

SOME THOUGHTS ON THE ETHICS OF PARKING PROFITS OFFSHORE

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ABSTRACT

This article reviews the practice of keeping profits offshore to avoid or defer paying U.S. corporate income taxes on those profits, and examines some of the ethical issues involved in doing so.

Key Words: offshore, tax evasion, haven, ethics, duty, multinational, parking profits, repatriation

JEL Codes: A13, D23, D63, F1, F38, F6, G15, G18, H2, H87, K2, K34, L2, M14, M16, M41, M48

INTRODUCTION

In a recent article, Richard Ruben¹ reported that the largest U.S. companies added \$206 billion to their stockpiles of offshore profits in 2013, an 11.8 percent increase since 2012. Total offshore profits for these companies are now \$1.95 trillion, which is more than the GDP of all but the largest nine countries in the world.² If these multinational corporations formed a separate nation, they would be slightly larger than India and slightly smaller than Italy in terms of GDP. Ruben pointed out that large multinational companies will likely continue to keep their profits offshore until Congress gives them a reason not to.

Richard Ruben, *Corporate Cash Abroad Rises \$206 Billion as Multinationals Avoid Taxes*. A.T. online, March 13, 2014. www.accountingtoday.com.

² World Bank <http://databank.worldbank.org/data/download/GDP.pdf>. The GDP statistics are for 2012.

The scary part of that assessment is that Congress can take several approaches to resolve this problem, assuming that it is a problem.³ One approach would be to penalize companies for continuing this practice, which would lead to negative unintended consequences. Another approach would be to reduce tax rates so that companies would not feel compelled to shelter their profits from the excessive tax rates the U.S. government and various state governments impose of them.

Some people would challenge the assertion that U.S. tax rates are excessive. However, a comparison of U.S. corporate tax rates to those of other developed countries finds that U.S. corporate tax rates are the highest in the world. Table 1 compares corporate tax rates of various developed countries.

Table 1. Marginal Effective Tax Rate on Capital Investment, OECD Countries⁴

	Marginal Effective Tax Rate										Statutory Tax Rate*
	2013	2012	2011	2010	2009	2008	2007	2006	2005	2013	
U.S.	35.3	35.3	35.3	35.3	35.6	35.6	35.6	35.9	35.9	35.9	39.1
France	35.2	35.2	35.2	34.0	35.1	35.1	35.1	35.1	35.4	35.4	34.4
Korea	30.1	30.1	30.1	30.1	30.1	32.8	32.8	32.8	32.8	32.8	24.2
Japan	29.3	31.5	31.5	31.5	31.5	31.5	31.5	31.5	31.5	31.5	37.0
Austria	26.2	26.2	26.2	26.2	26.2	26.2	26.2	26.2	26.2	26.2	25.0
Spain	26.0	26.0	26.0	26.0	26.0	26.0	28.2	30.3	30.3	30.3	30.0
Australia	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	25.9	30.0
UK	25.9	26.9	27.1	29.1	29.0	28.8	30.0	30.0	30.0	30.0	23.0
Italy	24.5	24.5	28.0	28.0	28.0	28.1	33.5	33.5	33.5	33.5	27.5
Germany	24.4	24.4	24.4	24.4	24.4	24.4	34.0	34.0	34.0	34.0	30.2
Norway	24.4	24.4	24.4	24.4	24.4	24.4	24.4	24.4	24.4	24.4	28.0

A strong case can be made that parking cash or any other asset offshore is really none of any government's business, since having the right to property means that anyone can do whatever they want with their own property. Governments have no inherent right to claim an ownership interest in the property of others.

Adapted from Table 2 of Jack Mintz and Duanjie Chen, *Special Report No. 214: The U.S. Effective Corporate Tax Rate: Myth and the Fact*, Washington, DC: Tax Foundation, February 6, 2014. <http://taxfoundation.org/article/us-corporate-effective-tax-rate-myth-and-fact> [accessed March 14, 2014].

