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In the late 1990s and early 2000s, a number of U.S.-based multinational entities moved their corporate headquarters from the United States to Caribbean tax havens through corporate inversions. The U.S. Office of Tax Policy (2002) defined a corporate inversion as ''a transaction through which the corporate structure of a U.S.-based multinational group is altered so that a new foreign corporation, typically located in a low- or no-tax country, replaces the existing U.S. parent corporation as the parent of the corporate group'' (p. 1). The U.S. entity then became a subsidiary of the overseas parent, but the firm's business operations were essentially untouched by this action.

The primary objective of a corporate inversion was to reduce the MNE's worldwide tax rate. Previous studies have demonstrated that firms successfully reduced their tax expense through corporate inversions (Seida and Wempe, 2004). Seida and Wempe said one of the ways firms accomplished this was through earnings stripping activities that shifted profits out of the United States. Corporate inversions also simplified the process of calculating tax obligations, as the U.S. firms inverted to jurisdictions that did not tax a firm's overseas income. Within the United States, corporate inversions created adverse publicity for the inverting firms and also generated concerns about lost U.S. federal tax revenue.

In response, the U.S. Congress passed IRC section 7874 in 2003. This law was designed to restrict corporate inversions. IRC section 7874 did not prohibit inversions, but it said the U.S. would continue to tax inverted corporations as domestic entities, as long as 80 percent or more of the firm's stock was held by the same shareholders before and after the inversion. If between 60 to 80 percent of the shareholders were unchanged before and after the inversion, the firm could move its headquarters abroad, but the law could increase the exit tax for the departing firm. It did this by denying the inverted firm tax credits that could have reduced the exit tax were those credits permitted. The number of U.S. corporate inversions has slowed since that law was passed (VanderWolk, 2010, pp. 1-2; and Leitner and Glicklich, 2009, p. 515).

However, IRC section 7874 did not completely resolve this problem. High tax rates and complicated international tax policies make the United States an expensive location to headquarter an MNE, and in a prior article I explained how one U.S. firm, Ensco, recently moved its corporate headquarters to the United Kingdom (Webber, 2011). At the same time, U.S. legislators have continued to search for ways to tax inverted firms or penalize them in other ways, such as denying them government contracts. Also, many Western countries and organizations such as the OECD have looked for ways to control the growth of tax havens such as Bermuda and the Cayman Islands.

Six members of the S&P 500 Index inverted in the late 1990s and early 2000s (Desai and Hines, 2002). Since that time, one of those firms, Tyco, divided into three firms, each of which was headquartered in Bermuda and a member of the S&P 500 Index. Thus, there were eight members of the S&P 500 Index formerly located in the United States. Seven of those eight firms have moved their headquarters again since 2008, citing concerns about possible legislation that might increase their tax obligations. Each has moved its corporate headquarters to either Switzerland or Ireland. The purpose of this article is to examine the reasons why each of these firms moved its corporate

Table 1. Corporate Inversions 1997-2002

Firm	NYSE Ticker Symbol	Year of Inversion	Original Corporate Home	New Corporate Home
Tyco	TYC	1997	United States	Bermuda
Transocean	RIG	1999	United States	Cayman Islands
Cooper Industries	CBE	2001	United States	Bermuda
Ingersoll-Rand	IR	2001	United States	Bermuda
Nabor Industries	NBR	2002	United States	Bermuda
Noble Drilling	NE	2002	United States	Cayman Islands

headquarters a second time, and why these MNEs selected Switzerland and Ireland as their new corporate home.

Inversion Activity

As noted above, IRC section 7874 appears to have significantly reduced corporate inversion activity. This can be shown by reviewing the history of inversion activity of members of the S&P 500 Index before and after the passage of IRC section 7874, which became effective on March 4, 2003. Desai and Hines (2002) identified six members of the S&P 500 index that inverted between 1997 and 2002. Those firms are shown in Table 1.

