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US AND EU MULTINATIONALS**

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The Effective Tax Rates of the Largest U.S. and EU Multinationals

REUVEN S. AVI-YONAH* AND YARON LAHAV**

I. INTRODUCTION

The United States has the second highest statutory corporate tax rate in the Organization for Economic Co-Operation and Development (OECD) (after Japan).¹ This has not always been the case. After the Tax Reform Act of 1986 lowered the U.S. rate from 46% to 34%,² the United States had one of the lowest statutory corporate tax rates in the OECD.³ In the past twenty-five years, however, the U.S. rate has remained essentially unchanged (it was raised to 35% in 1993),⁴ while most other OECD countries reduced their statutory rate so that the OECD average statutory corporate tax rate is 25.1%.⁵

Not surprisingly, this situation has led to numerous calls for lowering the U.S. statutory corporate tax rate, on the grounds that it is making U.S.-based multinationals uncompetitive vis-à-vis their counterparts in other OECD countries.⁶ Recently, even the Obama Administration, following the lead of some Democrats in Congress, has supported lowering the corporate tax rate.⁷ The current debate is less about whether the corporate rate should be lowered and more about whether such a reform should be revenue neutral, that is, paid for by eliminating corporate tax expenditures such as deferral, accelerated depreciation, and the tax credit for domestic production.⁸

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¹ OECD, Tax Database, tbl.II.1, <http://www.oecd.org/ctp/taxdatabase> (last visited Feb. 7, 2012).

² Tax Reform Act of 1986, Pub. L. No. 99-514, § 601, 100 Stat. 2085, 2249.

³ OECD, note 1, at tbl.II.1.

⁴ Revenue Reconciliation Act of 1993, Pub. L. No. 103-66, § 13221, 107 Stat. 312, 477.

⁵ OECD, note 1, tbl.II.1.

⁶ See, e.g., Scott A. Hodge, Tax Found., Fiscal Fact No. 136: U.S. Corporate Taxes Now 50% Higher Than OECD Average 1 (2008), available at <http://www.taxfoundation.org/files/ff136.pdf> (“The long-term prospects of the U.S. economy are at risk as long as our corporate tax rate remains out of step with the rest of the world.”).

⁷ Ryan J. Donmoyer & Peter Cohn, Obama Backs Corporate Rate Cut Along with Tax Simplification, Bloomberg.com (Jan. 26, 2011), <http://www.bloomberg.com/news/2011-01-26/Obama-backs-cut-in-u-s-corporate-tax-rate-only-if-it-won-t-affect-deficit.html>.

⁸ See, e.g., Comm. for Responsible Federal Budget, Yes, Actually, We Can (at the Very Least) Make Corporate Tax Reform Revenue Neutral (Nov. 7, 2011), <http://crfb.org/blogs/>

At the same time, however, there have been a plethora of conflicting claims about the effective tax rate (ETR) borne by U.S.-based multinationals. Some have stated that like the statutory rate, it is among the highest in the OECD,⁹ while others have claimed that it is among the lowest.¹⁰ This debate is important because it is the effective corporate tax rate and not the statutory rate that most directly affects the competitiveness of U.S.-based multinationals against multinationals based in other OECD jurisdictions.

Neither side, however, has data to support its claims. Almost all existing studies of the ETR on U.S.-based multinationals focus only on those companies, and do not attempt to compare them with multinationals based in other countries.¹¹ The only exception is a recent

yes-actually-we-can-very-least-make-corporate-tax-reform-revenue-neutral (“[R]eaching a target like 25 percent will require essentially wiping out all the tax expenditures on the corporate side of the code.”); Meg Shreve, *Businesses Oppose Revenue-Neutral Corporate Tax Reform, CEO Tells Ways and Means*, Tax.com (Jan. 24, 2011), <http://www.tax.com/taxcom/features.nsf/Articles/FCC694AF03D1F76985257822003D209A?OpenDocument> (describing how some U.S. business leaders wanted reduction in corporate rates without base offsets).

⁹ See, e.g., Amy S. Elliott, *Large U.S. Firms’ Effective Tax Rates Surpass OECD Average, Survey Says* (Apr. 14, 2011), 2011 TNT 73-3, Apr. 15, 2011, available in LEXIS, Tax Analysts File (stating effective U.S. corporate rate for multinationals is higher than other OECD countries); Kevin A. Hassett & Aparna Mathur, *Am. Enter. Inst. for Pub. Pol’y Research, Report Card on Effective Corporate Tax Rates: United States Gets an F, Tax Pol’y Outlook*, Feb. 2011, at 1, available at <http://www.aei.org/files/2011/02/09/TPO-2011-01-g.pdf> (same).

