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International Tax Reform – Brief Note on the Obama Administration Proposals

I. Introduction

In 2009 President Obama released a plan to reform and improve the enforcement of international tax laws.[1] His specific plan was to promote domestic job creation and reduce the amount of revenue lost to overseas tax havens.[2] The plan proposed promoting domestic job creation by replacing tax advantages for creating jobs overseas with incentives to create jobs domestically.[3] Initially the plan to remove tax advantages for foreign investment was estimated to raise 103.1 billion dollars of revenue, by reforming deferral rules and closing foreign tax credit loopholes.[4] Part of that revenue would be used to permanently extend a tax credit for research and experimentation providing an incentive for innovation and job creation domestically.[5] To reduce the amount of revenue lost to tax havens the plan proposed eliminating loopholes for disappearing offshore subsidiaries, cracking down on the abuse of tax havens by individuals, and hiring nearly 800 new IRS staff to increase international enforcement.[6]

The General Explanations of the Administration's Fiscal Year 2010 Revenue Proposals, prepared by the Treasury Department, (also referred to as the Green Book) presented ten specific proposals detailing the Administration's plan to reform the U.S. international tax system.[7] Some were part of the plans discussed above to increase employment and reduce revenue lost to tax havens and some were new. The proposals were to: (1) reform business entity classification rules for foreign entities, (2) defer deduction of expenses related to deferred income, (3) determine the foreign tax credit on a pooling basis, (4) prevent splitting of foreign income and foreign taxes, (5) limit shifting of income through intangible property transfers, (6) limit earnings stripping by expatriated entities, (7) prevent repatriation of earnings in certain cross-border reorganizations, (8) repeal 80/20 company rules, (9) prevent avoidance of dividend withholding taxes, and (10) modify the tax rules for dual capacity taxpayers.[8] A couple of these proposals have since been adopted, while others have been added, modified, and eliminated.

The 2011 and 2012 Green Books included two additional international tax reform proposals. They were to: (1) tax currently excess returns associated with transfers of intangibles offshore, and (2) disallow the deduction for excess nontaxed reinsurance premiums paid to affiliates.[9] The proposals to reform business entity classification rules for foreign entities and to prevent repatriation of earnings in certain cross border reorganizations were not included in the 2011 budget and those along with the proposal to prevent the avoidance of dividend withholding taxes did not appear in the 2012 budget.[10]

The proposals to prevent splitting foreign income and foreign taxes, part of the proposed foreign tax credit reform, and to repeal 80/20 company rules were enacted and signed into law by the President in August of 2010, along with other provisions impacting the international tax system, in P.L. 111-226, commonly referred to as the Education Jobs and Medicaid Assistance Act.[11] That leaves seven proposals currently on the table.[12]

This paper considers two of those proposals in greater detail: (1) the proposal to defer deduction of expenses related to deferred income, and (2) the proposal to determine the foreign tax credit on a pooling basis. Part II provides background information about the current U.S. international tax system, and how the deferral and foreign tax credit proposals would fit into that system. It then looks briefly at the international tax system generally before moving on to analyze these particular proposals and how they fit into a larger tax reform context. Part III analyzes the proposals and the surrounding debate. The debate surrounding the administration's proposals relates to broader issues as well as specific details. Part of the debate is a product of the debate over which of the two competing international tax systems should be used. The next section provides a foundation for further consideration of those issues.

II. Background

In general, a country can adopt either a worldwide tax system or a territorial tax system. The U.S. employs a hybrid worldwide tax system.[13] Most if not all countries employ a hybrid of one or the other. The two alternative systems can be used as a base of comparison when looking at the effects of specific changes such as the deferral and FTC related proposals. Examining how the current U.S. system fits into those two systems helps demonstrate their differences.