In a prior article, I examined firms that were in the S&P 500 Index as of March 4, 2003, to determine how many of those firms moved their headquarters out of the United States between that date and December 27, 2010 (Webber, 2011). Standard and Poor's provided a list of the 500 members of that index as of March 4, 2003. The current corporate home for each firm was researched by reviewing each firm's most recent SEC filings. Over that period, approximately 145 firms were removed from the index for a variety of reasons. A number of the firms went private, were acquired by another firm, or reported financial losses or financial irregularities that removed them from the index. Since March 4, 2003, no member of the S&P 500 Index that was headquartered in the United States has moved its headquarters abroad. This information supports the comments of VanderWolk (2010, pp. 1-2) and Leitner and Glicklich (2009, p. 515) that IRC section 7874 has been effective at preventing new corporate inversions of U.S.-based firms, particularly publicly held enterprises.[1]

As mentioned, since Tyco's original corporate inversion, it has split into three firms, each of which was headquartered in Bermuda. Each of those firms became a member of the S&P 500 Index. Thus, there were eight members of the S&P 500 Index that were located in Caribbean tax havens. Of those eight firms, seven have moved their headquarters a second time. Only one, Nabor Industries, has not relocated again. Table 2 shows the former and new headquarters of those seven firms.

To summarize, seven firms have relocated to Europe. Four of those firms have established new corporate headquarters in Switzerland, and three have established headquarters in Ireland.

Determining the MNE's Home

The first round of corporate inversions was accomplished through paper transactions that left each firm's business operations essentially untouched. This could be accomplished because the United States, Bermuda, and the Cayman Islands determine an MNE's corporate home though ''place of incorporation'' rules. Place of incorporation rules determine the MNE's home by establishing where the parent firm has filed incorporation papers. Thus, a corporate inversion could be accomplished by creating a new corporate parent in one of those tax havens and transforming the former U.S. parent into a subsidiary of that firm. No changes to the firm's business operations were necessary.

In contrast, European countries generally use ''real seat'' rules to identify an MNE's corporate home. These rules determine a firm's corporate home by looking at issues such as where the senior management of the firm works, where employees live and work, and where key business decisions are made. Real seat rules focus more on business substance than do jurisdictions with place of incorporation rules, such as Bermuda or the Cayman Islands.

[1]In 2007 Halliburton, a member of the S&P 500, announced it was opening a headquarters location in Dubai, United Arab Emirates. However according to a recent Schedule 10-K, filed February 17, 2010, its primary headquarters is still in Houston, and the Dubai site is identified as a second headquarters. According to the Schedule 10-K, it is still taxed as a U.S.-headquartered firm.

Table 2. Inverted Firms HQ Relocations, 2008-2010

Firm	New Firm Name (if applicable)	Year of Relocation	NYSE Ticker Symbol	Prior Corporate Headquarters	New Corporate Headquarters
Transocean	No change	2008	RIG	Cayman Islands	Switzerland[a]
Cooper Industries	No change	2009	CBE	Bermuda	Ireland[b]
Ingersoll Rand	No change	2009	IR	Bermuda	Ireland[c]
Noble Drilling	Noble Corp.[d]	2009	NE	Cayman Islands	Switzerland[e]
Tyco	Tyco Electronics	2009	TEL	Bermuda	Switzerland[f]
Tyco	Tyco International	2008	TYC	Bermuda	Switzerland[g]
Tyco	Covidien	2010	COV	Bermuda	Ireland[h]

[a] *See* Transocean Schedule 10-K, filed Feb. 24, 2010, p. 5.
[b] *See* Cooper Industries Schedule 10-K, filed Feb. 19, 2010, p. 2.
[c] *See* Ingersoll Rand Schedule 10-K, filed Feb. 26, 2010, p. 5.
[d] Noble Corp. is the successor to Noble Drilling. *See* Noble Corporation Schedule 10-K, filed Feb. 29, 2008, p. 1.
[e] *See* Noble Corp. Schedule 10-K, filed Feb. 26, 2010, p. 2.
[f] *See* Tyco Electronics Schedule 10-K, filed Nov. 10, 2010, p. 58.
[g] *See* Tyco International Schedule 10-K, filed Nov. 12, 2010, p. 6.
[h] *See* Covidien Schedule 10-K, filed Nov. 22, 2010, p. 1.

Kane and Rock (2007) explained the difference between place of incorporation rules and real seat rules in this way:

> Basically, in locating a corporation, a legal system can adopt either the ''place of incorporation'' (POI) rule or some version of the ''real seat'' (RS) rule. Under the POI rule, the corporation's location is determined by where it was incorporated, a purely formal criterion. Under the RS rule, a corporation's location depends upon some combination of factual elements, such as the location of the administrative headquarters or the location of the firm's center of gravity, as determined by the location of the employees and assets. The place of incorporation can bear on this determination but is not determinative. [P. 7.]

In short, place of incorporation jurisdictions focus more on legal form, while real seat jurisdictions emphasize business substance.

