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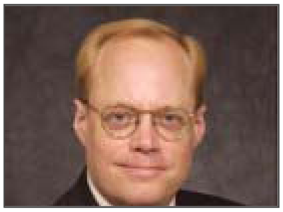

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Burger King's 'Not About The Taxes' Whopper? Playboy For The Articles

Burger King CEO Daniel Schwartz must think we've forgotten about people professing to read Playboy for the articles. He said the massive deal in which Burger King is going Canadian won't bring his company "meaningful tax savings." Right, it's not about the taxes.

Burger King's effective percentage tax rate is currently in the mid to high 20s. That is similar to Tim Hortons' effective rate. And so, the story goes, there's just not much there, there. The check's in the mail. Like your plan, keep your plan.

Maybe, but the 'not about taxes' line is a hard Whopper to swallow. Especially for anyone who has ever cracked open a tax code. Amazingly, the comment seems to have worked in some sectors, despite the fact that inversions are the hottest trend in years. The deals carry negative press, can roil investor relations, and face the possibility of a retroactive nixing of tax benefits. But tax benefits are there, just as sure as the centerfold.

(Photo credit: Wikipedia)

Canada's corporate income tax is lower and the rules are easier. Notably, unlike in the U.S., Canadian companies can collect tax-efficient dividends from foreign subsidiaries. That and other benefits make the lower rate deal a no-brainer. Burger King is probably also eyeing profits in foreign subsidiaries it would like to tap after the deal. Even loans post-deal would be a tax-savvy luxury.

Inversions are ideal for a company expanding overseas since they reduce U.S. taxes on foreign income. They don't cut taxes on U.S. based income. In that sense they arguably aren't 'unpatriotic' despite President Obama's name-calling.

President Obama wants Congress to restrict inversions, such as by hiking the current 20% foreign rule for inversions to a whopping 50%. But the pace of deals under the 20% rule continues, including AbbVie, buying Shire for $54 billion. Other companies doing inversions include Medtronic, buying Covidien, and Mylan Inc. buying parts of Abbott Laboratories.

Even Warren Buffett has largely avoided flack for a deal that seems at odds with his "raise my taxes" mantra. Cleverly, Mr. Buffett gave this inversion a shareholder twist, since there's a whopper reason shareholders hate inversions. An inversion involves a taxable swap for shareholders. But this time, Buffett's inversion allow tax-deferred treatment for some shareholders.

More than 40 large U.S. companies have recently gone foreign. There's a rush to get deals done before the law is changed. Companies that expect growth outside the U.S. say the U.S. tax code is driving them away.

At 35%, U.S. corporate tax rates are high. Many countries are in the teens or twenties. Ireland has a 12.5% rate. According to a Senate report, Apple avoided paying $9 billion in U.S. taxes in one year via Ireland.

Many American businesses and legislators say the problem is not patriotism. Many say the U.S. tax code is not competitive and drives U.S. companies to go on the hunt. Scrutiny is coming from abroad too, including calls for increased protection of some British companies. Meanwhile, the U.S. tax code–to paraphrase Sen. Wyden–continues to stink.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.