U.S. citizens and residents are generally taxed on all of their income no matter where it is earned.[14] Typically, though, the income of foreign subsidiaries is not taxed unless and until it is repatriated.[15] In 1961 the Kennedy Administration recommended eliminating deferral by imposing a deemed dividend of controlled foreign corporations earnings to their U.S. shareholders.[16] Under the plan, all income of U.S. controlled foreign corporations would be taxed currently.[17] In 1962 Congress, in what is viewed as a compromise, preserved the benefit of deferral for active income but enacted the Subpart F rules, still in place today, which impose current tax on a corporation for passive income earned by controlled foreign corporations.[18]

Income earned by U.S. citizens and residents in foreign countries may also be subject to taxes imposed by those countries. To prevent the same income from being taxed by multiple countries foreign tax credits, to offset to U.S. tax liability on foreign income, are allowed for taxes paid to other governments.[19] Credits are only available for taxes defined as income taxes by U.S. law.[20] Sources rules are used to determine which income and expenses are treated as foreign and which are treated as domestic for the purpose of calculating a taxpayer's allowable credit.[21]

The credit allowed cannot exceed the U.S. tax that is imposed on the foreign income,[22] which means that excess credits cannot be used to offset tax liability on domestic source income (though excess credits can be carried forward or backward a specified number of years).[23] This means that when income is taxed at a lower rate by another country in principle there should be some residual U.S. tax imposed on that income. However, the method for calculating the credit allows that residual difference to be offset with income taxed at a higher rate.[24] For the purpose of calculating a taxpayers allowable credit income is separated into two categories; passive category income and general category income.[25] In each category, the foreign taxable income over the total U.S. taxable income is multiplied by the U.S. income tax liability to calculate the overall limitation.[26] Cross-crediting is possible for income within the same category. Before 2004, there were nine categories of income (also called baskets).[27] Reducing the number of categories to two expanded the opportunities to take advantage of cross-crediting, or offsetting foreign taxes.[28] The two proposals discussed in this paper would reduce the benefits of deferral and limit the use of cross-crediting in calculating the foreign tax credits.

The first of those proposals, to defer deduction of expenses related to deferred income would decrease the benefits of deferral and increase the effective tax rate paid on foreign source income.[29] Currently when a U.S. firm defers recognition of foreign source income from a subsidiary it can still deduct currently expenses related to that income.[30]

So if a U.S. company borrows to invest in a factory overseas the associated interest expense can be used as a deduction to reduce that company's U.S. tax liability even if the company does not repatriate and pay U.S. taxes on the associated income. If the same company built the same factory in the U.S. it would receive the same deduction but would be taxed currently at the U.S. rate. This confers a tax advantage to the foreign investor as compared with the domestic investor when the foreign rate is lower than the domestic rates. The proposal to defer the deduction of expenses would attempt to eliminate that advantage.

Initially, as described in the 2010 Green Book, it sought to "… defer a deduction for expenses … of a U.S. person that are properly allocated and apportioned to foreign-source income to the extent the foreign-source income associated with the expenses is not currently subject U.S. tax."[31] Only research and experimentation expenses would have been excluded from the proposed deferral requirement, which was made exempt "… because of the positive spillover impacts of those investments on the U.S. economy."[32]

The next year when the 2011 Green Book was released the proposal had a narrower scope and provided additional details. The newer version of, "[t]he proposal would defer the deduction of interest expense that is properly allocated and apportioned to a taxpayer's foreign-source income that is not currently subject to U.S. tax."[33] It specified that branch income and other directly earned FSI would be considered currently subject to US tax for its purposes, and provided that the Treasury Department would revise regulations and propose "… other statutory changes as necessary to prevent inappropriate decreases in the amount of interest expense that is allocated and apportioned to foreign-source income."[34]

The 2010 proposal was estimated to generate 60.1 billion dollars of revenue from 2010-2019.[35] The changed version in 2011 was estimated to generate 25.642 billion dollars of additional revenue from 2011-2020.[36] The 2012 budget made no additional changes to the proposal, but estimated that it would generate 37.665 billion dollars of revenue over the 10 year period from 2012-2021.[37]