Concerning Europe, Kane and Rock (2007) write: ''With respect to corporate tax, on the whole, EU member states apply an RS location rule'' (p. 54). Thus, when moving a corporate headquarters to Europe, MNEs may need to do more than simply file incorporation papers in another jurisdiction. They may need to manage the firm from that site, or locate employees and assets there.

Income Tax Rates — 2011

According to the OECD, the United States has substantially higher corporate income tax rates than do Ireland or Switzerland. Table 3 shows corporate tax rates for 2011.

In Table 3, the second column identifies the highest marginal tax rate imposed by the national government. Some countries also levy income taxes to support local governments, or what the OECD calls subcentral governments, and may permit tax deductions or tax credits for these payments. The third column shows the federal income tax rate after deductions or credits for local government tax payments are calculated. The fourth column identifies the tax rate imposed by subcentral governments. The fifth column is the key figure, as it compares the net corporate income tax rate in a country, after the impact of local corporate taxes is included. It is the sum of columns three and four. It shows that in 2011 the combined income tax rate in the United States was 39.2 percent. In contrast, Ireland's top tax rate is 12.5 percent and Switzerland's is 21.2 percent. As a result, in some situations there may be substantial tax advantages to being headquartered in Ireland or Switzerland, compared with the United States. The more income an MNE earns at its headquarters level, the greater the tax advantage of locating in Ireland or Switzerland. Further, the United States enforces complex policies that tax a firm's worldwide income, while both Ireland and Switzerland enforce territorial tax policies that do not tax income earned outside their borders. High tax rates and complex tax policies may be two reasons firms would prefer to be headquartered outside the United States. The reasons those firms have given for relocating to Ireland or Switzerland will be explained in the following sections.

Transocean

Transocean was the first firm in this group to relocate its headquarters to Europe. Its reasons for exiting

Table 3. Corporate Tax Rates, 2011

1. Country	2. Central Government Corporate Income Tax Rate	3. Adjusted Central Government Corporate Income Tax Rate	4. Sub-Central Government Corporate Income Tax Rate	5. Combined Corporate Income Tax Rate-2010 (The Sum of Columns 3 + 4)
Ireland	12.5	12.5		12.5
Switzerland	8.5	6.7	14.5	21.2
United States	35.0	32.7	6.4	39.2

Source: OECD tax database, Table II.1, *available at* http://www.oecd.org/ctp/taxdatabase.

the Cayman Islands for Switzerland were stated in its preliminary proxy statement, the ''pre-14A,'' filed on October 10, 2008.[2]

Transocean gave the following reasons for its move:

> Our planned change of our place of incorporation from the Cayman Islands to Switzerland and relocation of our principal executive office to Geneva, Switzerland will establish a corporate headquarters that is more centrally located within our area of worldwide operations, will relocate Transocean in a country with a stable and developed tax regime, and should improve our ability to maintain a competitive worldwide effective corporate tax rate. [Transocean pre-14A, p. 2.]

Elaborating upon this, Transocean also said:

> Switzerland is more centrally located than our current executive offices to our worldwide operations, in terms of both time zone overlap and travel time. Switzerland also has numerous tax treaties with many taxing jurisdictions throughout the world and a stable tax regime. [Transocean pre-14A, p. 2.]

Focusing on tax issues, Transocean said:

> Switzerland has numerous tax treaties with many taxing jurisdictions throughout the world. The Cayman Islands has no tax treaties. Switzerland has a developed and stable tax regime. The Cayman Islands generally has no system of direct taxation. We believe that the Redomestication will improve our global tax position and substantially lower our tax risk related to possible tax legislation changes, possible changes to tax treaties and disputes with tax authorities. As such, we believe the Redomestication will improve our ability to maintain a competitive worldwide effective corporate tax rate. [Transocean pre-14A, p. 23.]

[2]*See* Transocean Inc. pre-14A, preliminary proxy statement not related to a contested matter or merger/acquisition, filed with the SEC on October 10, 2008.

In short, it appears the firm believed relocating its headquarters to Switzerland would substantially reduce the firm's tax risk.

Transocean planned to move only its headquarters operations to Switzerland. Thus it was able to bypass some local Swiss income taxes. Transocean wrote:

> A Swiss resident company is subject to income tax at federal, cantonal and communal levels on its worldwide income. However a holding company such as Transocean-Switzerland is exempt from cantonal and communal income tax and therefore is only subject to Swiss federal income tax. At the federal level, qualifying net dividend income and net capital gains on the sale of qualifying investments is exempt from federal income tax. Consequently, Transocean-Switzerland expects dividends from its subsidiaries and capital gains from sales of investments in its subsidiaries to be exempt from federal income tax. [Transocean pre-14A, p. 36.]

