United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman
Tom Coburn, Ranking Minority Member

OFFSHORE FUNDS LOCATED ONSHORE

MAJORITY STAFF REPORT ADDENDUM

December 14, 2011

to

REPATRIATING OFFSHORE FUNDS: 2004 TAX WINDFALL FOR SELECT MULTINATIONALS

MAJORITY STAFF REPORT

October 11, 2011

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE

December 14, 2011

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

SENATOR CARL LEVIN
Chairman

ELISE J. BEAN
Staff Director and Chief Counsel
ROBERT L. ROACH
Counsel & Chief Investigator
ALLISON F. MURPHY
Counsel

MARY D. ROBERTSON
Chief Clerk

12/15/11

OFFSHORE FUNDS LOCATED ONSHORE
MAJORITY STAFF REPORT ADDENDUM
December 14, 2011

Table of Contents

I. **EXECUTIVE SUMMARY** 1
- **A. Report Addendum Findings** 1
  1. Surveyed Corporations Had $538 Billion in Undistributed Accumulated Foreign Earnings 1
  2. Almost Half of the Surveyed Corporations' Offshore Tax-Deferred Corporate Earnings Were Invested in U.S. Assets 1
- **B. Report Addendum Recommendation** 2

II. **BACKGROUND** 2

III. **SUBCOMMITTEE REVIEW** 3

IV. **CONCLUSION** 6

# # #

OFFSHORE FUNDS LOCATED ONSHORE
Majority Staff Report Addendum
December 14, 2011
to
REPATRIATING OFFSHORE FUNDS: 2004 TAX WINDFALL FOR SELECT MULTINATIONALS
Majority Staff Report of October 11, 2011

I. EXECUTIVE SUMMARY

On October 11, 2011, the Permanent Subcommittee on Investigations Majority Staff Report, "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals," was released. The Report presented the findings from a survey of 20 major multinational corporations, including the 15 corporations that repatriated the largest amounts of offshore funds to the United States in response to the 2004 repatriation tax provision of the American Jobs Creation Act (AJCA) of 2004 (P.L. 108-357).

To gain a deeper understanding of the U.S. corporate funds that are currently offshore and might be repatriated if another repatriation tax break were enacted, a second survey was conducted of U.S. multinational corporations with major offshore earnings, including the corporations in the initial survey. This Report Addendum presents findings from that additional survey, which took a closer look at the nature and status of the undistributed accumulated foreign earnings of those corporations. That survey sought information about the amount of undistributed accumulated foreign earnings, their location, and the extent to which those earnings were invested in U.S. dollar assets, such as U.S. bank deposits, U.S. corporate stock, or U.S. government securities, including U.S. Treasury bonds. Additionally, the Subcommittee consulted with academic, banking, government, and other experts about the status of those offshore funds.

A. Report Addendum Findings

The Report Addendum makes the following findings of fact.

1. **Surveyed Corporations Had $538 Billion in Undistributed Accumulated Foreign Earnings.** The 27 U.S. corporations surveyed by the Subcommittee together had a total of $538 billion in undistributed accumulated foreign earnings at the end of FY2010, and of those, 18 corporations each had undistributed accumulated foreign earnings in excess of $10 billion.

2. **Almost Half of the Surveyed Corporations' Offshore Tax-Deferred Corporate Earnings Were Invested in U.S. Assets.** As of the end of FY2010, nearly half (46%) of the funds that the surveyed corporations identified as offshore and for which U.S. taxes had been deferred, were actually in the United States at U.S. financial institutions.

B. Report Addendum Recommendation

The Report Addendum recommends against enacting a second corporate repatriation tax break for an additional reason to those enumerated in the Report: because undistributed accumulated foreign earnings are not trapped offshore. U.S. corporations are already investing nearly half of those foreign earnings in U.S. assets without paying any U.S. taxes on them, allowing those corporations to reap benefits from the U.S. financial system without paying the tax dollars needed to support that system. Enacting still another corporate repatriation tax incentive would further exacerbate that tax unfairness.

