The Daily Dish

August 3rd Edition

GORDON GRAY | AUGUST 4, 2014

In an interview with The Economist President Obama told reporters to “take the complaints [on regulations] of the corporate community with a grain of salt.” With his administration adding regulatory costs at a break-neck speed (already $100 billion this year) and planning to release at least $34 billion in regulations after the election, it should be more than businesses that are concerned. These regulations often become a hidden tax on consumers pushing up the cost of housing, energy, and food.

Congress may be on recess, but before they left the House was able to pass bills on both the Department of Veterans Affairs (VA) and the border crisis. The $17 billion VA bill calls for more employees and facilities while providing funds for better oversight. The border bill would provide $694 million in additional funding for federal agencies dealing with the crisis.

Eakinomics: Flawed Anti-Inversion Policy Could Cost over 50,000 Pharma Jobs Alone– Guest Authored by Gordon Gray, AAF Director of Fiscal Policy

As Congress adjourns for August, a host of domestic and international issues will compete for the public’s attention. Among them will no doubt be the populist hobby-horse du jour: corporate flight from the United States. While there are important factors that distinguish cross-border mergers and acquisitions from “inversions,” a key feature is the movement of the legal corporate residence to another country – a lower tax country. These transactions are nothing new, nor are incremental attempts by regulatory bodies and Congress to staunch them. While the futility of such band-aid approaches over time should alone be instructive, the most recent attempt by some members of Congress and the administration bear particular scrutiny.

The president’s FY2015 budget, Senator Levin’s bill and its companion bill in the House have all proposed measures that they argue would staunch such expatriations. Among other provisions, these proposals would reduce the proportion of corporate shares that a U.S. company may own of a foreign entity to be considered as a foreign-domiciled firm. At present this stands at 80 percent, while these proposals would reduce it to 50 percent. As a result, if, under an expatriation transaction, the original shareholders have a majority stake in the foreign, top-tier corporation, that corporation is viewed as a domestic corporation for tax purposes. It is important to note that Senator Levin’s measure sunsets after two years, nominally to provide political “room” for comprehensive tax reform, which is at least a tacit acknowledgment that the U.S. code may ultimately be at fault for these expatriations.

These proposals also share a key feature related to management and control that would ultimately incentivize shipping corporate headquarters jobs overseas. All of these proposals would add a management and control test to the determination of the tax treatment of a firm. Specifically, as the administration notes, “a special rule whereby, regardless of the level of shareholder continuity, an inversion transaction will occur if the affiliated group that includes the foreign corporation has substantial business activities in the United States and the foreign corporation is primarily managed and controlled in the United States.” In essence, if a firm keeps its headquarters in the United States, and continues to do significant business in the States, it will be taxed as a U.S. firm. To the extent the U.S. tax code otherwise incentivizes these firms to expatriate, this test will push these firms a step further – shipping their headquarters off-shore.

The pharmaceutical industry provides an instructive example of the potential effects of current anti-inversion proposals, and the need to address the inherent anti-competitive nature of the corporate tax code. The table below displays total employee and headquarters employee figures at top pharmaceutical firms.

Image not found or type unknown

Looking at just large pharmaceutical firms suggests that something on the order of 56,000 jobs would be at risk. Note that these are often high-skill and high-wage jobs that would be expatriated, and only represent the largest firms of just one sector.

From the Forum

Week in Regulation by Sam Batkins, AAF Director of Regulatory Policy