In an apparent effort to satisfy real seat rules, Transocean said:

> In connection with the Transaction, we also plan to relocate our principal offices from the Cayman Islands and Houston, Texas to Geneva, Switzerland. Initially, we expect that 14 of our officers, including the Chief Executive Officer, will be relocated to our new principal executive offices, along with related support staff. [Transocean pre-14A, p. 1.]

Transocean structured the transaction to reduce the likelihood that Switzerland's withholding tax on dividends would apply. According to Transocean's pre-14A, ''A Swiss withholding tax of 35 [percent] is due on dividends and similar distributions to Transocean-Switzerland shareholders from Transocean Switzerland, regardless of the place of residency of the shareholder'' (p. 4).

However, distributions to shareholders paid from the par value of its securities or additional paid-in capital are generally exempt from withholding tax. As part of the move to Switzerland, the firm simultaneously increased par value of its securities and additional paid-in capital so that they equal the firm's market capitalization (pp. 4-5). As a result of this action, ''Transocean-Switzerland expects that a substantial amount of any potential future distributions may be exempt from Swiss withholding tax'' (p. 4). The Switzerland-U.S. tax treaty also allows U.S. shareholders to apply for a refund on withholding in excess of 15 percent, and it states that qualified pension funds are eligible for a complete refund on the withholding (p. 18).

Transocean also said the move to Switzerland will give its board of directors less flexibility to manage its capital structure than it had previously. In general, Swiss laws require that shareholders approve key capital decisions in more situations than do laws in the Cayman Islands. They write:

> Swiss law also reserves for approval by shareholders many corporate actions over which Transocean-Cayman's board of directors currently has authority. For example, dividends must be approved by shareholders. [P. 17.]

There have been questions raised concerning whether Transocean has in fact physically moved its corporate home to Switzerland. The television documentary series *60 Minutes* ran a show on March 25, 2011, that looked at Transocean's move to Switzerland, in a show entitled ''A Look at the World's New Corporate Tax Havens.''[3] In that show, CBS reporter Leslie Stahl visited Transocean offices to speak with senior management and was told the CEO was not there and did not normally work out of its Swiss offices.

Cooper Industries

Cooper Industries moved its corporate home from Bermuda to Ireland in 2009. All the information that follows is found in Cooper Industries' pre-14A filed on June 19, 2009.[4]

Cooper Industries moved its corporate home to Ireland in two steps (Cooper Industries pre-14A, p. 5). Ireland's laws make a distinction between a firm's tax home and its place of incorporation, and they do not have to be identical. Cooper Industries first moved its tax home to Ireland in 2008, and then moved its corporate home to Ireland in 2009. The firm's board of directors moved its tax home to Ireland, and this action did not require shareholder approval (p. 5). Moving the firm's place of incorporation required shareholder approval, which was received in 2009.

Like Transocean, Cooper Industries was motivated by legislative proposals targeting tax havens. It wrote:

> Bermuda, however, lacks a substantial network of commercial, tax, and other treaties and established relationships with many of the countries where Cooper Industries has major operations. In addition, there continues to be negative publicity regarding, and criticism of, companies that conduct substantial business in the U.S. but are domiciled in countries that do not have tax treaties with the U.S., like Bermuda. Also, legislative and regulatory bodies in the U.S. and certain U.S. trading partners have been actively considering proposals that would impact multi-national companies incorporated in jurisdictions such as Bermuda that do not have tax treaties with the U.S. or certain U.S. trading partners'' [Cooper Industries pre-14A, p. 6.]

Cooper Industries also specifically mentioned proposed legislation that might designate Cooper Industries a U.S. resident for tax purposes.

Cooper Industries said it considered relocating its headquarters back to the United States. However, it determined this would substantially increase its tax liabilities. It wrote:

> We determined that incorporating in the United States would have negative financial consequences for Cooper Industries and its shareholders by increasing our global effective tax rate, resulting in potentially significant declines in net income, earnings per share, and cash flow. [Cooper Industries pre-14A, p. 6.]

Cooper said it considered a number of alternatives and ultimately determined it was in its best interest to incorporate in a jurisdiction that is a member of both the European Union and the OECD. Cooper cited its substantial operations in Europe, tax proposals in the EU and the OECD that might penalize firms headquartered in some jurisdictions that weren't part of the EU or the OECD, and ''favorable European Union tax directives that apply only to a company that is both incorporated and tax resident in a European Union jurisdiction'' (p. 6).

