

**Congress of the United States**  
**Washington, DC 20515**

February 25, 2016

The Honorable Jacob J. Lew  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Ave NW  
Washington, D.C. 20220

Dear Secretary Lew:

Thank you for your recent testimony to Congress regarding the President's Budget. We share your concern about the hemorrhaging of revenue from the current spike in inversions and agree with your testimony regarding the urgency of action to deal with inversions. Aware that Treasury will soon be promulgating regulations concerning this matter, we respectfully urge you to use all of your existing regulatory authority to address this issue. Prior Treasury guidance has not been successful in slowing inversions and no meaningful legislative response seems probable this year from Congress. We simply cannot wait, and your action can put a stop to this trend until a new Congress can act.

Specifically, we bring to your attention an article in this week's issue of *Tax Notes* from former Deputy Assistant Secretary for International Tax Affairs, Stephen Shay, with Professors J. Clifton Fleming Jr. and Robert J. Peroni. We agree with Mr. Shay et al. that Treasury has regulatory authority to adopt earnings stripping restrictions through regulatory action and that such regulations should be directed at all foreign-owned firms. Congress explicitly authorized the Treasury to "prescribe such regulation as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for all purposes of the code as stock or indebtedness." (Internal Revenue Code Section 385) Treasury need only "set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists." One of these factors could be whether the interest was held by a related person that is not subject to U.S. tax, like a foreign corporation. See Rosenthal, "Professor Shay Got It Right: Treasury Can Slow Inversion," *Tax Notes*, September 22, 2014, p. 1447.

Additionally, we agree with Mr. Shay et al. that Treasury can and should expand its prior Notice 2014-52 limiting the ability of expatriating firms to use "hopscotch" transactions and to "de-control" their controlled foreign corporations in order to access their offshore earnings without paying the tax owed to the United States. We are concerned that Treasury's decision to limit its prior Notice to only those firms covered by Section 7874 has allowed companies like Pfizer and Johnson Controls to evade the restricts by structuring their deals just below the thresholds in that

statute. Treasury's authority for addressing "hopscotch" loans (Section 956) and "de-controlling" strategies (Section 7701) is not in any way limited by Section 7874. We urge you to expand the reach of your prior guidance as you issue regulations to apply to all foreign ownership cases.

We appreciate your attention to these important issues and look forward to your response.

Sincerely,

Wayne Duggan  
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Chris Veroff  
Elyse Cummings

Jan Stank  
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