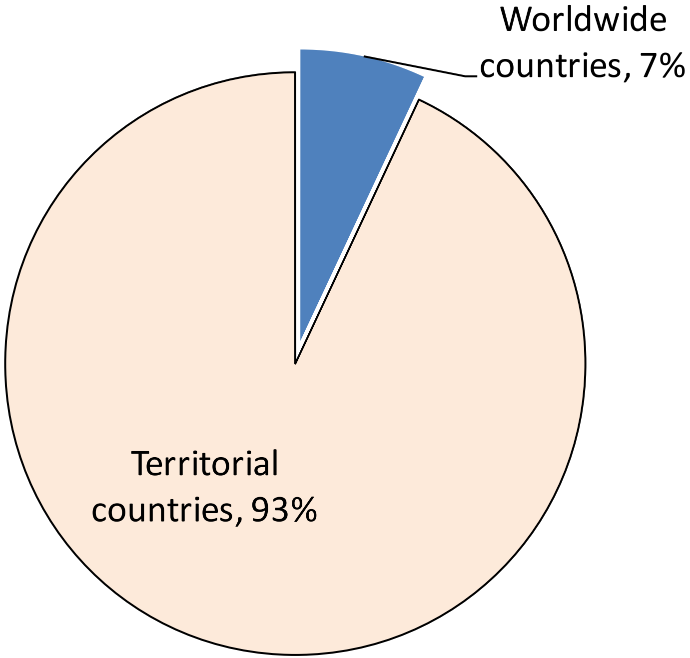


Figure 2. Number of Countries with Dividend Exemption Systems among 34 OECD Countries, 1891-2011
28 of the 34 OECD member countries, and all of the G-7 member countries except the US, have adopted dividend exemption ("territorial") tax systems. In addition to the US, OECD members that have not adopted territorial tax systems are Chile, Ireland, Israel, Mexico, and Korea.
Canada
France
Italy
Germany
Japan
UK
0
5
10
15
20
25
30
1891
1914
1920
1940
1951
1962
1968
1972
1979
1989
1990
1991
1992
1998
2000
2001
2003
2004
2005
2006
2009
2011




Source: Business Roundtable, *Comprehensive Tax Reform – The Time is Now*, July, 2013

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## Table 5. US Cross Border Mergers and Acquisitions, 2005-2014

| Year | Foreign Acquisitions of U.S. Companies | | U.S. Acquisitions of Foreign Companies | | All Cross-Border M&A | |
|---|---|---|---|---|---|---|
| | Number of Deals* | Value ($ billions) | Number of Deals* | Value ($ billions) | Foreign Acquisitions of U.S. Companies (% of total value) | U.S. Acquisitions of Foreign Companies (% of total value) |
| 2005 | 1,402 | $116.31 | 1,467 | $133.48 | 46.6% | 53.4% |
| 2006 | 1,609 | $184.72 | 1,679 | $189.63 | 49.3% | 50.7% |
| 2007 | 1,911 | $329.63 | 1,883 | $278.05 | 54.2% | 45.8% |
| 2008 | 1,630 | $279.26 | 1,633 | $124.68 | 69.1% | 30.9% |
| 2009 | 1,157 | $148.68 | 1,149 | $54.50 | 73.2% | 26.8% |
| 2010 | 1,237 | $131.59 | 1,417 | $123.31 | 51.6% | 48.4% |
| 2011 | 1,385 | $198.69 | 1,622 | $201.56 | 49.6% | 50.4% |
| 2012 | 1,258 | $147.23 | 1,536 | $130.16 | 53.1% | 46.9% |
| 2013 | 1,151 | $123.88 | 1,435 | $113.32 | 52.2% | 47.8% |
| 2014 | 1,391 | $208.54 | 1,721 | $160.35 | 56.5% | 43.5% |
| **2005-14** | **14,131** | **$1,869** | **15,542** | **$1,509** | **55.3%** | **44.7%** |

Source: Thompson Reuters SDC M&A Data, various years and PwC calculations.

Note: Deals limited to those in which at least 20% of the shares of the target were acquired. Includes asset sales and divesitures.

*Number of deals includes all deals, including deals for which the deal value was undisclosed.