II. BACKGROUND

Based on corporate filings with the U.S. Securities and Exchange Commission (SEC), U.S. corporations held an estimated $1.4 trillion in undistributed accumulated foreign earnings at the end of the first half of 2011.[1] The term "undistributed accumulated foreign earnings" is commonly used to describe the sum of the earnings added up over prior years of the foreign subsidiaries of a U.S. parent corporation that have not been distributed to the U.S. parent corporation as a dividend. The $1.4 trillion in total estimated foreign earnings of U.S. corporations is in addition to their domestic corporate cash holdings, which have been calculated at over $2 trillion.[2]

Under the U.S. tax system, the overseas income generated by foreign subsidiaries of U.S. corporations is subject to U.S. tax, but the tax is deferred until that foreign income is paid as a dividend to the U.S. parent corporation. In addition, U.S. tax law contains an explicit series of exceptions which allow U.S. corporations to invest their foreign income in certain specified U.S. assets without characterizing that income as having been repatriated and without triggering the tax that would otherwise be associated with the return of those funds to the United States.[3] By statute, some of the common investments that can be made with foreign income without triggering U.S. taxation include the deposit of foreign earnings with U.S. banks, the use of foreign earnings to purchase government securities like U.S. Treasury bonds, and the use of foreign earnings to purchase shares of stock of unrelated U.S. corporations.[4] In order to make purchases of U.S. government bonds and U.S. securities, foreign earnings must be converted to U.S. dollars, which are typically deposited into a U.S. bank or securities account.

Advocates of a second repatriation tax break sometimes claim that foreign earnings of U.S. corporations are currently "trapped" abroad or "locked" overseas.[5] Such descriptions are misleading, however, because those funds may be returned to the United States at any time and

---

[1] See, e.g., Dane Mott, J.P. Morgan, "Accounting Issues: Show Us the Foreign Cash!" at 4 (9/12/2011) (estimating that aggregate global undistributed foreign earnings attributable to U.S. corporations are in excess of $1.4 trillion based on its survey of recently increased corporate financial disclosures).
[2] See Federal Reserve Board, "Flows of Funds Accounts of the United States," Second Quarter 2011, Table L.102, Line 41 (9/16/2011), http://www.federalreserve.gov/releases/z1/current/z1.pdf. The exact figure estimated by the Federal Reserve for domestic cash holdings is $2.047 trillion.
[3] See 26 U.S.C. § 956(c)(2) (defining exceptions to "United States property").
[4] See 26 U.S.C. § 956(c)(2)(A), (F).
[5] See, e.g., Robert J. Shapiro and Aparna Mathur, "The Revenue Implications of Temporary Tax Relief For Repatriated Foreign Earnings: An Analysis of the Joint Tax Committee's Revenue Estimates," at 3 (August 2011); Douglas Holtz-Eakin, "The Need for Pro-Growth Corporate Tax Reform: Repatriation and Other Steps to Enhance Short- and Long-Term Economic Growth" (August 2011).

placed in U.S. financial institutions or used in a range of U.S. investments without incurring any penalty or tax burden.

Prior to this research, virtually no data was publicly available on the extent to which U.S. corporations kept undistributed accumulated foreign earnings overseas or, alternatively, placed those foreign earnings in U.S. bank accounts or used them to purchase U.S. assets such as Treasury bonds or U.S. stock.[6] The Subcommittee undertook its survey to obtain that information from U.S. corporations known to have substantial overseas cash holdings.

III. SUBCOMMITTEE REVIEW

To gain a deeper understanding of the extent to which U.S. multinationals held their tax-deferred foreign earnings in offshore jurisdictions or in the United States, the Subcommittee conducted a survey of over two dozen U.S. corporations. The surveyed firms were: Adobe, Altria, Apple, Bristol-Myers Squibb, Broadcom, CA Technologies, Cisco, Coca-Cola, Devon Energy, Duke Energy, DuPont, Eastman Kodak, Eli Lilly, EMC Corporation, Google, Hewlett-Packard, Honeywell, IBM, Intel, Johnson & Johnson, Merck, Microsoft, Motorola, Oracle, PepsiCo, Inc., Pfizer, Procter & Gamble, and Qualcomm. Due to mergers and other data issues, the final survey results analyzed the foreign earnings of 27 U.S. multinational corporations.[7]

The survey was conducted from June to November 2011, through questionnaires sent to the selected corporations, followed by individualized inquiries to clarify the information received. The survey questions focused on the amount of foreign earnings that were kept overseas versus invested in the United States at the end of 2010. In most cases, corporations provided data on the status of their undistributed accumulated foreign earnings; in a few cases, corporations chose instead to present data on the status of their foreign cash holdings.[8]

Overall, U.S. corporations held an estimated $1.4 trillion in undistributed accumulated foreign earnings as of mid-2011.[9] As shown in the table below, the tax-deferred foreign earnings of the 27 surveyed corporations amounted to $538 billion as of the end of FY2010. Eighteen of the surveyed corporations each had total undistributed accumulated earnings in excess of $10 billion. The $538 billion in tax-deferred foreign earnings held by the surveyed corporations at the end of last year, thus, represents a significant portion of the undistributed accumulated foreign earnings held by all U.S. corporations.