As noted above, European laws generally apply real seat rules to establish tax residency. To accomplish this, Cooper Industries said:

> The move in tax residency was effected as a result of a determination by our board of directors to hold at least 50 [percent] of the scheduled board meetings each year in Ireland and to make all key strategic decisions at the board level. [Cooper Industries pre-14A, p. 5.]

While the majority of board meetings will be held in Ireland and strategic decisions made at that level, the company did not anticipate this would have an impact on how the firm conducted its daily operations. It wrote:

[3] *Available at* http://www.cbsnews.com/stories/2011/08/14/60minutes/main20091720.shtml.

[4] *See* Cooper Industries pre-14A, filed with the SEC on June 19, 2009.

> We believe that the Reorganization will have no material impact on how we conduct our day-to-day operations. The location of our future operations will depend on the needs of our business, independent of our legal domicile. [P. 8.]

Ireland enforces a withholding tax on dividends that depends primarily on where the shareholder resides. However, Cooper believes this tax will not apply to the majority of its shareholders. Cooper Industries said: "For the majority of shareholders, there is no Irish withholding tax on dividends" (p. 10). Further, Cooper said that shares owned by residents of the U.S. or EU member states will generally not be subject to Irish withholding tax on dividends (p. 10). In some situations, the Irish withholding tax of 20 percent could apply, but since many exemptions are available, the firm suggested some shareholders may want to consult with their brokers or tax advisers to determine if there are ways to avoid this tax (pp. 10-11).

Cooper Industries also noted that its move to Ireland will give its board of directors less flexibility to manage the firm's capital structure than it had in Bermuda (p. 30). Under Irish law, specific actions must be approved by shareholders. For example, in Ireland the shareholders can authorize the board of directors to issue new shares, but this authorization must be renewed every five years. In Bermuda, the board of directors can issue new shares without shareholder approval.

Ingersoll Rand

Ingersoll Rand also moved its corporate home from Bermuda to Ireland. Its rationale was explained in its pre-14A, which was filed with the SEC on March 30, 2009.[5] Ingersoll Rand's move to Ireland was similar to Cooper Industries' move, in that the firm established its tax residency in Ireland first, and then asked shareholders to approve moving its corporate home there after the change in tax residency (p. 4).

Ingersoll Rand gave the following reasons for its move:

> There continues to be negative publicity regarding, and criticism of, companies that conduct substantial business in the U.S. but are domiciled in countries like Bermuda. In addition, the U.S. federal government and various states and municipalities have enacted or may enact legislation intended to deny government contracts to U.S. companies that have reincorporated outside the United States. Further, proposals have from time to time been made and/or legislation has been introduced to change the U.S. tax law that, if enacted, could increase our tax burden. For example, recent legislative proposals would broaden the circumstances under which we would be considered a U.S. resident. [P. 5.]

After determining it needed to relocate, Ingersoll Rand considered the United States and other unspecified countries. However, it concluded that relocating to the United States would have a negative impact on the firm's tax rate and cash resources (p. 5).

The firm cited several reasons for selecting Ireland as its new corporate home. The firm had substantial experience operating in Ireland, noting that it had significant manufacturing and sales operations in Ireland, and more than 700 employees there before the headquarters relocation. In addition to its operations there, Ingersoll Rand cited Ireland's many tax treaties and its membership in the EU and the OECD as important considerations (p. 5). It also said Ireland "is an English-speaking common law jurisdiction, which we believe makes its legal system less prescriptive and more flexible than those of civil law jurisdictions and also more familiar to Ingersoll Rand and its shareholders" (p. 5).

Ingersoll Rand said its U.S. shareholders will generally not be subject to Irish withholding tax on dividends (p. 8). As Cooper Industries explained, Ireland's withholding tax generally depends on where the shareholder resides for tax purposes. Withholding tax does not apply for residents of 50 countries, which are identified in Annex C of the firm's SEC filing. Tax havens such as Bermuda and the Cayman Islands are not included on this list.

Ingersoll Rand said it would also take some actions to increase its presence in Ireland. It said:

> In addition to IR-Ireland being incorporated in Ireland and being governed by Irish law, we will expand our presence in Ireland with additional finance and regulatory professionals. In general, we will hold our Board of Directors meetings in Ireland. [P. 6.]