¹⁰ See, e.g., Citizens for Tax Justice, *Analysis: 12 Corporations Pay Effective Tax Rate of Negative 1.5% on \$171 Billion in Profits; Reap \$62.4 Billion in Tax Subsidies: Exxon Mobil, Boeing, Verizon, Others Illustrate Why Revenue Raising Reform Is Needed 2* (2011), available at <http://www.ctj.org/pdf/12corps060111.pdf> (finding that the highest ETR of twelve Fortune 500 Corporations was 14.2% for 2008-2010); Citizens for Tax Justice, *U.S. Is One of the Least Taxed Developed Countries: Revenue Increase the Obvious Answer to Deficit Impasse 2* (2011), available at <http://www.ctj.org/pdf/oced201106.pdf> (stating some U.S. corporations have a far lower ETR than foreign competitors because of aggressive tax strategies); David Kocieniewski, *U.S. Business Has High Tax Rates, Technically*, N.Y. Times, May 3, 2011, at A1 (same); Chuck Marr & Brian Highsmith, *Ctr. on Budget & Pol’y Priorities, Six Tests for Corporate Tax Reform: Reform Should Help Shrink Long-Term Deficits, Reduce Biases and Preferences in the Tax Code, and Discourage Tax Sheltering 3* (2011), available at <http://www.cbpp.org/Files/2-28-11tax.pdf> (“[T]he U.S. collects less corporate taxes as a share of GDP than all but one of the 26 OECD countries . . .”).

¹¹ See, e.g., Rosanne Altshuler & Harry Grubert, *The Three Parties in the Race to the Bottom: Host Governments, Home Governments and Multinational Companies*, 7 Fla. Tax Rev. 153, 155 (2005) (limiting analysis to U.S. multinationals); Scott D. Dryeng & Bradley P. Lindsey, *Using Financial Accounting Data to Examine the Effect of Foreign Operations Located in Tax Havens and Other Countries on U.S. Multinational Firms’ Tax Rates*, 47 J. Acct. Res. 1283, 1284-85 (2009) (same); George K. Yin, *How Much Tax Do Large Public Corporations Pay? Estimating the Effective Tax Rates of the S&P 500*, 89 Va. L. Rev. 1793, 1795 (2003) (limiting analysis to S&P 500 corporations); Harry Grubert, *Foreign Taxes, Domestic Income, and the Jump in the Share of Multinational Income Abroad: Sales Aren’t Being Globalized, Only Profits 1* (Oxford Univ. Ctr. for Bus. Tax’n, Working Paper No. 09/26, 2009), available at <http://www.sbs.ox.ac.uk/centres/tax/Documents/work->

study commissioned by the Business Roundtable and executed by PricewaterhouseCoopers.¹² As discussed below, however, this study suffers from numerous flaws, the most important of which is that it includes two thousand companies from fifty-eight foreign countries and, therefore, has many companies that are not serious competitors of large U.S.-based multinationals (for example, companies based in Morocco, Kazakhstan, Nigeria, Jordan, Lebanon, and Oman).¹³

The competitiveness issue is primarily about the ability of the largest U.S. multinationals to compete with their counterparts based in other countries, and especially those based in the European Union (since Japanese multinationals are known to be subject to higher statutory and effective tax rates than U.S. ones, and therefore, they are less relevant to this debate).¹⁴ We therefore decided to study the overall ETRs of the largest 100 U.S.-based multinationals over the past decade, and compare them with the ETRs of the largest 100 EU-based multinationals. In our opinion, this is the comparison that is most relevant to resolving the competitiveness issue, because (1) it focuses only on large multinationals in the most relevant jurisdictions,¹⁵ and (2) it focuses on the overall ETR borne by each group of multinationals, and not on other issues such as the statutory tax rate, the ETR on foreign source income, or whether dividends from active income can be repatriated tax free. Those issues, while important for other purposes (for example, transfer pricing or the “lock out” effect), are in our view irrelevant to the competitiveness issue.

ing_papers/WP0926.pdf (limiting analysis to U.S. multinationals). The Swenson and Lee and Markle and Shackleford studies discussed below focus on ETRs of countries, although they base that on studying the financial data of multinational enterprises from those countries. See note 14 and accompanying text.

¹² PricewaterhouseCoopers, *Global Effective Tax Rates 1* (Apr. 14, 2011), http://www.businessroundtable.org/uploads/studies-reports/downloads/Effective_Tax_Rate_Study.pdf.

¹³ *Id.* at 3 tbl.1; see notes 14-15 and accompanying text.

¹⁴ Kevin S. Markle & Douglas A. Shackleford, *Cross-Country Comparisons of Corporate Income Tax Rates 1* (NBER, Working Paper No. 16839, Feb. 2011), available at <http://www.nber.org/papers/w16839> (finding, in a study of 11,602 public corporations from eighty-two countries for 1988-2009, Japanese firms always faced the highest ETRs); Charles Swenson & Namyoung Lee, *The Jury Is In: US Companies Are Overtaxed Relative to Their International Competitors*, AICPA Tax Insider Newsletter (July 17, 2008), http://www.cpa2biz.com/Content/media/Producer_Content/Newsletters/Articles_2008/Tax/Juryin.jsp (noting Japanese median ETR for 2006-2007 was 41%).

¹⁵ The Forbes 2000 list for 2011 includes 536 U.S. companies. *The World's Biggest Public Companies*, Forbes.com (Apr. 20, 2011), <http://www.forbes.com/global2000/>; see Scott DeCarlo, *A Regional Look at the Forbes Global 2000*, Forbes.com (Apr. 20, 2011), www.forbes.com/sites/scottdecarlo/2011/04/20/a-regional-look-at-the-forbes-global-2000-2/. The top 100 (19%) account for 57% of the revenues and 77% of the profits of those companies, see *The World's Biggest Public Companies*, supra, suggesting that to study competitiveness we should focus on these companies.