The second proposal, to determine foreign tax credits on a pooling basis, would change the way taxpayers are allowed to calculate their foreign tax credit. This proposal was one of two designed to reform the foreign tax credit. The other, which was to prevent splitting of foreign income and foreign taxes, as mentioned above, was enacted in 2010. This proposal, to determine the FTC on a pooling basis, is designed to eliminate the ability of companies to use cross-crediting to reduce U.S. taxes on foreign source income.[38] When earnings are repatriated to a domestic corporation, it gets a "deemed paid FTC" for foreign taxes paid by its foreign subsidiaries.[39]

Under the proposal, this deemed paid foreign tax credit would be determined on a consolidated basis. Foreign taxes and earnings and profits of all of the foreign subsidiaries for which a deemed paid foreign tax credit could be claimed would be aggregated and the deemed paid FTC would be determined based on the amount of the consolidated earnings and profits repatriated by the subsidiaries.[40] In the 2010 budget the estimated revenue gain from this change was 24.492 billion dollars over a ten year period.[41] The 2011 version estimated 31.961 billion dollars of revenue over a ten year period.[42] The only other difference was that that version indicated that the Secretary would be granted authority to issue any regulations necessary to carry out the purposes of the proposal.[43] The 2012 version estimated a revenue gain of 51.444 billion dollars, but included no additional changes.[44]

The U.S. system just described, which imposes taxes on all of its residents and citizens income, is referred to as a worldwide system of taxation. "In a pure worldwide tax system, resident individuals and entities are taxable on their worldwide income, regardless of where the income is derived."[45] The country of residence imposing taxes on worldwide income will typically allow a credit to avoid taxation of the same income by multiple countries.[46] Additionally, "[w]orldwide countries, including the United States, generally permit residence tax on the foreign-source income of foreign corporations controlled by residents to be deferred until the income is repatriated."[47] By allowing the deferral of tax of foreign source income, the U.S. and other worldwide countries deviate from a pure worldwide tax system. If that income is never repatriated, the residence country tax is never paid. Additionally, the longer the income is held in a foreign country the smaller the present value of the future tax becomes.

The basis upon which taxes are imposed in a worldwide system is the status of residency or citizenship. An alternative basis for imposing taxes on income is the location of its source within a countries territory.[48] This type of system is called a territorial (or exemption) tax system. By adopting a worldwide tax system, a country is not precluded from taxing the income of non-residents that is earned within its borders.

"In a pure territorial tax system, the country taxes only income derived within its borders, irrespective of the residence of the taxpayer."[49] Foreign source income earned by residents is exempt from tax.[50] However, "[territorial] countries typically depart from a pure [territorial system] by imposing worldwide taxation on all foreign-source income of noncorporate residents and foreign-source passive income of corporate residents (except for nonportfolio dividends), thus bringing real-world [territorial] systems closer to nonpure worldwide systems."[51]

"In recent years, there has been a movement toward hybrid [territorial] systems. They are now employed by more than half of the OECD member countries …"[52] While the U.S. still uses a worldwide approach, most other developed countries have switched to a territorial tax approach.[53] Most recently, in 2009, Japan and the United Kingdom switched from worldwide to territorial based systems.[54]

Despite the similarity and flexibility of the hybrid approaches to the territorial and worldwide taxation discussed above, the sensibleness of using one over the other is still a topic of debate. The next section considers the general debate surrounding the President's proposals, including the one over using a territorial or a worldwide system, and broader debate relating to tax reform. It then considers some of the arguments surrounding the deferral and FTC proposals explained above.

III. Analysis

In the background of debate over tax reform is general agreement that reform is needed. For example, as mentioned in The President's Economic Recovery Advisory Board's report on tax reform options, "[m]ost experts agree that the current hybrid U.S. system that combines a worldwide approach with deferral embodies the worst features of both a pure worldwide system and a pure territorial system from the perspective of simplicity, enforcement and compliance."[55] While there is agreement over the need for reform, there is disagreement over what it should look like. With the need for broader reform of the US international tax system in the background, one criticism of the President's proposals is that in its effort energy is being misdirected if the goal is to reform the U.S.'s international tax system.[56] Moreover, even if the proposals are just an attempt to fill a budget gap the revenue gained will be insufficient to cover the deficit or long run projected expenditures, and that eventually some larger reform is going to be necessary anyway.[57]

Additional reform related concerns include, the need to carefully consider how any changes to the U.S. international tax laws will interact with those of other countries and the resultant impact.[58] Heightening those concerns is the fact that current rules were put in place at a different time and might now be outdated and unsuitable for the current global economic climate. In the face of changes in the global economic environment, the applicability of the premises underlying those rules may have also become questionable.