Ingersoll Rand also said that relocating to Ireland will give the firm's board of directors less ability to make capital management decisions than it had in Bermuda (p. 26).

Noble Corp.

Noble Corp., which changed its name from Noble Drilling in 2008, explained its headquarters relocation to Switzerland in its Schedule 14-A proxy statement, dated February 11, 2009.[6] The firm explained:

> since the Cayman Islands has no tax treaties and generally no system of direct taxation, migrating to another country with a different tax regime

[5] *See* Ingersoll Rand Schedule 14A, filed with the SEC on March 30, 2009.

[6] *See* Noble Corp. Schedule 14A, filed with the SEC on February 11, 2009.

> would enable us to improve our global tax position and lower the risks related to possible changes in tax legislation and regulations, both U.S. and non-U.S., including those relating to treaties, and disputes with tax authorities. [P. 24.]

Further, Noble said that maintaining a predictable tax rate would help it compete with other firms in the offshore drilling industry and make it a more attractive investment.

Noble said it considered a number of jurisdictions before selecting Switzerland. It identified three reasons for selecting Switzerland. The first was Switzerland's reputation for ''stability and financial sophistication'' (p. 24). The second was that country's many tax treaties and stable and well-developed tax laws. The third was Switzerland's well-developed ''set of corporate laws and a tradition of respecting the rule of law'' (p. 25).

As mentioned, when Transocean moved its corporate headquarters to Switzerland, it announced plans to relocate its senior management there. In contrast, Noble made no such commitment. It said:

> At the current time, we have not concluded that we should relocate executive management of our publicly traded holding company from our current headquarters in Sugar Land, Texas. However we are continuing to analyze whether relocating to Europe would be in Noble's best interest and the best interest of our shareholders. [P. 2.]

Noble said it would be subject to additional Swiss taxes as a consequence of the relocation, but did not expect them to be significant. It wrote: ''Although we do not expect Swiss taxes to materially affect our worldwide effective corporate tax rate, we will be subject to additional corporate taxes in Switzerland as a result of the Transaction'' (p. 20). However, Noble said that it believed the parent firm could receive dividends and capital gains from subsidiaries without incurring additional taxes. Noble said:

> Switzerland imposes a corporate federal income tax for holding companies at an effective tax rate of 7.83 [percent], although we would be entitled to ''participation relief'' that in most cases will effectively eliminate any Swiss taxation on the profits of our subsidiaries paid by them to Noble-Switzerland as dividends as well as on capital gains. [P. 20.]

As noted above, Switzerland imposes a 35 percent withholding tax on dividends, regardless of the residency of the shareholder. However, ''under current Swiss law, distributions to shareholders in relation to a reduction of par value are exempt from Swiss withholding tax'' (p. 5). Noble said that beginning in 2011, distributions to shareholders from additional paid-in capital will not be subject to withholding tax. As a part of the transaction, Noble planned to increase the par value of its stock and additional paid-in capital. The firm said: ''Consequently, Noble-Switzerland expects that a substantial amount of any potential future distributions may be exempt from Swiss withholding tax'' (p. 5).

As mentioned by other firms, the relocation from the Cayman Islands to Switzerland shifts some powers from the board of directors to the firm's shareholders. Consequently, Noble explained: ''As a result of increased shareholder approval requirements, Noble-Switzerland will have less flexibility than Noble-Cayman with respect to managing its capital structure'' (p. 17).

Tyco Electronics

Tyco Electronics (which changed its name to TE Connectivity Ltd. in 2011) moved its corporate home from Bermuda to Switzerland in 2009. All the information that follows is drawn from its Form S/4, which was filed on May 1, 2009.[7]

Tyco Electronics was concerned with potential legislation in several countries that could increase its tax obligations. It says that for a number of years:

> various U.S. and non-U.S. legislative proposals and other initiatives have been directed at companies incorporated in low-tax jurisdictions such as Bermuda. We believe that recently there has been heightened focus on adoption of such legislation and other initiatives. If adopted, these proposed changes could materially increase our worldwide corporate effective tax rate and negatively impact our U.S. government contracts business. [P. 10.]

In short, they were concerned both with higher taxes and lost government business.

Tyco Electronics said it considered a number of jurisdictions for a new corporate home, but did not identify the candidates. It selected Switzerland for several reasons. One was Switzerland's ''mature tax environment and established global treaty network'' (p. 10). Also:

> Unlike Bermuda, Switzerland has both a generally imposed corporate income tax rate and comprehensive tax treaties and other jurisdictions in which we operate. Accordingly, we believe that the Swiss Continuation may lower our risk of becoming subject to the U.S. and non-U.S. legislative and other initiatives discussed above and thus may provide greater certainty and predictability in managing our government contracts business. [P. 10.]