II. METHODOLOGY

To find the 100 biggest U.S. companies and the 100 biggest European companies, we used the list of Forbes 2000 biggest public companies for 2011, as published in Forbes magazine's website.¹⁶ We then constructed our database by choosing the most highly ranked U.S. and European companies respectively. The list of the 200 chosen companies is presented in Table 2 in the Appendix.

We then searched the Compustat database (both North America and Global) to find financial data of the chosen companies.¹⁷ For every company in our list, we found the pretax income, net income, and current income tax for fiscal years 2001 to 2010. Because fiscal years of different companies end at different dates, we grouped fiscal years if they ended between July 1 of a certain year and June 30 of the following year. For example, for fiscal year 2005 we included all fiscal years that ended between July 1, 2004 and June 30, 2005.

If, for some reason, a certain company did not have any financial data available on the Compustat database for all fiscal years mentioned, we did not include it in our database and replaced it by the next highest ranked company on the Forbes 2000 list. We then translated all financial data into U.S. dollars using annual exchange rates taken from the OANDA website.¹⁸ At the end of this process, we obtained a database of 200 companies (100 U.S. companies and 100 European companies) with at least one year of financial data between 2001 and 2010. Table 3 in the Appendix describes the distribution of companies by country of residence.

Comparing the ETRs in each region (Europe and the United States), we calculated aggregate effective tax rate (AETR) as follows:

$$AETR_{i,t} = \frac{\sum_j T_{j,t}}{\sum_j PI_{j,t}}$$

where is the AETR of region i during period t . The numerator is the sum of all current income taxes booked by the companies residing in region i during period t , and the denominator is the sum of all pretax income paid earned by the companies residing in region i during the same period. Naturally, the Compustat database may not have the relevant data to calculate this measure for all companies during all fiscal years. For this reason, we only used available data that can be found either directly (that is, both pretax income and current income

¹⁶ The World's Biggest Public Companies, note 15.

¹⁷ Compustat is an online database that provides financial, market, and other statistical information on companies throughout the world. See www.compustat.com.

¹⁸ See www.oanda.com/currency/converter.

tax are available) or indirectly (that is, either pretax income or current income tax can be found by adding current and deferred income tax to net income or subtracting deferred income tax and net income from pretax income respectively).

The AETR is therefore a measure of the ETR paid by the business sector in every region. Our decision to use aggregate measures in our study is a result of (what we see as) a bias that can occur when using some kind of average (either weighted or not) of ETRs of individual companies. This bias is more significant when companies have a relatively low (or even negative) pretax income. When this is the case, all deviation from the current (say, 35% in the case of U.S. companies) tax provision may strongly affect the ETR. Assume, for example, two companies, *Company A* and *Company B*. Both companies' revenues in a given year equal \$1 million. The pretax profits, however, are different and equal \$100,000 and \$10,000 respectively. If both pay 35% of pretax income as income tax, then the average ETR is 35%. Assume now that there is a tax adjustment to *Company A* in the amount of \$2000. This adjustment will change *Company A*'s ETR by approximately 6% (from 35% to 33%). If, however, the same adjustment was made to *Company B*, its ETR would change by approximately 57% (from 35% to 15%). This difference would also affect an average ETR if weighted by revenues. If the adjustment was made to *Company A*, the new average ETR would be 34%. If, on the other hand, the adjustment was made to *Company B*, the new average ETR would be 25%. A similar example can show biased calculations when the average ETR is weighted by any variables other than pretax profit.

Several ways are used in the literature to avoid this bias. One way (used in the PricewaterhouseCoopers study) is to eliminate outliers.¹⁹ It is reasonable to assume that relatively low (or negative) pretax income generates either too high or too low (or negative) ETRs.²⁰ For this reason, in cases where either a too high or a too low ETR is detected, the observation is eliminated. It is our view, however, that outliers in this context are part of the data. Furthermore, when the AETR is calculated using our method, relatively low pretax income and relatively low income tax will have relatively low effect on the measure. A tax credit to a company with low or negative pretax income is not an outlier. Therefore it should be treated the way it is: part of the total income tax collected by the tax authority during the testing period.

To illustrate the crucial effect of outliers on the accuracy of the results, we present the case of Boeing in fiscal year 2003. During this

¹⁹ PricewaterhouseCoopers, note 12, at 1.

²⁰ See *id.*

year, Boeing earned a pretax profit of \$550 million, with an ETR of negative 315%!²¹ A study such as that produced by PricewaterhouseCoopers would exclude Boeing's fiscal year 2003 on this basis.²² Investigating the reason for this abnormal ETR, however, we find that Boeing's total corporate tax was negative \$168 million.²³ A part of this amount, however, is an audit settlement in the amount of \$456 million paid to Boeing this year.²⁴ We consider this settlement as a reduction from the tax revenues collected by the IRS. This revenue reduction must be taken into account when AETRs are compared. An exclusion of this amount would result in biased measurement of aggregate corporate taxes and, hence, AETRs.

In other cases, it is possible that such an elimination process will result with keeping the outliers. To illustrate this, consider the above example and assume that the researcher chooses to exclude companies with nonpositive ETRs. Assume now that *Company A* received a tax credit of \$20,000 and *Company B* received a tax credit of \$3500. The researcher will exclude *Company B* because of a dismissible tax adjustment, where *Company A* will still be part of the data with a much bigger tax adjustment. In sum, excluding outliers does not ensure the isolation of companies with reasonable ETRs on the one hand, and does not provide accurate results on the other hand.

