

**SAVE 10%!** **GO GREEN!**  
Receive your newsletter by e-mail to save time, money and paper!  
Renew your subscription with the electronic version by **December 31, 2014** and we will reduce the price by **10%**  
Call 800-248-3248 to renew and save!

# The M&A Tax Report

NOVEMBER 2014 VOLUME 23, NUMBER 4

The Monthly Review of Taxes, Trends & Techniques

## EDITOR-IN-CHIEF

Robert W. Wood  
Wood LLP  
San Francisco

## PRODUCTION EDITOR

Mina Chung  
Wood LLP  
San Francisco

## ADVISORY BOARD

Michael R. Faber  
Cooley LLP  
New York

Jonathan R. Flora  
Montgomery McCracken  
Walker & Rhoads, LLP  
Philadelphia

Steven R. Franklin  
Gunderson Dettmer  
Menlo Park

Lawrence B. Gibbs  
Miller & Chevalier  
Washington

Ivan Humphreys  
Wilson Sonsini  
Goodrich & Rosati  
Palo Alto

Steven K. Matthias  
Deloitte Tax  
San Francisco

Matthew A. Rosen  
Skadden, Arps, Slate,  
Meagher & Flom  
New York

Mark J. Silverman  
Step toe & Johnson  
Washington

Robert Willens  
Robert Willens, LLC  
New York

## Inversion Issue

This issue of THE M&A TAX REPORT is devoted to inversions. An inversion involves a U.S. company buying a smaller, foreign rival and reincorporating in its home country. A home with lower corporate tax rates opens a range of options for the combined business to reduce both U.S. and global taxes. About 50 such deals have taken place since the early 1980s, but many were struck only recently.

After legislative efforts stalled, President Obama made it clear he would take executive action and tasked his Treasury Secretary with the job. The result—so far—is Notice 2014-52. One rule prevents inverted companies from using hopscotch loans to avoid dividend taxes when tapping tax-deferred foreign profits. Another bars the inverter from gaining access to offshore profits by restructuring so CFCs are no longer U.S.-controlled.

## Past Inversions Are OK

By Robert W. Wood • Wood LLP • San Francisco

Amidst grumbling that the Treasury Department did too much or not enough about inversions, one thing is clear: The impact is harsh on companies that might consider inversions. It is also harsh on companies that are considering them or are part way done.

There was some degree of surprise that the inversion crackdown announced September 22, 2014 was not made retroactive. The general consensus is that companies that *already* inverted got off scot-free. Although there would doubtless have been retroactivity challenges to impacting those deals, that could occur with pending transactions too.

There are approximately a dozen companies at various stages of executing a previously announced inversion. They include AbbVie Inc.'s acquisition of Shire Plc, and Medtronic, Inc.'s planned takeover

## ALSO IN THIS ISSUE

of Covidien Plc. Despite the application of the new rules to pending transactions, all indications from these large deals are that they will continue to consummation.

The press has widely taken note of the break-up fee that would call for AbbVie to pay Shire an outsize \$1.6 billion break-up payment for backing out of the merger agreement. There had been uncertainty surrounding Congress. Indeed, some deals expressly called for an ability to back out or renegotiate if Congress acted.

The Stop Corporate Inversions Act of 2014 (H.R. 4679) was introduced May 20, 2014 by Rep. Sander M. Levin, D-Mich., of the House

Ways and Means Committee. A companion bill, S.2360, was introduced the same day by Sen. Carl Levin, D-Mich. This legislation would apply in years ending after May 8, 2014, to acquisitions completed after that date.

That means it would cover some pending and even completed deals. And there were fears that the Treasury Department's administrative approach would do the same. In fact, on September 8, 2014, Treasury Secretary Jacob Lew said new anti-inversion legislation would apply retroactively "to any deal after early May of this year." Notice 2014-52 takes a different tack.

For now.