The firm also said it had a presence in Switzerland since 1985. The firm said it had more than 1,000 employees and four manufacturing facilities in Switzerland (p. 11). Relocating to Switzerland also located the

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[7] *See* TE Connectivity Ltd. Form S-4, ''Registration of securities issued in business combination transactions,'' filed with the SEC on May 1, 2009.

firm's headquarters closer to the firm's growing markets in Europe, the Middle East, and Africa. The firm noted that 65 percent of its manufacturing sites and 73 percent of its employees were located in Europe, the Middle East, and Africa, and with this move its headquarters would be closer to those sites.

As other firms mentioned, moving from Bermuda to Switzerland shifted some powers from the board of directors to its shareholders (p. 11). And like Transocean and Noble Drilling, Tyco Electronics changed the firm's capital structure to transfer funds into equity accounts from which dividends can be paid without incurring withholding taxes. As result, Tyco Electronics said, ''We do not expect to pay Swiss withholding tax on any distributions that we may make to shareholders for the foreseeable future'' (p. 13).

Tyco International

Tyco International relocated from Bermuda to Switzerland in 2008. Its rationale was stated in its S-4 filed with the SEC on December 10, 2008.[8] The firm was concerned with legislative proposals in the United States that could increase its tax obligations. The firm said its board of directors:

> has also considered legislation introduced in the U.S. Congress to limit tax treaty benefits and legislation that otherwise targets companies that are domiciled in countries like Bermuda — for example, by limiting the ability of such companies to enter into contracts with U.S. federal or state governmental authorities. [P. 28.]

Tyco International explained the reasons it selected Switzerland in this way:

> After careful consideration of our country of domicile over a number of years, our board of directors has concluded that incorporation in Switzerland, a major business center known for its economic and financial stability and financial sophistication, is in the best interests of Tyco International and our shareholders. [P. 7.]

Reasons the firm cited for the move to Switzerland included its stable economic, regulatory, and political environment; its well-developed relationships with countries throughout the world; and its stable tax regime and many reliable tax treaties (p. 7).

It considered the United States but determined that would have adverse financial consequences. Referring to the decision to invert originally, the firm said:

> At that time, we estimated that, had Tyco International been a U.S. corporation during fiscal year 2003, the effective tax rate on our income from continuing operations excluding special charges would have increased to more than 35 [percent], resulting in significant declines in our net income and earnings per share. We believe that similar declines would result if Tyco International became a U.S. corporation today. [Pp. 7-8.]

Tyco International had maintained operations in Switzerland for many years. In a letter to shareholders included in the proxy statement, board Chairman and CEO Edward Breen said:

> We have a well-established presence in Switzerland and today employ approximately 400 people there, primarily in our fire and security businesses, as well as in certain key corporate functions. With the Change of Domicile, we expect an increase in our presence in Switzerland.

Later Tyco International said:

> When the Change of Domicile is completed, our executive officers and directors immediately prior to the completion of the Change of Domicile will be our executive officers and directors. Our directors will continue as directors during their terms. [P. 32.]

Like the other firms moving to Switzerland, Tyco International altered its capital structure to avoid Swiss withholding tax on dividend payments. The firm said it would increase its share capital and contributed surplus to $35 billion, ''and this represents the amount that we expect to be able to distribute to our shareholders free of Swiss withholding taxes'' (p. 10).

Covidien

While the other two Tyco spinoffs, Tyco Electronics and Tyco International, selected Switzerland as their new corporate home, Covidien selected Ireland. The information below can be found in Covidien's definitive proxy statement, the DEF 14A, filed on April 24, 2009.[9]

After the original Tyco split into three parts, Covidien became concerned that potential U.S. legislation would affect the firm. It wrote:

> After our first year as an independent healthcare products company, we revisited the decision regarding the location of our principal executive offices, and determined that it no longer remained appropriate to be located in Bermuda. The primary factor in reaching this decision was the possible adoption of various legislative and regulatory proposals in the United States. These included proposals introduced in the U.S. to limit tax treaty benefits to companies that are domiciled and tax resident in countries that do not

[8] *See* Tyco International Form S-4, filed with the SEC on December 10, 2008.