Another way is to aggregate data across periods. If a certain company showed an abnormal ETR in a certain year, then aggregating income taxes over several years should dismiss small or insignificant deviations from standard tax rate levels. For this reason, in addition to annual analysis, we also provide results across ten years of study.

III. RESULTS

AETR values of each region are presented in Table 1 for different fiscal years and for the last decade. The table shows that in eight of ten years, the annual European AETR is higher than the annual U.S. AETR. In addition, the European AETR is also higher for the period from 2001 to 2010.

²¹ See Boeing Co., 2003 Annual Report 25 (2003), available at http://www.boeing.com/companyoffices/financial/finreports/annual/03annualreport/boeing_03ar.pdf.

²² PricewaterhouseCoopers, note 12, at 1.

²³ Boeing Co., note 21, at 25.

²⁴ Id. at 63.

TABLE 1
AETR FOR EACH REGION BY YEAR

<i>Year</i>	<i>Europe</i>	<i>U.S.</i>	<i>Revenue Ratio</i> ²⁵ <i>(U.S./EU)</i>
2001	39%	33%	1.19
2002	49%	32%	1.06
2003	34%	24%	0.99
2004	31%	27%	1.02
2005	34%	30%	1.20
2006	32%	31%	1.16
2007	31%	32%	1.25
2008	46%	56%	1.22
2009	37%	30%	1.21
2010	31%	24%	1.25
2001–2010	35%	31%	1.16

IV. DISCUSSION

Our results are the opposite from those found in the PricewaterhouseCoopers study, even though that study used the same methodology (that is, calculated AETR as aggregate income tax divided by aggregate pretax income).²⁶ In our opinion, however, the PricewaterhouseCoopers study is flawed and should not be taken as an indication that U.S.-based multinationals are subject to a higher AETR than their counterparts from other countries. The reasons for this conclusion are as follows:

(1) PricewaterhouseCoopers used all 2000 companies in the Forbes Global database,²⁷ while we used only the largest 200 (100 U.S. and 100 EU). As explained above, in our opinion focusing on the largest companies is more closely related to competitiveness.

(2) PricewaterhouseCoopers calculated results only for the period from 2006 to 2009,²⁸ while we calculated between 2001 and 2010. Including a longer time frame improves the reliability of our results.

(3) PricewaterhouseCoopers compared U.S. companies to those from fifty-eight other countries, not to European companies as a group (although they did compare the United States to OECD countries).²⁹ We used the biggest 100 U.S. and biggest 100 European companies. In our opinion this method is more relevant to the

²⁵ Revenue Ratio is the ratio of total U.S. revenues to total European revenues. It can be regarded as a measure of business volume.

²⁶ See PricewaterhouseCoopers, note 12, at 1, 5 tbl.2.

²⁷ *Id.* at 1.

²⁸ *Id.*

²⁹ *Id.* at 1-2.

competitiveness question because the PricewaterhouseCoopers study includes many companies from small countries that do not provide serious competition to large U.S. multinationals (for example, Morocco).³⁰

(4) PricewaterhouseCoopers eliminated outliers,³¹ while we did not. As explained above, outliers can have an important impact on the results and there is no reason to assume they are irrelevant in this context. By eliminating outliers, PricewaterhouseCoopers limited themselves to conventional cases only (that is, only to those companies with an ETR in the 20% to 40% range). In our opinion, this analysis is all about the outliers. We are looking for the special cases that make the difference. This is why we only include the top 100 companies from each group. In such a small number, any tax holiday should make the difference, so it is important to include outliers.

(5) For income tax, PricewaterhouseCoopers used current income tax and changes in deferred tax,³² while we used only current income tax. While over a ten-year period one might expect that most deferred taxes will become current taxes, in our opinion using deferred taxes can be misleading because they just represent one accounting firm's best guess as to whether taxes will have to be paid. For example, under FASB Interpretation No. 48, deferred taxes have to be booked if a transaction that avoids taxation has a 50% chance of being upheld by the courts if challenged by the IRS, but not if it has a 51% chance (in the opinion of the accounting firm).³³ In addition, deferred taxes may or may not include the tax on repatriations, depending on the company's assertion that the earnings are or are not permanently reinvested overseas, which in turn assumes that the tax law relating to repatriations will remain unchanged.³⁴ In our opinion these determinations are too flimsy a basis to calculate AETRs reliably. Using only current taxes insures that the AETR reflects taxes that have actually been paid or accrued.

(6) Table 1 of the PricewaterhouseCoopers study has a list of fifty-nine countries that were included,³⁵ but the appendix indicates that only thirteen countries have more than thirty observations in each year.³⁶ This means that for all the rest, one cannot assume (statisti-

³⁰ See *id.* at 3 tbl.1 (listing the AETRs in fifty-eight foreign countries included in PricewaterhouseCoopers study).

³¹ *Id.* at 1.

³² *Id.*

³³ Fin. Accounting Standards Bd., Accounting for Uncertainty in Income Taxes, Interpretation No. 48: An Interpretation of Statement of Fin. Accounting Standards No. 109, ¶¶ 6-8 (2006).

³⁴ See PricewaterhouseCoopers, note 12, at 1.

³⁵ *Id.* at 3 tbl.1.