Portugal	22.9	22.9	20.8	20.8	18.8	18.8	18.8	19.6	19.6	31.5
New Zealand	21.6	21.6	21.6	18.2	18.2	18.2	20.5	20.5	20.5	28.0
Denmark	19.1	19.1	19.1	19.1	19.1	19.1	19.1	21.7	21.7	25.0
Canada	18.6	17.4	18.7	19.8	27.3	28.0	30.9	36.2	38.8	26.3
Belgium	18.5	18.5	18.5	18.5	18.5	18.5	18.0	18.0	23.5	34.0
Greece	18.1	11.3	11.3	13.2	13.7	13.7	13.7	15.8	17.5	26.0
Finland	17.5	17.5	18.7	18.7	18.7	18.7	18.7	18.7	18.7	24.5
Switzerland	17.5	17.5	17.5	17.5	17.5	17.5	18.0	18.0	18.0	21.1
Netherlands	17.5	17.5	17.5	17.5	17.5	17.5	17.5	20.7	22.3	25.0
Mexico	17.4	17.4	17.4	17.4	16.0	16.0	16.0	16.7	17.4	30.0
Luxembourg	17.3	17.0	17.0	16.8	16.8	18.5	19.4	19.4	19.9	29.2
Estonia	17.1	17.1	17.1	17.1	17.1	17.1	18.1	19.1	20.2	21.0
Hungary	16.1	16.1	16.1	16.1	16.6	16.6	16.6	15.3	14.7	19.0
Sweden	16.1	19.5	19.5	19.5	19.5	20.9	20.9	20.9	20.9	22.0
Slovak Republic	15.7	12.7	12.7	12.7	12.7	12.7	12.7	12.7	12.7	23.0
Israel	15.0	15.0	14.3	15.0	15.8	16.5	18.0	19.5	19.5	25.0
Poland	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	14.6	19.0
Iceland	14.2	14.2	14.2	12.6	10.4	10.4	12.6	12.6	18.0	20.0
Czech Rep	12.7	12.7	12.7	12.7	13.5	14.2	16.5	16.5	18.0	19.0
Ireland	10.1	10.1	10.1	10.1	10.1	10.1	10.1	10.1	10.1	12.5
Slovenia	9.8	10.5	11.8	11.8	12.4	13.1	13.8	14.5	15.2	17.0
Chile	7.7	7.7	7.7	6.7	6.7	6.9	7.1	7.3	7.3	20.0
Turkey	5.7	5.7	5.7	5.7	5.7	5.7	5.7	5.7	10.9	20.0
OECD Average:										
Weighted*	28.5	28.8	29.0	29.1	29.5	29.6	30.8	31.2	31.5	32.9
Unweighted	19.6	19.5	19.7	19.6	19.8	20.1	21.0	21.6	22.4	25.5

Note: G-7 countries are in bold.

*Weighted by the average GDP for 2005-2011 in 2005 constant U.S. dollars.

It must be pointed out that these U.S. corporate tax rates are for the federal tax only. One must add the appropriate state and perhaps local tax rates to get the complete picture. Table 2 ranks the states based on their top marginal corporate income tax rate.

Table 2
Ranking of State Corporate Tax Rates
(as of January 1, 2013)⁵

RANK	STATE	RATE %
1	Iowa	12.0
2	Pennsylvania	9.99
3	D.C.	9.975
4	Minnesota	9.8
5	Illinois	9.5
6	Alaska	9.4
7	Connecticut	9.0
7	New Jersey	9.0
7	Rhode Island	9.0
10	Maine	8.93
11	California	8.84
12	Delaware (see note)	8.7
13	New Hampshire	8.5
13	Vermont	8.5
15	Maryland	8.25
16	Indiana	8.0
16	Louisiana	8.0
16	Massachusetts	8.0
19	Wisconsin	7.9
20	Nebraska	7.81
21	New Mexico	7.6
21	Oregon	7.6
23	Idaho	7.4
24	New York	7.1
25	Kansas	7.0
25	West Virginia	7.0
27	Arizona	6.968

Adapted from Table 15 of Tax Foundation, Facts & Figures: How Does Your State Compare? Washington, DC: Tax Foundation, 2013.

<http://taxfoundation.org/sites/taxfoundation.org/files/docs/ff2013.pdf>.

28	North Carolina	6.9
29	Montana	6.75
30	Alabama	6.5
30	Arkansas	6.5
30	Tennessee	6.5
33	Hawaii	6.4
34	Missouri	6.25
35	Georgia	6.0
35	Kentucky	6.0
35	Michigan	6.0
35	Oklahoma	6.0
35	Virginia (see note)	6.0
40	Florida	5.5
41	North Dakota	5.15
42	Mississippi	5.0
42	South Carolina	5.0
42	Utah	5.0
45	Colorado	4.63
46	Nevada	0
46	Ohio (see note)	0
46	South Dakota	0
46	Texas (see note)	0
46	Washington (see note)	0
46	Wyoming	0

Note: Ohio, Texas and Washington do not have a corporate income tax, but they do have a gross receipts tax. Delaware and Virginia have both a corporate income tax and a gross receipts tax. For specifics, see Tax Foundation, *Facts & Figures: How Does Your State Compare?* 2013.

Iowa imposes the highest corporate tax rate, 12 percent, followed by Pennsylvania, Washington, DC, Minnesota, Illinois, Alaska, Connecticut, New Jersey and Rhode Island, all of which

have a top rate of 9 percent or more. Nevada, Ohio, South Dakota, Texas, Washington and Wyoming do not have a corporate income tax, although some of these states have other taxes to compensate for the lack of a corporate income tax.

If one adds the federal, state and (sometimes) local corporate income tax rates, plus some of the other taxes assessed on corporations in the United States such as property and sales taxes, the total could come close to, or even exceed, 50 percent of profits in some cases. Thus, up to half of corporate profits are skimmed off the top by a party (government) that is not even a shareholder.

SOME MORAL ISSUES

The underlying assumption of many people who complain about the practice of shifting profits to low-tax jurisdictions is that there is somehow something wrong or immoral about parking profits in a foreign country, that there is something unpatriotic about it. Setting aside for a moment the fact that patriotism is the last refuge of a scoundrel,⁶ if one examines this issue from the perspective of *wertfrei* economics, the issue is a little more complex than what may at first appear.

