



Retired U.S. Sen. Carl Levin
Remarks for “Next Steps in Offshore Multinational Corporate Tax”
Jan. 31, 2017

The focus of today’s forum: Offshore Multinational Corporate Tax, was the subject of perhaps a dozen hearings of the Senate Permanent Subcommittee on Investigations (PSI) when I along with Tom Coburn (and later John McCain) were Chairman and Ranking members of that Subcommittee.

Intensive bipartisan investigations which preceded those hearings disclosed tax loopholes with no economic justification which allowed for tax avoidance by highly profitable corporations, of 100’s of billions of dollars of taxes.

Many, probably most, of the deductions and credits in our tax law have some economic justification.

One may not agree that a particular justification is adequate to support favorable tax treatment—but at least there usually is an economic justification.

For instance, you may not support favorable tax treatment for oil and gas exploration, or accelerated depreciation, or deductible charitable contributions by corporations, or conservation measures in commercial buildings, etc.—but at least they have an economic justification: they promote or produce something. There is a need for energy production and conservation, investment in more efficient new equipment, and support of our charities and educational institutions.

But the loopholes our PSI looked at had no arguable justification. Indeed, when we asked companies what was the economic justification for shifting revenue to tax havens, the answer we got invariably was: “it’s legal”. No statement about lowering production costs or being closer to markets. Just an acknowledgement that yes, it was to reduce taxes, and if you don’t like our using tax havens for that purpose, “change the law”.

While debate will rage over whether and how to accomplish a comprehensive overhaul of our tax code, at least we should end without delay the indefensible and unconscionable tax haven absurdity costing our treasury perhaps 100-200 billion dollars a year.

30 of our largest and most profitable corporations, with 160 billion dollars of combined income in 2008-2010 paid zero income taxes, mainly by using tax havens.

Three quarters of our Fortune 500 corporations have created paper corporations in tax havens, most with zero employees. 365 of those companies have together created about 10,000 of those shell companies.

The use of tax havens for tax avoidance is a big part of the explanation for why corporate income taxes paid into the U.S. treasury are now only 11% of our tax revenue, dramatically down over the decades.

2-3 trillion dollars sit “overseas” held by our most profitable corporations. They refuse to bring those dollars “back” to the U.S. where the intellectual property which produced those profits was

created, and the patent law which protects the creativity which spawned them is enforced, and the R&D tax credits which helped fund them were provided.

A number of fictions are used to produce this situation.

Fiction #1—that the *negotiations* to set the value of the intellectual property transferred from the parent corporation in the U.S. to its own controlled foreign subsidiary (CFC) are in any real sense arm's length transactions, as required by the tax laws.

Fiction #2—the representation made by a corporation in its annual report to the Executive Branch, the SEC, that the dollars kept abroad are “permanently” there (thereby avoiding the need to maintain a reserve to pay U.S. taxes) when that corporation, at the very same time, is lobbying the legislative branch seeking a tax holiday here in the U.S. so it can bring those dollars back at a lower tax rate.

Fiction #3—is when a box is checked on an IRS form, magically transforming *passive* income like royalty or dividend income which is to be taxed annually, into *deferrable active* income.

There is nonetheless substantial support for another tax holiday which would provide a rate reduction in exchange for repatriating the trillions of dollars. (By the way, I know of no other example where tax payers can bargain in this way with the government).

Some of that support for another tax holiday is based on the need for infrastructure funding and support for a related proposal that all or some of the revenues resulting from the tax holiday be used specifically for that purpose.

Well, let me suggest a 3 part package deal.

Part I: a discounted rate for repatriating the 2-3 Trillion dollars.

Part II: Congress links the 100's of billions in resulting tax collections to funding needed infrastructure.

Part III: Congress closes the unjustified loopholes that led to the existing tax haven drain so it doesn't happen again.

So that's what I'm suggesting: A package deal ending the use of tax havens to avoid U.S. taxes, giving a tax break to bring home the 2-3 Trillion Dollars that is now kept “offshore” and using the taxes collected for infrastructure. How to do this mechanically?

1. End the use of “check the box” and “look through” mechanisms used by and with foreign corporations created and controlled by U.S. corporations.
2. Tax foreign corporations managed and controlled in the U.S. as though they were incorporated here.
3. Continue to provide U.S. tax credits for taxes paid to foreign governments for economic activity, such as manufacturing and sales in those countries. These credits are justified to avoid double taxation.

Subpart F of our tax code was passed in 1963 in response to a plea from President Kennedy in his address to Congress in 1961 to end tax haven abuses.

President Kennedy said this: “Recently more and more enterprises organized abroad by American firms have arranged their corporate structures aided by artificial arrangements between parent and subsidiary regarding inter-company pricing, the transfer of patent licensing rights, the shifting of management fees, and similar practices which maximize the accumulation of profits in the tax haven as to exploit the multiplicity of foreign tax systems...”

“I recommend elimination of the tax haven abuse”, President Kennedy concluded.

The actions I’m proposing today will give the “Subpart F” provision in our tax law the life it was intended to have when it was passed in 1963. The loopholes that have subverted Subpart F’s purpose, which was to end tax haven abuses, should be promptly closed. The debate over comprehensive tax reform is likely to be long and it is far from certain it is even achievable in one Congress.

The upcoming debate over the complex pros and cons of comprehensive tax reform should not deter us from promptly ending the use of tax havens which has no pro’s—no justification—and which robs us of funds our nation needs, including substantial investments in infrastructure which have broad bipartisan support.