³⁶ See *id.* app. at 8-11 tbls.A-1 to A-4.

cally) that the results properly represent the real populations. Among these thirteen, the United States ranked number seven (right in the middle for fiscal year 2009). In addition, the AETRs of some countries from the fifty-nine are based on one observation, which cannot be representative.³⁷

In contrast with the PricewaterhouseCoopers study, our results are consistent with previous studies that have focused on comparing the ETRs of various jurisdictions.³⁸ For example, Kevin Markle and Douglas Shackelford compared the U.S. ETR in 2005-2009 with the ETRs of Canada, France, Germany, Japan, and the United Kingdom and found that the U.S. ETR was 23% while the average weighted ETR of the other five countries was 24.5%.³⁹ Charles Swenson and Namyoung Lee compared ETRs in 2006 and found that the U.S. ETR was 29.5% while the OECD weighted average ETR was 28.4%.⁴⁰ For the fifteen largest countries, Swenson and Lee concluded that the weighted average ETR in 2006 was 28.7% (compared to the U.S. ETR of 29.5%).⁴¹ As Gravelle concluded, these studies all confirm that “effective tax rates in the United States and in other countries are similar.”⁴²

V. CONCLUSION

We believe that this study indicates that U.S.-based multinationals do not face a tax-induced competitive disadvantage in competing against EU-based multinationals. Even though the U.S. statutory rate is ten percentage points higher than the average corporate statutory rate in the European Union, the effective U.S. corporate tax rate is the same or lower than the effective EU corporate tax rate for the largest U.S. and EU multinationals.

Presumably, the reason for this result is that while the EU countries have a lower statutory rate, their tax base is larger because it has fewer exceptions. In fact, a comparison of the controlled foreign cor-

³⁷ See *id.* (determining AETRs of Kazakhstan, Nigeria, and Czech Republic, among others, with only one observation).

³⁸ For a summary of the literature, see Jane G. Gravelle, Cong. Research Serv., *International Corporate Tax Rate Comparisons and Policy Implications 1-9* (2011), available at http://www.assets.opencrs.com/rpts/R41743_20110331.pdf.

³⁹ Markle & Shackelford, note 14, at 42 tbl.2. This study compared ETRs of 11,602 public corporations from eighty-two countries from 1988 to 2009, *id.* at 1, so it is hard to draw conclusions from it in regard to competitiveness because it includes so many companies from small countries that do not pose serious competition to U.S. multinationals.

⁴⁰ Swenson & Lee, note 14, at tbl.

⁴¹ *Id.*

⁴² Gravelle, note 38, at 5. Gravelle also reports comparisons of marginal ETRs, but those are more suspect because they rely on a hypothetical firm, rather than actual taxes paid by real firms. See *id.* at 5-8.

poration (CFC) rules of the United States (subpart F) and the major EU jurisdictions (the United Kingdom, Germany, Italy, and France) indicates that the EU CFC rules tend to be tougher than subpart F because (1) they take into account the ETR in the source country in deciding whether to tax income from a CFC,⁴³ and (2) they take into account whether the CFC has a real presence in the source country.⁴⁴ Under the EU rules, for example, a bank earning interest income in a tax haven is likely to be subject to current tax because the ETR in the haven is low, and the bank does not have a real presence in the haven.⁴⁵ Under subpart F the income will likely qualify for the active financing exception.⁴⁶ In addition, the European Union 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 U.S. tax cost (check-the-box and § 954(c)(6)).⁴⁷

This conclusion suggests that the United States can in fact reduce its corporate tax rate to the EU average in a revenue neutral fashion without affecting the competitiveness of U.S.-based multinationals, since such a move would simply result in a tax regime that is more similar to that faced by EU companies. Specifically, as many observers have recommended, it should be possible to abolish deferral altogether if the U.S. rate were reduced sufficiently. Such a move would have tremendous simplification potential since it would be possible to get rid of both subpart F and outbound transfer pricing enforcement, and it would eliminate the “lock out” problem as well (since repatriations would not be taxed). Alternatively, it should be possible to amend subpart F to take the source country rate into account, so that an effective source rate that is below 90% of the U.S. statutory rate would result in a subpart F inclusion, while reducing the U.S. statutory rate. Such a move, while not as radically simplifying as abolishing deferral, will significantly reduce the pressure on outbound transfer pricing while not resulting in a competitive disadvantage to U.S.-based multinationals or inducing more profit shifting from the United States to low-taxed offshore locations, like the current rules do.

⁴³ See PricewaterhouseCoopers, *A Comparison of Key Aspects of the International Tax Systems of Major OECD and Developing Countries* 7-8 (May 10, 2010), http://www.businessroundtable.org/uploads/studies-reports/downloads/BRT_14_country_international_tax_comparison_20100510.pdf.

⁴⁴ See *id.* at 8-9.

⁴⁵ See *id.* at 7-9.

⁴⁶ See IRC § 954(h).

⁴⁷ See PricewaterhouseCoopers, note 43, at 9.