A subset of the debate regarding the appropriate type of reform, is the debate over using a territorial versus a worldwide system and whether the U.S. should switch to a territorial system. Both systems have some significant advantages and disadvantages.

Arguments favoring one or the other generally relate to efficiency, equity, administrative ease, complexity and the competitiveness of multinational firms.[59]

Efficiency, equity, and tax base preservation related grounds are offered as support for the worldwide system. The efficiency basis for taxing worldwide income is based on the concept of capital export neutrality.[60] "Capital export neutrality refers to a system under which an investor residing in a particular locality can locate investment anywhere in the world and pay the same tax."[61] Taxing all income at the same rate regardless of where it is earned, should prevent investment decisions from being distorted by relative income tax rates. Taxing worldwide income at the residence country rate eliminates incentives to locate investment activities in countries that impose lower rates on those activities. This leads to basing investment decisions on before tax returns rather than after tax returns, which should promote the efficient allocation of capital, by directing investments to where they will receive the highest expected return.

Worldwide taxation is also in harmony with the notion of horizontal equity as between taxpayers with the same country of residence and operates to preserve vertical equity within a country.[62] By imposing the same rate structure on domestic and foreign income, taxpayers with the same amount of income are treated the same. To allow different taxes to be imposed based on where the income is earned would defy the principle of similar treatment for similarly situated residents of the same country. Additionally, allowing residents to realize different rates by moving investments to other countries would work against the principle of vertical equity. Progressive tax rates could be avoided by shifting income to countries with lower rates. Moreover, those with greater resources are more likely to be able to shift income and take advantage of lower rates, which would lead to more regressive results. Related to the equity based arguments is the notion that paying taxes on all income is validated as paying for the benefits of U.S. citizenship and residency. [63] Worldwide taxation should also, generally, better preserve the domestic tax base. However, if it causes expatriation of taxpayers or negatively affects the economy it could possibly, to some extent diminish the tax base or slow its growth.

On the other side of the debate, the grounds offered in support of a territorial based tax system include efficiency, administrative ease, and simplicity. The concept of capital import neutrality, under which "…income from investment located in each country is taxed at the same rate regardless of the residence of the investor," is offered as a rationale for territorial based taxation.[64] Capital import neutrality promotes the competiveness multinational businesses in that, to the extent that competition is among businesses located within a particular geographical area, none of those businesses would get an advantage over another because of favorable tax treatment; competition would be on the merits. Capital export neutrality and worldwide income taxation, on the other hand puts resident multinational businesses at a disadvantage compared to companies from other countries, when those companies are taxed only on a territorial basis and are competing with the business taxed based on residency in a country with a lower tax rate than the residence country.[65]

Territorial tax systems are also argued to be less complex, in part because the issue of mitigating taxation by multiple countries is avoided.[66] They are also viewed as simpler from an administrative perspective, in part, because there is no need to go beyond the country's own borders for enforcement purposes.[67] However, the administrative ease and complexity of a worldwide or territorial system in practice will depend on the variations incorporated into the particular hybrid system. For example, as cited above, the argument that the U.S. had incorporated the most difficult aspects with respect to simplicity, enforcement, and compliance, implies that the attributes of a particular system will have an impact.