---

[6] Corporations generally do not disclose the total amount of undistributed accumulated foreign earnings of their foreign subsidiaries, though many do disclose the amount of undistributed accumulated foreign earnings that are deemed indefinitely reinvested under FASB standard ASC 740-30. Some corporations have also recently begun to disclose in their SEC filings the total amount of their foreign cash holdings.

[7] The Subcommittee did not seek to obtain separate survey information from two of the corporations that were the subject of the survey in the original Report, because they had merged with other firms among that original group (Schering-Plough which merged with Merck, and Wyeth which merged with Pfizer). In addition, a survey response from Altria indicated that it does not control or record earnings from its principal foreign investments until those earnings are returned as dividends, and therefore it had no data on the percentage of its foreign investments that were placed in U.S. assets. The final survey results, thus, do not include data from these three firms.

[8] Five corporations in the survey, while keeping track of U.S. dollar assets as a percentage of their foreign cash, told the Subcommittee that they were unable to break out the proportion of their U.S. dollar assets as a percentage of their undistributed accumulated foreign earnings. The Subcommittee accepted reports of their U.S. dollar assets as a percentage of their foreign cash, cash equivalents and investments as a substitute. In the survey results, these corporations are denoted with an asterisk (*).

[9] See Dane Mott, J.P. Morgan, “Accounting Issues: Show Us the Foreign Cash!” at 4 (9/12/2011).

Corporation	Undistributed accumulated foreign earnings as of FY2010 (in billions of dollars)
Hewlett-Packard	$ 55
Merck	$ 50
Pfizer	$ 48
Johnson & Johnson	$ 37
Microsoft	$ 34
Cisco	$ 32
IBM	$ 31
Procter & Gamble	$ 30
Apple	$ 29
PepsiCo	$ 27
Eli Lilly	$ 27
Coca-Cola	$ 21
Google	$ 18
Oracle*	$ 17
Bristol-Myers Squibb	$ 17
DuPont	$ 13
Intel	$ 12
Qualcomm	$ 11
Honeywell	$ 6
Devon Energy	$ 5
EMC	$ 5
Motorola	$ 5
Eastman Kodak	$ 2
Adobe	$ 2
Broadcom	$ 1
Duke Energy	$ 1
CA Technologies	$ 1
TOTAL	$ 538 Billion

* Oracle total reflects its total foreign cash, as opposed to its undistributed accumulated foreign earnings.
Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

The survey determined that while just over half of the $538 billion in tax-deferred foreign earnings held by the foreign subsidiaries of the 27 surveyed corporations was maintained and invested overseas, the remaining offshore funds were held and invested in the United States. Altogether, of the 27 surveyed corporations, on average, 46% of their tax-deferred offshore funds

were held in U.S. bank accounts and invested in U.S. assets such as U.S. Treasuries or shares of unrelated U.S. corporations.[10]

The survey also found that, while the overall average of undistributed accumulated foreign earnings invested in U.S. assets was 46%, individual corporations varied significantly in the extent to which they maintained those foreign earnings overseas versus placing them in the United States. As of the end of FY2010, the survey results showed that 9 of the 27 corporations, or 33%, had placed between three-quarters and all of their tax-deferred offshore funds in U.S. assets; 3 corporations had placed between half and three-quarters of those funds in U.S. assets; 4 corporations had placed between a quarter and half of those funds in U.S. assets; and 11 corporations, or nearly 41%, had placed up to one quarter of their tax-deferred offshore funds in U.S. assets. These figures show U.S. corporations have not taken a uniform approach, but have made a wide range of decisions about keeping some or all of their offshore funds in the United States.

Percentage of Undistributed Accumulated Foreign Earnings Held in U.S. Bank Accounts or U.S. Investments At the End of FY2010

0 - 25%	**26% - 50%**	**51% - 75%**	**76% - 100%**
Bristol-Myers Squibb	Coca-Cola	Oracle	Adobe*
CA Technologies	Devon Energy	Motorola	Apple*
Duke Energy	DuPont*	PepsiCo*	Broadcom
Eli Lilly	Intel		Cisco
Hewlett-Packard			Google
Honeywell			EMC
IBM			Microsoft
Eastman Kodak			Johnson & Johnson
Merck			Qualcomm*
Pfizer			
Procter & Gamble			

* Figures reflect their U.S. dollars and investments as a percentage of their foreign cash.
Source: U.S. Senate Permanent Subcommittee on Investigations survey data.