APPENDIX

TABLE 2
THE 200 CHOSEN COMPANIES⁴⁸
(NUMBERS IN BILLIONS)

<i>Forbes 2000 Ranking</i>	<i>Company</i>	<i>Country</i>	<i>Sales</i>	<i>Profits</i>	<i>Assets</i>	<i>Market Value</i>
1	JPMorgan Chase	U.S.	\$115.5	\$17.4	\$2117.6	\$182.2
2	HSBC Holdings	U.K.	103.3	13.3	2467.9	186.5
3	General Electric	U.S.	150.2	11.6	751.2	216.2
4	ExxonMobil	U.S.	341.6	30.5	302.5	407.2
5	Royal Dutch Shell	Netherlands	369.1	20.1	317.2	212.9
8	Berkshire Hathaway	U.S.	136.2	13.0	372.2	211.0
10	Citigroup	U.S.	111.5	10.6	1913.9	132.8
11	Wells Fargo	U.S.	93.2	12.4	1258.1	170.6
11	BNP Paribas	France	130.4	10.5	2680.7	88.0
13	Banco Santander	Spain	109.7	12.8	1570.6	94.7
14	AT&T	U.S.	124.3	19.9	268.5	168.2
16	Chevron	U.S.	189.6	19.0	184.8	200.6
18	Wal-Mart Stores	U.S.	421.8	16.4	180.7	187.3
19	Total	France	188.1	14.2	192.8	138.0
20	Allianz	Germany	142.9	6.7	838.4	62.7
22	ConocoPhillips	U.S.	175.8	11.4	156.3	109.1
24	Volkswagen Group	Germany	168.3	9.1	267.5	70.3
26	Nestlé	Switzerland	112.0	36.7	117.7	181.1
27	Vodafone	U.K.	67.5	13.1	236.6	148.2
28	ENI	Italy	130.5	8.4	176.1	96.8
29	American Intl Group	U.S.	77.3	7.8	683.4	67.1
29	GDF Suez	France	113.1	6.2	245.5	85.2
31	IBM	U.S.	99.9	14.8	113.4	198.1
31	Telefónica	Spain	81.3	13.6	166.5	113.3
35	Procter & Gamble	U.S.	79.6	11.2	134.3	172.2
36	Pfizer	U.S.	67.8	8.3	195.0	155.7
37	Goldman Sachs Group	U.S.	46.0	8.4	911.3	90.0
38	E.ON	Germany	124.6	7.9	205.1	64.0
39	ING Group	Netherlands	149.2	4.3	1665.3	46.8
40	UBS	Switzerland	49.8	7.7	1403.0	70.8
41	Barclays	U.K.	63.9	5.6	2328.3	58.3
42	Hewlett-Packard	U.S.	127.2	9.1	119.9	90.3
43	Daimler	Germany	130.9	6.0	178.7	70.5
44	Société Générale	France	85.4	5.3	1518.7	46.9
45	Siemens	Germany	103.5	5.3	135.0	110.2
47	Apple	U.S.	76.3	16.6	86.7	324.3
48	AXA Group	France	162.4	3.7	981.8	46.4
50	Microsoft	U.S.	66.7	20.6	92.3	215.8
54	Ford Motor	U.S.	129.0	6.6	164.7	54.3
55	ENEL	Italy	96.5	5.9	217.4	54.0
57	Johnson & Johnson	U.S.	61.6	13.3	102.9	163.3
58	Rio Tinto	U.K.	56.6	14.3	112.4	131.6
59	Credit Suisse Group	Switzerland	53.9	5.2	1097.1	50.7
60	Statoil	Norway	90.4	6.5	110.3	83.8
62	DeutscheBank	Germany	61.2	3.1	2556.5	59.6
62	Novartis	Switzerland	50.6	9.8	123.3	125.2

⁴⁸ The companies are ordered by their rank, sales, profits, assets, and market value as published by the Forbes 2000 website. World's Biggest Public Companies, note 15.