[9] *See* Covidien DEF 14A, definitive proxy statements, filed with the SEC on April 24, 2009.

have tax treaties with the U.S., and potential federal and state legislative proposals that would deny government contracts to such companies. [P. 6.]

Covidien also considered relocating to the United States, but determined this would reduce its earnings. It wrote:

> We determined that incorporating in the United States would have negative financial consequences for Covidien and its shareholders by increasing our global effective tax rate, resulting in potentially significant declines in net income and earnings per share. [P. 6.]

Covidien determined that it was important to be located in a jurisdiction that is both a member of the EU and the OECD (p. 6). It was concerned with OECD and EU tax proposals that could adversely affect companies incorporated outside those organizations. Ireland was selected for many reasons, including Covidien's history of operating there for more than 30 years, Ireland's EU membership and its many tax treaties, its common law legal system, and the country's English-speaking population (p. 6).

The firm's board of directors moved its tax residency to Ireland in December 2008. A shareholder vote was required to move the firm's place of incorporation to Ireland (p. 5). They also decided to hold the majority of board meetings each year in Ireland and to make all key strategic decisions there (p. 5). As part of the move, Covidien said:

> We will expand our presence in Ireland with additional finance and regulatory professionals appropriate to staff our principal executive office. We will also hold a majority of our board of directors meetings in Ireland. [P. 7.]

But apart from this, it did not expect the move would affect the firm's daily business operations.

Similar to the other companies mentioned, the firm expected the move would place some limits on the ability of the board of directors to manage the firm's capital without shareholder approval (p. 28). It also said Ireland's withholding tax on dividends would not apply to the majority of its shareholders. Covidien said Ireland's withholding tax does not apply to residents of 50 countries, and it said the country also offers many other exemptions from this tax, which it encouraged shareholders to investigate (pp. 9-10).

Conclusion

Legislative proposals in the United States and Europe to tax or penalize firms that were headquartered in jurisdictions such as Bermuda and the Cayman Islands were the primary reason firms relocated again. Each of the seven firms that relocated its headquarters to Switzerland or Ireland cited legislative proposals as a key reason for their move. A number of the firms were also concerned with legislative proposals that might deny the government contracts to firms located in tax havens such as Bermuda and the Cayman Islands.

All the firms said the large network of tax treaties in Ireland and Switzerland were factors in their decision to relocate there. All seven firms contrasted the large number of tax treaties in Ireland and Switzerland with the lack of tax treaties in Bermuda and the Cayman Islands.

Several of the firms chose to relocate their headquarters to locations where they already had substantial business operations. Ingersoll Rand and Covidien both said they operated in Ireland for many years, and chose to locate there. Tyco International and Tyco Electronics both had operations in Switzerland, and selected it as their new corporate home. Companies might prefer to select a country where they already had operations because they are familiar with a country and its laws, and to satisfy real seat tax rules.

Firms that selected Switzerland as their new corporate home cited several other reasons. Transocean, Noble Industries, and Tyco International all mentioned Switzerland's stable and well-developed tax system. Transocean and Tyco International also cited Switzerland's central location, which would give senior management easier access to business operations in many countries.

Firms that selected Ireland saw advantages to locating there. The United States and Ireland both have common law legal systems, which firms were familiar with. Switzerland had a civil law system. Also, some firms thought Ireland's English-speaking population was another advantage to locating there.

While Switzerland and Ireland both impose withholding taxes on dividends, they permit exemptions, and their rules are very different. In general, Switzerland taxes dividends paid to shareholders in all countries. However, when dividends are paid from the firm's par value or additional paid-in capital, the dividends are not subject to withholding tax. Thus, when firms moved to Switzerland, they modified their capital structure to increase the value of these accounts.

In contrast, Ireland's withholding tax applies for residents of some jurisdictions, but it is waived for residents of other jurisdictions. Withholding tax does not apply to residents of 50 nations, including the United States and most European countries. Firms moving to Ireland said that withholding on dividend payments would not apply to the majority of the firm's shareholders. They also said there were many other ways shareholders could exempt themselves from that tax, which they encouraged shareholders to investigate.

Several firms indicated they considered relocating back to the United States. However, they said doing so would increase the firm's tax obligations, reduce earnings and cash flow, and thus reduce the firm's share price. While each of these firms was originally headquartered in the United States, and all still have substantial operations here, not one chose to return to the United States. Thus, U.S. legislative proposals that sought to penalize inverted firms were successful at driving these seven firms from Bermuda and the Cayman Islands, but not at attracting them back to the United States.

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