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The Honorable Richard Durbin
Chairman
Subcommittee on Financial Services and General Government
Senate Committee on Appropriations
United States Senate
Dirksen Senate Office Building Rm. 184
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Subcommittee on Financial Services and General Government
Senate Committee on Appropriations
United States Senate
Dirksen Senate Office Building Rm. 142
Washington, DC 20510

CC: U.S. Senate Committee on Appropriations, The Honorable Charles Grassley, The Honorable Carl Levin, The Honorable Max Baucus, Michael Mundaca, Acting Assistant Secretary for Tax Policy, U.S. Treasury

Dear Chairman Durbin and Ranking Member Collins,

The U.S. Public Interest Research Group (PIRG) writes today regarding the **Financial Services and General Government Appropriations Act of 2010**. Language in the bill (specifically, Sec. 740 (d)) could **undermine existing protections in the Homeland Security Act and subsequent appropriations bills which keep inverted companies from receiving government contracts**.

Inverted companies are those who base their operations in the U.S. and establish a nominal presence in a foreign country for the purposes of avoiding U.S. taxes. Laws to close these tax haven loopholes have garnered bipartisan support and produced common-sense directives. Dismantling them allows profitable companies to legally skip out on their taxes and shifts that tax burden to taxpayers and responsible businesses already facing tough times in this economy. Given your past leadership on issues to protect taxpayers, and your positions on the Appropriations Committee we urge you to block this blatant end run around existing tax law.

In 2002, Congress took the first step in enacting legislation to address corporate inverters that seek government contracts with the Homeland Security Act. The law, passed overwhelmingly in the House and Senate, prohibited the Department of Homeland Security from contracting with inverted corporations. Most recently, with the Omnibus Appropriations Act of 2009, Congress broadened this restriction to apply government-wide.

However, this protection is in danger of being diluted, if not completely undermined, by a section currently written into the **Financial Services and General Government Appropriations Act of 2010** that makes a broad exception for compliance with "international agreements." Foreign companies that are owned, managed, and operationalized within their country are not subject to the current restrictions defined in detail by both the law and rules associated with it. The acquisition regulation defines what constitutes an "inverted corporation."¹ The issue is that

companies that exist only nominally in countries protected by the agreements would be exempted from our law or could simply change their address to a country that has such an agreement.

The existing law makes sense.

The existing law prohibits government agencies from awarding contracts to inverted corporations. These are companies not withstanding their U.S. presence, reincorporate outside of the U.S., while enjoying the benefits, protections, and access to U.S. markets associated with doing business in the U.S.

When corporations first invert and then have the ability seek public contracts, taxpayers suffer a triple injury. First because the American companies at least nominally move overseas and transfer their tax burden to taxpayers. Secondly, taxpayer dollars would go overseas to pay public contracts paid to these reincorporated companies. And third, we lose when their American “subsidiaries” are able to strip their income down to a point where their U.S. tax is zero.²

As Senator Byron Dorgan (D-ND) observed in hearings on this topic back in 2002: “The American People pay their taxes. People who run businesses on Main Street pay their taxes. And frankly, it disgusts me to see corporations decide in their boardrooms that they would like to renounce their US citizenship so they can avoid paying taxes. My feeling is that if they would like to be citizens of Bermuda, perhaps they should rely on the Bermuda navy to protect their assets and I believe the total Bermuda armed forces has somewhere around 27 people.”

The existing law has bipartisan support.

Leadership and support for this issue has come from the left and the right. Senator Charles Grassley (R-IA), the late Senator Paul Wellstone (D-MN), Senate Financial Services Chairman Max Baucus (D-MT) and Senator Susan Collins (R-ME) have all introduced legislation to address the tax issues with corporate inverters. Senator Collins has commented in past statements, “American companies should not suffer a competitive disadvantage because tax haven contractors have inverted ownership to gain an unfair edge by avoiding paying corporate tax.” In addition, President Obama has been an ardent supporter of legislation to end such tax abuse and close corporate loopholes. As a U.S. Senator, he co-sponsored tax haven abuse legislation with Senator Levin and former Senator Coleman. And as President, he has included closing corporate loopholes in his budget.

A reason there has been strong bipartisan support behind the bill is that its taxpayer protections will not make American companies or truly foreign companies less competitive. Quite the opposite, the only companies that are affected are those that have declared themselves no longer to be American companies by changing their address. American companies and true foreign companies become more competitive with the current law because, as the Government Accountability Office concludes, they no longer compete for contracts on an unlevelled playing field against companies with significant artificial advantages.³

The loophole undermines original law.

In **Section 740 (d)** of the bill, a sweeping exception is made to the current law. In reference to prohibitions against granting public contracts to inverted companies, it reads: “The prohibition...shall not apply to the extent that it is inconsistent with the United States obligations under an international agreement.”

Though “agreement” is a nebulous term, it is presumed to mean the World Trade Organization’s Government Procurement Agreement, but could be interpreted as wide as Trade Agreements, Trade and Investment Agreements or even Tax Treaties. Tables 1.0 and 1.1 list participants after the letter text. Regardless, the term “international agreement” could exempt inverted companies from the current law so long as they are located within a country with which we have any of these

agreements. The original law does not provide for any preferential treatment of any particular country. The original law in no way impacts true foreign companies. Instead, it keeps contracts and tax dollars out of the hands of companies that have renounced their U.S. citizenship to avoid paying their fair share taxes.