<i>Forbes 2000 Ranking</i>	<i>Company</i>	<i>Country</i>	<i>Sales</i>	<i>Profits</i>	<i>Assets</i>	<i>Market Value</i>
64	Verizon Communications	U.S.	106.6	2.5	220.0	101.3
66	BBVA-Bancoilbao Vizcaya	Spain	43.4	6.3	734.1	52.3
72	BMW Group	Germany	80.2	4.3	146.1	51.0
73	BASF	Germany	85.5	6.1	78.2	74.2
74	France Telecom	France	60.9	6.5	120.5	56.7
81	Morgan Stanley	U.S.	38.0	4.7	807.7	43.8
81	Sanofi-aventis	France	40.7	7.3	110.3	89.2
83	MetLife	U.S.	52.7	2.8	730.9	48.4
86	PepsiCo	U.S.	57.8	6.3	68.2	102.6
87	Cisco Systems	U.S.	42.4	7.6	82.0	99.2
89	Roche Holding	Switzerland	50.8	9.3	62.9	120.9
90	ArcelorMittal	Luxembourg	78.0	2.9	130.9	53.6
91	Coca-Cola	U.S.	35.1	11.8	72.9	148.7
92	Deutsche Telekom	Germany	83.6	2.3	164.6	60.7
93	Intel	U.S.	43.6	11.5	63.2	114.5
96	Anheuser-Busch	Belgium	36.8	4.1	113.8	90.6
100	EDF Group	France	87.2	1.4	319.9	78.2
101	Repsol YPF	Spain	62.2	6.2	90.4	39.6
101	RWE Group	Germany	67.9	4.4	121.7	35.4
103	Unilever	Netherlands	59.3	5.7	54.8	91.9
104	Comcast	U.S.	37.9	3.6	118.5	68.7
105	Kraft Foods	U.S.	49.2	4.1	95.3	55.4
106	UnitedHealth Group	U.S.	94.2	4.6	63.1	47.7
107	Oracle	U.S.	32.0	6.8	67.2	161.2
108	Tesco	U.K.	79.6	3.5	70.1	50.5
110	Walt Disney	U.S.	39.0	4.4	71.0	81.5
112	United Technologies	U.S.	54.3	4.4	58.5	74.8
113	Iberdrola	Spain	40.7	3.8	121.0	45.0
114	American Express	U.S.	30.2	4.1	147.0	53.2
116	Prudential Financial	U.S.	38.4	3.2	539.9	30.7
117	Prudential	U.K.	75.6	2.2	408.3	29.4
118	Boeing	U.S.	64.3	3.3	68.6	52.7
119	CVS Caremark	U.S.	96.4	3.4	62.2	46.5
120	Google	U.S.	29.3	8.5	57.9	185.8
125	Møller-Maersk	Denmark	56.6	4.7	66.5	40.5
127	Abbott Laboratories	U.S.	35.2	4.6	59.5	75.0
129	AstraZeneca	U.K.	33.6	8.1	54.8	65.6
131	USancorp	U.S.	20.5	3.3	307.8	52.2
133	Anglo American	U.K.	28.4	6.6	66.4	66.2
134	GlaxoSmithKline	U.K.	44.3	2.5	62.1	99.2
135	Aviva	U.K.	90.7	2.3	567.9	20.5
138	Caterpillar	U.S.	42.6	2.7	64.0	63.9
140	Dow Chemical	U.S.	53.7	2.3	69.6	43.0
142	Home Depot	U.S.	68.0	3.3	40.1	60.9
146	Vivendi	France	38.7	2.9	76.7	33.8
147	Bayer Group	Germany	47.0	1.7	67.5	62.5
149	News Corp	U.S.	33.1	3.1	56.7	45.5
150	Vinci	France	45.5	2.4	75.5	32.9
151	Marathon Oil	U.S.	67.1	2.6	50.0	35.6
152	PNC Financial Services	U.S.	17.1	3.4	264.3	33.1
153	Philip Morris International	U.S.	27.2	7.3	35.0	114.6
154	United Parcel Service	U.S.	49.5	3.5	33.6	73.1
155	Target	U.S.	67.4	2.9	43.7	35.7
158	Occidental Petroleum	U.S.	19.2	4.5	52.4	80.3

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<i>Forbes 2000 Ranking</i>	<i>Company</i>	<i>Country</i>	<i>Sales</i>	<i>Profits</i>	<i>Assets</i>	<i>Market Value</i>
159	British Amer. Tobacco	U.K.	23.2	4.5	43.0	76.6
161	Nokia	Finland	56.8	2.5	50.3	31.2
162	Renault	France	52.2	4.6	93.1	16.7
163	Time Warner	U.S.	26.9	2.6	66.5	39.7
166	Travelers Cos	U.S.	25.1	3.2	105.2	25.4
167	WellPoint	U.S.	58.8	2.9	50.2	25.5
168	Deutsche Post	Germany	68.3	3.4	50.5	21.7
170	Merck & Co	U.S.	46.0	861.0 M	105.8	100.9
173	EI du Pont de Nemours	U.S.	32.7	3.0	40.4	48.8
174	BG Group	U.K.	17.4	3.4	50.0	79.2
176	Bank of New York Mellon	U.S.	14.5	2.5	247.3	36.0
181	McDonald's	U.S.	24.1	4.9	32.0	80.1
182	Dell	U.S.	61.5	2.6	38.6	29.5
183	Aegon	Netherlands	42.4	2.4	445.8	14.2
184	Capital One Financial	U.S.	19.1	2.7	197.5	22.7
188	Aflac	U.S.	20.7	2.3	101.0	26.1
190	3M	U.S.	26.7	4.1	30.2	65.2
192	Lockheed Martin	U.S.	45.8	2.9	35.1	28.2
193	L'Oréal Group	France	26.1	3.0	31.4	67.9
194	Honeywell International	U.S.	33.4	2.0	37.8	44.1
195	Volvo Group	Sweden	39.4	1.6	45.5	34.8
196	Schneider Electric	France	26.2	2.3	40.3	43.3
196	National Grid	U.K.	20.7	2.1	66.1	32.0
198	Archer Daniels	U.S.	68.6	1.9	42.6	23.0
199	Lowe's Cos	U.S.	48.8	2.0	33.7	36.5
200	Deere & Co	U.S.	27.3	2.1	42.9	37.0
201	Amgen	U.S.	15.1	4.6	43.5	49.9
204	Imperial Tobacco Group	U.K.	23.6	2.4	48.0	32.2
206	Walgreen	U.S.	68.4	2.2	27.0	38.7
207	Eli Lilly & Co	U.S.	23.1	5.1	31.0	40.4
208	Altria Group	U.S.	16.9	3.9	37.4	52.4
210	Philips	Netherlands	34.0	1.9	41.5	30.4
211	Union Pacific	U.S.	17.0	2.8	43.1	46.5
215	Ericsson	Sweden	30.3	1.7	40.0	40.0
216	Exelon	U.S.	18.6	2.6	52.2	28.6
216	Christian Dior	France	28.3	1.7	55.3	25.7
218	Danone	France	22.8	2.5	35.9	39.7
222	Freeport Copper	U.S.	19.0	4.3	29.4	46.8
222	ACE	Switzerland	16.0	3.1	83.4	20.6
224	General Dynamics	U.S.	32.5	2.6	32.5	28.4
225	Southern Co	U.S.	17.5	2.0	55.0	32.4
225	Metro AG	Germany	90.2	1.1	47.0	23.0
227	Centrica	U.K.	35.0	3.0	29.8	27.4
229	Hess	U.S.	33.9	2.1	35.4	27.1
231	Bristol-Myers Squibb	U.S.	19.5	3.1	31.1	45.0
235	ThyssenKrupp Group	Germany	58.1	1.1	58.9	20.0
238	TeliaSonera	Sweden	15.9	3.2	35.9	38.2
241	EADS	Netherlands	60.7	733.6 M	111.2	22.0
242	Apache	U.S.	12.1	3.0	43.4	45.5
245	Carrefour Group	France	120.6	579.7 M	70.9	31.2
246	Costco Wholesale	U.S.	82.0	1.4	25.7	31.7
247	Medtronic	U.S.	15.8	3.3	30.6	40.7
248	SAP	Germany	16.7	2.4	27.8	71.9

