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This article from NYTimes.com
has been sent to you by bmarchant@sandiego.gov.

Greetings all!

I can't say it's really good to be back from vacation, but I'm back just the same. I look forward to seeing you all and I thought I'd pass along this very relevant article. Cheers! Ben

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Musical Chairs on Tax Havens: Now It's Ireland

August 3, 2002
By DAVID CAY JOHNSTON

Efforts by American companies to save on taxes by reincorporating in Bermuda and other offshore tax havens are nearly dead. But United States corporations are still bristling at the way they are taxed, and another island, Ireland, may soon emerge as the next battleground.

Stanley Works, responding to criticism from employees, investors and public officials from Hartford to Sacramento, abandoned plans late Thursday to acquire a Bermuda address that would have allowed it to stop paying taxes to the United States on profits earned in the United States as well as abroad. The company, a maker of tools based in New Britain, Conn., said it would instead press for legislation to make the tax system more fair.

Earlier in the week, PricewaterhouseCoopers dropped its plan to spin off its consulting division as a Bermuda company, instead selling the division to I.B.M.

With bills in both houses of Congress to refuse such tax breaks to any company that moved after March 20, no new companies have proposed a move to Bermuda or similar tax havens.

Further, Congress is moving to deny government contracts to companies that reincorporated abroad before March 20.

But the larger issue of how to tax multinational corporations is far from resolved, and two immediate challenges face Congress.

One challenge is how to respond to a new maneuver: incorporate in Ireland to reduce taxes. Tax advisers are already selling the idea of Ireland as an alternative to

Bermuda, the Cayman Islands and Panama, two people who have heard such pitches said yesterday.

Ireland has low corporate tax rates and favorable tax-treaty terms with the United States.

The second challenge is how to deal with the competitive advantage that firms that acquired an offshore address before March 20 enjoy because they can pay little or no American tax on their profits earned in the United States and abroad, allowing them to charge lower prices yet earn the same or larger profits.

Corporate unhappiness with American taxation has grown as American companies increasingly compete with rivals abroad and argue that their overseas rivals pay lower taxes.

But according to a new study by the Organization for International Investment, United States publicly traded companies pay 34.2 percent of their profits in taxes worldwide, compared with 36.9 percent for the non-American companies, said Todd Malin, the organization's executive director.

The 100 largest United States publicly traded companies pay a significantly smaller share of their profits in taxes worldwide than the 100 largest companies based outside the United States, according to the analysis of disclosure reports to shareholders prepared for the organization. The trade group represents large companies including Nestlé and the American arm of Toyota.

For seven years Congressional Republicans have been promising fundamental reform of the corporate tax system to make American companies more competitive. But nothing has been done.

The Bush administration, which also favors changes, has said it will begin a comprehensive study of the problem, but not until next year.

Meanwhile, tax experts have been selling companies on do-it-yourself tax avoidance techniques like the Bermuda move.

Stanley's decision was praised yesterday by critics of the Bermuda move, who had started a campaign to persuade pension funds of state and local governments and unions to divest themselves of shares in the company and others that had or were seeking a Bermuda address.

Denise L. Nappier, the Connecticut state treasurer who sued Stanley Works for what she said was its rigging of an earlier shareholder vote on the Bermuda deal, said she hoped the tide had turned and other companies would see the folly in pursuing offshore reincorporation.

The Bermuda move was growing quickly in popularity just six months ago. For example, Ernst & Young boasted to clients that it was advising a large number of companies preparing to acquire an offshore mailbox to escape American taxes while keeping their operating headquarters in the United States. The flood of such moves that Ernst & Young predicted became a trickle after The New York Times disclosed the plans in February and the techniques were widely criticized.

At least 19 large publicly traded companies have moved to Bermuda or other offshore havens.

Another company that recently received shareholder approval to reincorporate in Bermuda, the Leucadia National Corporation, said yesterday that it had not decided whether to go ahead and that it had until 2005 to decide.

Congress is now considering two bills that would deny tax benefits to companies that acquire an offshore address after March 20 of this year.

But Congress is also facing questions of fairness. Doing nothing further will leave companies that did not use the Bermuda loophole at a serious competitive disadvantage.

For example, insurers that have reincorporated in Bermuda, like White Mountains Insurance and the PXRE Group, can price some of their property and casualty insurance at lower rates than America-based competitors like Hartford Financial Services, Liberty Mutual Insurance and Chubb, which continue to be fully taxed on the interest, dividends and capital gains they earn from investing premiums.

The legislation currently moving through both the House and Senate would leave in place the loophole that allows companies that acquired an offshore mailbox before March 20 to turn otherwise taxable profits earned in the United States into tax deductible payments to their offshore corporate parent. These deductible payments are for interest, management fees and overhead fees and as royalties for use of intellectual property like the company logo and patents on drugs and oil drilling techniques.

The March 20 deadline would give a tax advantage for Cooper Industries, Ingersoll-Rand, Tyco International and others that acted before the deadline. John M. Trani, the chief executive of Stanley Works, said in a May interview that it would be unfair for Ingersoll-Rand and Cooper to have a tax break that his company did not have on products on which they compete.

The chief tax writer in Congress, Representative Bill Thomas, a California Republican, reiterated his view that American tax law was forcing corporations to acquire an offshore mailbox.

"We need to do the rest of the job by passing legislation that removes incentives for companies to acquire an offshore address," he said.

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