[10] Five of these corporations chose to use foreign cash data to calculate the percentages of their foreign earnings held in U.S. versus non-U.S. assets. If these five corporations were eliminated from the data used to calculate the portion of corporate foreign earnings held in the United States, the data from the 22 remaining corporations would show that, overall, they held an average of 40% of their undistributed accumulated foreign earnings in U.S. bank accounts.

The U.S. assets reported by the 27 surveyed corporations included U.S. dollar deposits in U.S. bank accounts; U.S. dollars invested in U.S. government and agency securities such as U.S. Treasury bonds; U.S. dollars invested in unrelated U.S. corporate notes and bonds; and U.S. dollars invested in U.S. mutual funds and unrelated stocks. Where tax-deferred foreign earnings are placed in U.S. assets, they are converted to U.S. dollars and nearly always deposited in U.S. financial accounts within the United States. In limited instances, smaller amounts of U.S. dollars may be held overseas in Eurodollar accounts or in exchange accounts denominated in U.S. dollars.

Multinationals invest in U.S. assets, including U.S. dollar deposits in U.S. bank accounts and U.S. Treasury bonds, because those U.S. assets are safe, keep their value, and are recognized as reliable and strong investments across the world. One of the surveyed corporations explained that the reason it held its foreign earnings in U.S. dollars was because of the safety and security of the U.S. currency, and because holding dollars "minimizes volatility."[11] Another corporation wrote that it "holds the majority of its cash in U.S. Dollars to mitigate against a potential accounting loss in its periodic U.S. GAAP financial statements from the translation of cash held in foreign currencies to U.S. Dollars."[12] Another corporation described how its global suppliers wanted to be paid in dollars, and purchasers required deals to be structured in dollars, because of the reliability of the U.S. dollar as a currency.[13]

IV. CONCLUSION

The survey results in the Report Addendum contribute to the debate over enacting a second repatriation tax break in at least two ways.

First, the survey results provide the first quantitative data on the proportion of undistributed accumulated foreign earnings that U.S. multinational corporations have chosen to place in U.S. banks and invest in U.S. assets, while avoiding the payment of any taxes on those earnings.[14] The data shows that, in many cases, the funds that corporations identify as being offshore are really onshore. The onshore percentage, 46% on average, represents nearly half of the surveyed corporations' undistributed accumulated foreign earnings. The presence of those funds in the United States undermines the argument that undistributed accumulated foreign earnings are "trapped" abroad, because nearly half of those funds are already located right here in the United States. In addition, the facts demonstrate that U.S. multinational corporations are already well aware that they can invest their offshore funds in U.S. assets, without those funds being deemed repatriated or taxed, because that is what they are doing with a significant amount of those funds. Because foreign earnings of those U.S. corporations are not "trapped" abroad, another tax break is not needed for those foreign earnings to be "returned" to the United States.[15]

---

[11] 9/8/2011 response to Subcommittee inquiry.
[12] 8/18/2011 response to Subcommittee inquiry.
[13] 9/19/2011 response to Subcommittee inquiry.
[14] Under § 945(c)(2), undistributed accumulated foreign earnings invested in U.S. banks or U.S. assets are not taxed. Under Subpart F, however, corporations are required to pay taxes on any interest or other income derived from foreign earnings deposited in the United States. The Subcommittee's survey did not examine any issues related to the taxation of such income.
[15] Some have raised the argument that the tax code's deferral rules do not permit undistributed accumulated foreign earnings from being utilized on a tax-free basis by U.S. multinational corporations for their own investments, such as building new plants, increasing research and development, or creating new jobs. However, the 2004 repatriation

Secondly, the survey results and the ability of U.S. corporations to defer paying taxes on foreign income that is returned to and invested in the United States raise significant tax fairness issues. Surveyed multinational corporations are investing nearly half of their tax-deferred offshore funds in the United States now because they gain a host of benefits from doing so, including the ability to make safe and secure investments using a currency that maintains its value. U.S. tax dollars pay for the systems that produce those benefits, including an efficient and reliable banking system, regulated capital markets, a legal system that protects property rights, and a government that is steadfast in upholding the value of its currency. The surveyed corporations are enjoying those advantages of the American system by investing more than half a trillion dollars here while deferring payment of the taxes that support it. A new repatriation tax break would only exacerbate that existing tax unfairness.

---

shows, as discussed in the main body of the Report, that there is little evidence that repatriating corporations would use their offshore funds for such purposes anyway. In addition, U.S. corporations currently have substantial amounts of domestic cash that could be used for those purposes, should they wish to make those types of investments.