<i>Forbes 2000 Ranking</i>	<i>Company</i>	<i>Country</i>	<i>Sales</i>	<i>Profits</i>	<i>Assets</i>	<i>Market Value</i>
250	BT Group	U.K.	31.7	1.6	40.2	23.4
252	Qualcomm	U.S.	11.7	3.6	31.3	88.1
254	Dominion Resources	U.S.	15.2	2.8	42.8	26.4
255	EMC	U.S.	17.0	1.9	30.8	55.0
258	Hartford Fin'l Svcs.	U.S.	22.4	1.7	318.3	12.3
260	Bouygues	France	41.8	1.4	47.4	16.5
264	Allstate	U.S.	31.4	928.0 M	130.9	16.9
267	NextEra Energy	U.S.	15.3	2.0	53.0	23.4
269	Gas Natural Group	Spain	26.3	1.6	59.5	15.4
271	Holcim	Switzerland	23.2	1.3	47.1	23.4
272	Northrop Grumman	U.S.	34.8	2.1	31.4	19.3
275	Air Liquide	France	18.1	1.9	30.2	36.1
276	Diageo	U.K.	14.6	2.4	28.3	47.3
278	Emerson Electric	U.S.	21.7	2.2	22.7	44.8
279	McKesson	U.S.	109.9	1.1	30.4	19.8
281	Johnson Controls	U.S.	35.4	1.5	26.0	27.6
282	FedEx	U.S.	38.2	1.3	26.2	28.6
282	BlackRock	U.S.	8.6	2.1	178.5	25.0
284	BAE Systems	U.K.	32.9	1.6	35.8	17.5
286	Time Warner Cable	U.S.	18.9	1.3	45.8	23.6
290	Duke Energy	U.S.	14.3	1.3	59.1	24.5
291	Telenor	Norway	16.3	2.5	29.4	26.7
292	Devon Energy	U.S.	9.9	4.6	32.9	37.6
298	State Street	U.S.	9.7	1.6	160.5	21.8
302	Amazon.com	U.S.	34.2	1.2	18.8	75.8
303	Aetna	U.S.	34.2	1.8	37.7	14.0
304	Scottish & Southern	U.K.	32.7	1.9	27.3	17.9
305	Linde	Germany	17.3	1.3	36.1	25.8
307	Peugeot	France	75.0	1.5	91.2	8.7
307	Veolia Environnement	France	46.6	777.9 M	66.7	15.0
309	EnBW-Energieaden	Germany	23.4	1.6	47.2	14.4
312	Chubb	U.S.	13.3	2.2	50.2	17.4
313	Loews	U.S.	14.6	1.3	76.3	17.4
314	Lafarge	France	21.6	1.1	56.4	16.7
319	Danskeank Group	Denmark	21.7	657.0 M	578.3	15.6
320	Alstom	France	26.6	1.6	33.8	15.9
326	EDP-Energias de Portugal	Portugal	19.0	1.4	53.7	13.9
336	PPR	France	19.6	1.3	32.4	19.0
341	Reckittenckiser Group	U.K.	13.2	2.4	20.7	36.2
343	Koç Holding	Turkey	35.9	1.2	52.5	10.8
346	Henkel Group	Germany	20.2	1.5	23.0	24.4
352	CEZ	Czech Republic	10.6	2.5	29.0	24.6
358	Fiat Group	Italy	48.0	696.1 M	96.3	10.9
363	OMV Group	Austria	31.2	1.2	35.2	12.5
376	Ferrovial	Spain	16.1	2.9	55.3	9.2
378	Continental	Germany	34.9	771.1 M	31.8	16.8
381	Areva	France	12.2	1.2	46.3	17.1

TABLE 3
THE NUMBER OF COMPANIES BY COUNTRY OF RESIDENCE

<i>Country</i>	<i>Count of Company</i>
Austria	1
Belgium	1
Czech Republic	1
Denmark	2
Finland	1
France	24
Germany	19
Italy	3
Luxembourg	1
Netherlands	6
Norway	2
Portugal	1
Spain	7
Sweden	3
Switzerland	7
Turkey	1
United Kingdom	20
United States	100
Total	200