A recent report by the President's Economic Recovery Advisory Board, which considered possibilities for broader reform and identified some of the potential advantages and disadvantages of moving the U.S. to a territorial system, provides an example of how the previously discussed advantages and disadvantages might be applied in evaluating the merits of switching systems.[68] In terms of advantages it found, for one, that switching to a territorial system would eliminate incentives created by deferral to keep foreign income abroad which would in turn improve the efficiency of corporate finance decisions.[69]

Additionally the report found that the switch would reduce the relative cost of doing business in countries with lower tax rates, and would enhance the ability of U.S. companies to acquire foreign firms while eliminating incentives to sell to or merge with foreign firms for tax reasons.[70] This would help ensure that assets were managed by the most productive businesses.[71] Finally, it found that moving to a territorial system, by eliminating most of the need for foreign tax credit provisions, could provide simplification benefits.[72]

The principal disadvantages reported came from the fact that "… the differences in tax rates applied to repatriated foreign earnings versus domestic earnings and active versus passive income would increase, strengthening the incentives for firms to shift income offshore … and encouraging active tax planning (as long as the U.S. corporate tax rate remains significantly higher than the rates imposed by other countries)."[73] Although, when compared to the current incentives created by deferral it noted that the incremental effect may be only modest.[74] The other disadvantages identified related to the design and implementation issues, which would need to be dealt with in order to maintain corporate tax revenues and reduce incentives for inefficient behavior.[75] For example, in terms of the revenue consequences of design decisions, the report refers to a study concluding that a simplified territorial system would result in revenue loss, whereas a territorial system with full application of expense allocation rules could be revenue neutral or even raise revenue, the difficulty would be in optimally designing those expense allocation rules.[76]

Given this background, the remainder of this section will consider in turn some of the specific issues associated with the deferral and FTC proposals, and how those proposals fit into the broader context discussed in the first portion of this section.

Some of the arguments against the first proposal, to defer the deduction of expenses, arise form the fact of it would reduce the benefits of deferral, from the means by which it reduces that benefit, and from other adverse economic consequences and unintended incentives to which it might give rise.

A major point of controversy is that the proposal would reduce the benefits of deferral. As discussed above, the economic consequences of such a reduction would occur via the resultant competitive disadvantage it would impose on U.S. multinational companies. On the other hand, the deferral benefit can be viewed as a tax expenditure and in that sense as providing multinational companies with subsidies, which may or may not be justified when properly considered from a cost-benefit perspective.

The second version of the proposal, narrowing its scope, makes those arguments somewhat less significant. Still though because it reduces the benefits of deferral one of the central issues is its impact on the competitiveness of U.S. corporations operating in foreign markets.[77] In addition, related to the competitiveness arguments it is also regarded as pushing the U.S. system further off the path being taken by other countries.[78]

Also controversial is the disparate impact the proposal would likely have on different firms and sectors. Again, this should be less significant under the later version of the proposal, which applies only to deductions for interest expenses. The impact on various firms and sectors would depend, in part, on how interest expenses are allocated by the source rules. Treas. Reg. 1.861-9T(a) sets forth a fungibility rule for the allocation and apportionment of interest expense. All deductions for interest are considered related to all income producing activities and assets and are therefore allocable to all gross income generated by a taxpayers assets.[79] In other words, when a taxpayer has foreign and domestic income, the interest deductions from a loan used in domestic operations may be considered related to both foreign and domestic income producing activities.

One of the methods corporations use to apportion interest expenses, under these rules, is based on relative value of assets.[80] Under this method, the greater the portion of total assets generating foreign source general income the greater the portion of the aggregate interest expense apportioned to foreign source general income.[81] The more that is apportioned to foreign source income, the less that can be deducted currently without repatriating some income. The methods used to allocate deductions and the lack of conformity between domestic and international accounting standards, the details of which are beyond the scope of this paper, are another source contention and are offered as the reason that, while in theory the underlying matching concept sounds reasonable, it would in practice be problematic.[82]

In terms of unintended economic consequences, the prospect of not being able to fully deduct domestic expenses, it has been argued, could provide a company with incentive to invest abroad rather than domestically, where it could fully deduct expenses against foreign taxes.[83] As long as that company did not repatriate any its profits it would not be affected on the margin. This type of result would go against the principle of capital export neutrality and achieve results contrary to the intent of the proposal.