One obvious point to be made is that corporate board members have a fiduciary duty to their shareholders to safeguard the assets of the corporation. Earning profits in high-tax jurisdictions tends to dissipate those assets to a greater extent than would be the case if those profits were instead reported in a lower-tax jurisdiction. Thus, the argument could be made that the top management of a corporation has a fiduciary duty to export profits if doing so is in the best interests of the shareholders.

Robert Nozick,⁷ the eminent Harvard philosopher, took the position that the income tax is the equivalent of slavery, since it robs the workers of the fruits of their labor. For example, in

Samuel Johnson, April 7, 1775. <http://www.samueljohnson.com/refuge.html>.
R...N..., A..., S...&U... New York: Basic Books, 1974.

substance it does not make much difference whether someone takes 40 percent of your income or forces you to work for them two days a week. In both cases, you only get to keep 60 percent of the fruits of your labor and you are someone's slave two days a week.

It might be argued that the government provides services in exchange for these exactments, and that there is therefore a moral duty to pay, but the same argument could be made for slave owners. They provide food, shelter and clothing for their slaves, yet no one argues they have a duty to work for the slave master. In many cases, government does not even provide services, at least not for the individuals who have to pay the taxes. What is more likely is that the people who do not pay taxes receive the benefits.

If there is any moral duty to pay taxes, that duty must be directly related to the extent of services provided by the government that insists on skimming a portion of the corporation's profits. One might begin this conversation by asking, "What does the federal government do for the average multinational corporation?"

It has been argued that the government provides services that corporations benefit from using. Police and fire are two services that come to mind. However, most police and fire services are provided by the local governments. In some communities, more than half of the police function is performed by the private sector through security guards. Many fire departments are volunteer, and thus are not a burden even on the local government. The argument that the federal government is morally entitled to receive tax payments because it provides these services falls apart under this analysis.

The infrastructure argument is another argument that has been used to justify corporate income taxation at the federal level. However, most infrastructure is provided either by the state and local governments or by the private sector. State and federal gasoline taxes pay for the roads. Income taxes do not.

National defense is provided by the federal government. However, the extent to which this expenditure benefits multinational corporations is questionable. One reason why U.S. citizens and U.S. corporations feel threatened is because of the U.S. government's aggressive and interventionist foreign policy. Such a policy causes some people to hate Americans and American corporations, making them more likely to be attacked. In the absence of such a foreign policy, the need to defend the citizenry would be greatly reduced.⁸ It might also be pointed out that the federal government does little or nothing to defend multinational corporations, especially the branches located outside the United States. The federal government sometimes makes them targets, but does little or nothing to defend them.

Table 3 provides a statistical summary of U.S. federal government spending.

Table 3
Federal Government Summary of
Spending (2014)⁹

Health care	27
Pensions	25
Defense	22
Welfare	11
Interest	6
Education	3
Transportation	3
Protection	1
General government	1
Other	1
Total	100%

⁸ C. J., B.: T. C. C. A. E., 2nd edition, New York: Macmillan/Holt, 2010; R. P., AF. P. F., Rosetta Books, 2010.

⁹ http://www.usgovernmentspending.com/piechart_2014_US_fed. [accessed March 14, 2014]

It is questionable how much the federal health care system benefits multinational corporations, especially the branches outside the United States. Even for those locations within the United States it is questionable how much the federal health care system benefits them. The system imposes costs, but the benefits are more difficult to assess.

Federal pension payments do not have any visible benefits for multinational corporations. However, the pension system (Social Security) does impose costs on multinationals as well as on all other businesses, even those in the nonprofit sector, since they have to pay more than 7 percent of employee wages into the system, with no visible benefits.

The U.S. tax system taxes American citizens and U.S. corporations on their worldwide income, which means that American citizens living and working in France and U.S. corporations doing business in Germany have to pay taxes to support the federal welfare and pension schemes that benefit people living in the United States, a policy that is inherently unfair. Multinational corporate units located outside the United States do not benefit from these expenditures, and it is questionable whether their domestic units benefit, either. Since that is the case, where can one find a moral duty to pay corporate taxes to the U.S. government?

The point is that the federal government provides little in the way of services to multinational corporations, although the myriad of federal regulations imposed on them does increase their cost of doing business. According to one estimate, the cumulative cost of regulations added between 1949 and 2011 has cost \$38 trillion in terms of reduced economic growth.¹⁰

Kevin Glass, *The \$38 Trillion Cost of Regulation*, June 26, 2013, Townhall.com <http://townhall.com/tipsheet/kevinglass/2013/06/26/the-38-trillion-cost-of-regulation-n1628668>; John W. Dawson and John J. Seater, Federal Regulation and Aggregate Economic Growth, *Journal of Economic Growth* 18: 137-177 (June, 2013).

The current regulatory and tax system also places U.S. corporations at a competitive disadvantage worldwide. Their costs of capital and other costs of doing business are higher than would otherwise be the case, and the regulatory burden makes it more difficult to do business. Can it be said that there is still a moral obligation to pay the corporate tax when the recipient of that tax is doing more *to* you than *for* you?