Getting some perspective on tax inversions

By Jeff Buckstein

Perhaps wary of the political gridlock paralyzing United States lawmakers, the Department of the Treasury and Internal Revenue Service have announced measures designed to reduce the benefits associated with corporate tax inversions. But critics denounced that as either being too shallow or missing the mark.

"While comprehensive business tax reform that includes specific anti-inversion provisions is the best way to address the recent surge of inversions, we cannot wait to address this problem," said Treasury Secretary Jacob Lew, who insisted that while corporate inversion transactions "may be legal, they are wrong, and our laws should change.

These transactions, such as Burger King's recent purchase of Tim Hortons, with plans to create a new corporate structure headquartered in Canada, are highly controversial, particularly now with the leading industries empha-
sizing the need to preserve their tax bases.

Treasury said in a press release that "these transactions erode the U.S. tax base, unfairly placing a larger burden on all other taxpayers, including small businesses and hardworking Americans.

Treasury said that with this latest move, certain techniques that inverted companies use to gain tax-free access to the deferred earnings of a foreign subsidiary were being eliminated, thereby significantly diminishing the ability of inverted companies to escape U.S. taxation.

They also announced they have made it more difficult for U.S. entities to participate in inversions by strengthening the requirement that the foreign owners of the U.S. company must own less than 80 per cent of the new combined entity.

Treasury's move was criticized by Jack Mintz, director of the School of Public Policy at the University of Calgary, who accused the U.S. tax system of being "a system that attracts and retains businesses, whereas their own factors involve.

"These are companies that spend a lot of time and effort trying to comply with the rules. When the cost and the burden becomes that difficult, it makes you wonder whether you want to be doing business in a particular jurisdiction," said Jonhson.

"Who's going to bet the ranch on a major transaction involving billions of potential dollars, knowing there is more uncertainty today than there was three, six months ago?"

Howard Engle, University of Illinois

"Instead of taking a step back to fix all of the problems, they're trying to fix one narrow issue with a lot of Band-Aids as opposed to a broad-based change," he said. "Treasury doesn't have all the tools they need to completely fix the problem. The system needs to be overhauled, and it just doesn't know that the political climate is [recep-
tive] to an overhaul at the moment.

Shumate also pointed to the U.S. residency-based system, compared to the territorial-based system Canada and the overwhelming majority of other countries have, as being a disadvantage.

"That's the fundamental problem. When the U.S. had more power within the worldwide eco-

Canary report addresses inversions

A recent report on aggressive international tax planning by the School of Public Policy at the University of Calgary addressed the growing popularity of the tax invasion strategy.

"This sort of aggressive international tax planning by multinational corporations was what G20 members had committed to fighting against when they endorsed the OECD's 'action plan' against base erosion and profit shifting (BEPS)," the report said.

"These are companies that spend a lot of time and effort trying to comply with the rules. When the cost and the burden becomes that difficult, it makes you wonder whether you want to be doing business in a particular jurisdiction," said Jonhson.

"Who's going to bet the ranch on a major transaction involving billions of potential dollars, knowing there is more uncertainty today than there was three, six months ago?"

Howard Engle, University of Illinois

"Instead of taking a step back to fix all of the problems, they're trying to fix one narrow issue with a lot of Band-Aids as opposed to a broad-based change," he said. "Treasury doesn't have all the tools they need to completely fix the problem. The system needs to be overhauled, and it just doesn't know that the political climate is [recep-
tive] to an overhaul at the moment.

Shumate also pointed to the U.S. residency-based system, compared to the territorial-based system Canada and the overwhelming majority of other countries have, as being a disadvantage.

"That's the fundamental problem. When the U.S. had more power within the worldwide eco-

This article originally appeared in the mid-November, 2014 issue of The Bottom Line. Any other use (reprint in a newsletter, for example) requires further permission requests.