There are meaningful changes that can be made within the rulemaking process to address outstanding concerns for truly foreign corporations or process-related clarifications for procurement staff. Changing the law in this way does not accomplish anything but instantaneously exempt inverted companies from the law or just as soon as they can change their post office box.

If Section 740 (d) is included, and inverted companies can simply point to any number of “international agreements,” or can simply move their “location” or address to any country with which we have an “agreement,” the existing protections in the current law could become meaningless. We urge the Senators to remove this damaging language from the bill before final passage.

Sincerely,

Nicole M. Tichon
 Tax and Budget Reform Advocate
 U.S. Public Interest Research Group

[U.S. PIRG](#), a federation of state Public Interest Research Groups, is a non-profit, non-partisan public interest advocacy organization.

Table 1.0 Government Procurement Agreement Participants

Government Procurement Agreement Parties	WTO Observers
Canada	Albania *
European Communities with regard to its 27 member States:	Argentina
Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom	Armenia *
Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic and Slovenia	Australia
Bulgaria and Romania	Bahrain
Hong Kong , China	Cameroon
Iceland	Chile
Israel	China *
Japan	Colombia
Korea	Croatia
Liechtenstein	Georgia *
the Netherlands with respect to Aruba	Jordan *
Norway	Kyrgyz Republic *
Singapore	Moldova *
Switzerland	Mongolia
Chinese Taipei	New Zealand
United States	Oman *
Canada	Panama *
European Communities with regard to its 27 member States:	Saudi Arabia
Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom	Sri Lanka

Government Procurement Agreement Parties	WTO Observers
Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic and Slovenia	Turkey
Bulgaria and Romania	Ukraine
Hong Kong , China	
Iceland	
Israel	
Japan	
Korea	
Liechtenstein	
the Netherlands with respect to Aruba	
Norway	
Singapore	
Switzerland	
Chinese Taipei	
United States	

Table 1.1 U.S. International Agreements and Treaties (Trade and Tax)

Column 1	Column 2	Column 3	Column 4	
Free Trade Agreements	Trade Investment Framework Agreements	Caricom TIFA:	Tax Treaties	
Australia	Angola TIFA	Antigua and Barbuda	Armenia	Pakistan
Bahrain	Common Market for Eastern and Southern Africa (COMESA) TIFA	Bahamas	Australia	Philippines
Canada	East African Community TIFA	Barbados	Austria	Poland
Chile	Ghana TIFA	Belize	Azerbaijan	Portugal
Costa Rica	Liberia TIFA	Bermuda	Bangladesh	Romania
Dominican Republic	Mauritius TIFA	British Virgin Islands	Barbados	Russia
El Salvador	Mozambique TIFA	Cayman Islands	Belarus	Slovak Republic
Guatemala	Nigeria TIFA	St. Kitts and Nevis	Belgium	Slovenia
Honduras	Rwanda TIFA	St. Lucia	Bulgaria	South Africa
Israel	South Africa TIFA	St. Vincent and the Grenadines	Canada	Spain
Jordan	West African Economic and Monetary Union (WAEMU) TIFA	Singapore	China	Sri Lanka
Mexico	Caricom TIFA	Turks and Caicos	Cyprus	Sweden
Morocco	Uruguay TIFA		Czech Republic	Switzerland
Nicaragua	Algeria TIFA		Denmark	Tajikistan
Oman	Bahrain TIFA		Egypt	Thailand
Peru	Egypt TIFA		Estonia	Trinidad
Singapore	Georgia TIFA		Finland	Tunisia
	Iceland TIFC		France	Turkey
	Iraq TIFA		Georgia	Turkmenistan
	Kuwait TIFA		Germany	Ukraine
	Lebanon TIFA		Greece	Union of Soviet Socialist Republics (USSR)
	Oman TIFA		Hungary	United Kingdom
	Qatar TIFA		Iceland	United States Model
	Saudi Arabia TIFA		India	Uzbekistan
	Switzerland TIFC		Indonesia	Venezuela
	Tunisia TIFA		Ireland	
	Ukraine TIFA		Israel	
	United Arab Emirates TIFA		Italy	
	Yemen TIFA		Jamaica	
	Afghanistan TIFA		Japan	
	Central Asian TIFA (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan)		Kazakhstan	
	Pakistan TIFA		Korea	
	Sri Lanka TIFA		Kyrgyzstan	

Column 1	Column 2	Column 3	Column 4	
Free Trade Agreements	Trade Investment Framework Agreements	Caricom TIFA:	Tax Treaties	
	ASEAN TIFA		Latvia	
	Brunei TIFA		Lithuania	
	Cambodia TIFA		Luxembourg	
	Indonesia TIFA		Mexico	
	Malaysia TIFA		Moldova	
	New Zealand TIFA		Morocco	
	Philippines TIFA		Netherlands	
	Thailand TIFA		New Zealand	
	Vietnam		Norway	

¹ Statutory definition of inverted domestic corporation. Section 835(b) defines an inverted domestic corporation to mean a foreign incorporated entity that, pursuant to a plan (or a series of related transactions) (1) directly or indirectly acquires substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership; (2) acquires at least eighty percent (80%) of the stock (by vote or value) of the entity held (a) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or (b) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and (3) after the acquisition, the expanded affiliated group that includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities. <http://edocket.access.gpo.gov/2009/pdf/E9-15434.pdf>

² http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:83645.wais

³ <http://www.gao.gov/new.items/d04856.pdf>