Another potential adverse impact that has been suggested is putting U.S. companies operating domestically at a disadvantage compared to foreign companies operating within the country.[84] The reason is that those foreign companies would be able to fully deduct expenses from their U.S. income while U.S. companies with foreign operations would not.[85] An extension of this argument is that it would allow foreign companies to increase their market share in the U.S. and make U.S. companies attractive takeover targets.[86]

The second proposal, to determine the FTC on a pooling basis, limit the ability to use cross crediting and thereby, generally increase the U.S. tax liability imposed on repatriated foreign source income. This, is argued, will discourage repatriation of profits by firms that have already made the initial decision to invest abroad.[87] The increased tax penalty on repatriating foreign profits into the U.S. is referred to as the "lock-out effect."[88] In changing investment behavior based on tax considerations, this would have the effect of discouraging the efficient allocation of capital. It would also be contrary to the policy the proposal seeks to encourage.[89]

IV. Conclusion

In conclusion, the debate surrounding these particular provisions is a function of the broader context in which they were proposed and implicates multiple considerations. Both the FTC and deferral proposals discussed above where initially part of a plan that sought to increase domestic employment by reducing tax advantages for investing abroad. A closer examination of the possible impacts that each proposal might have, and at the way they interact with the broader policy debates discussed, shows that the effects may not be as simple as portrayed by the plan.

[1] Press Release, Office of the Press Secretary, The White House, *Leveling the Playing Field: Curbing Tax Havens and Removing Tax Incentives For Shifting Jobs Overseas*, (May 4, 2009), http://www.whitehouse.gov/the_press_office/LEVELING-THE-PLAYING-FIELD-CURBING-TAX-HAVENS-AND-REMOVING-TAX-INCENTIVES-FOR-SHIFTING-JOBS-OVERSEAS/. *See also* Office of Mgmt. and Budget, Exec. Office of the President, *A New Era of Responsibility: Renewing America's Promise* at 128 (Feb. 2009), available at http://www.gpoaccess.gov/usbudget/fy10/browse.html.

[2] *Leveling the Playing Field*, *supra* note 1.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] DEP'T OF THE TREAS., GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL YEAR 2010 REVENUE PROPOSALS (May 2009) [hereinafter 2010 GREEN BOOK].

[8] *Id.*

[9] DEP'T OF THE TREAS., GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL YEAR 2011 REVENUE PROPOSALS (Feb. 2010) [hereinafter 2011 GREEN BOOK]; DEP'T OF THE TREAS., GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL YEAR 2012 REVENUE PROPOSALS (Feb. 2011) [hereinafter 2012 GREEN BOOK].

[10] *Id.*

[11] JANE G. GRAVELLE, CONG. RESEARCH SERV., R40623, TAX HAVENS: INTERNATIONAL TAX AVOIDANCE AND EVASION 37-39 (2010).

[12] 2012 GREEN BOOK, *supra* note 9 at 146.

[13] Fleming et al., *Perspectives of the Worldwide vs. Territorial Taxation Debate*, 125 TAX NOTES 1079 (Dec. 7, 2009).

[14] I.R.C. § 61; Fleming et al., *supra* note 13.

[15] Fleming et al., *supra* note 13.

[16] Reuven S. Avi-Yonah, *All of a Piece Throughout: The Four Ages of U.S. International Taxation*, 25 Va. Tax Rev. 313, 325 (2005).

[17] *Id.*

[18] *Id* at 328-29.

[19] I.R.C. § 901 (2010); TAX TOPICS – FOREIGN TAX CREDIT, http://www.irs.gov/taxtopics/tc856.html (last visited May 19, 2011).

[20] *See* Treas. Reg. § 1.901-2 (2008)

[21] I.R.C. §§ 861-865; Treas. Reg. § 1.861-8 (2009).

[22] I.R.C. § 904(a) (2010). *See also* GRAVELLE, *supra* note 11 at 7.

[23] I.R.C. § 904(c).

[24] *See* I.R.C. § 904.

[25] I.R.C. § 904(d).

[26] *See* Treas. Reg. § 1.904-1(b).

[27] 2010 GREEN BOOK, *supra* note 7, at 30.

[28] *Id.*

[29] The proposal was intended to build on an earlier measure proposed by Charles Rangel, Chairman of the House Ways and Means Committee, in 2007 (HR 3970). *Leveling the Playing Field*, *supra* note 1.

[30] *Leveling the Playing Field*, *supra* note 1.

[31] 2010 GREEN BOOK, *supra* note 7, at 29.

[32] *Leveling the Playing Field*, *supra* note 1.

[33] 2011 GREEN BOOK, *supra* note 9, at 39.

[34] *Id.*

[35] 2010 GREEN BOOK, *supra* note 7, at 128.

[36] 2011 GREEN BOOK, *supra* note 9, at 150.

[37] 2012 GREEN BOOK, *supra* note 9 at 40-41, 146.

[38] *Leveling the Playing Field*, *supra* note 1.

[39] I.R.C. § 902.

[40] 2010 GREEN BOOK, *supra* note 7, at 30.

[41] *Id* at 128.

[42] 2011 GREEN BOOK, *supra* note 9, at 150.

[43] *Id* at 41.

[44] 2012 GREEN BOOK, *supra* note 9 at 146.

[45] Joint Committee on Taxation, *The U.S. International Tax Rules: Background and Selected Issues Relating to the Competitiveness of U.S. Business Abroad* JCX-68-03 at 2 (July 14, 2003) [hereinafter *U.S. International Tax Rules*].

[46] Fleming et al., *supra* note 13.

[47] *Id.*

[48] *Id.*

[49] *U.S. International Tax Rules*, *supra* note 45, at 2.

[50] *Id* at 2.

[51] Fleming et al., *supra* note 13.

[52] *Id.*

[53] Angus et al., *The U.S. International Tax System at a Crossroads*, 127 Tax Notes 45, 54 (Apr. 5, 2010).

[54] *Id* at 55.

[55] THE PRESIDENT'S ECONOMIC RECOVERY ADVISORY BOARD, THE REPORT OF TAX REFORM OPTIONS: SIMPLIFICATION, COMPLIANCE, AND CORPORATE TAXATION 88 (Aug. 2010) [hereinafter REPORT OF TAX REFORM OPTIONS].

[56] Mark Weinberger, Global Vice Chairman for Tax, Ernst & Young LLP, Panelist at the Tax Analysts Roundtable on Obama's International Tax Proposals: Where Would They Take the United States? (June 12, 2009) (transcript available at http://www.taxanalysts.com/www/conferences.nsf/KeyLookup/MNEN-7WJKWU?OpenDocument&link=transcript).

[57] *Id.*

[58] *See* Angus et al., *supra* note 53.

[59] *See U.S. International Tax Rules*, *supra* note 45.

[60] *Id* at 2.

[61] *U.S. International Tax Rules, supra* note 45, at 18.

[62] *Id* at 3.

[63] *Id.*

[64] *Id* at 18.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] REPORT OF TAX REFORM OPTIONS, *supra* note 55.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id* at 89-90.

[74] *Id.*

[75] *Id.*

[76] *Id* at 90.

[77] John Samuels, Vice President and Senior Tax Counsel at General Electric, Panelist at the Tax Analysts Roundtable on Obama's International Tax Proposals: Where Would

They Take the United States? (June 12, 2009) (transcript available at http://www.taxanalysts.com/www/conferences.nsf/KeyLookup/MNEN-7WJKWU?OpenDocument&link=transcript).

[78] *Id.*

[79] Treas. Reg. § 1.861-9T(a).

[80] Treas. Reg. § 1.861.9T(f)(1).

[81] *See* Treas. Reg. § 1.861.9T(g)(1)(v).

[82] Martin A. Sullivan, Contributing Editor of Tax Analysts, Panelist at the Tax Analysts Roundtable on Obama's International Tax Proposals: Where Would They Take the United States? (June 12, 2009) (transcript available at http://www.taxanalysts.com/www/conferences.nsf/KeyLookup/MNEN-7WJKWU?OpenDocument&link=transcript).

[83] John Samuels, *supra* note 77.

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

[88] *Id.*

[89] *Id.*