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Key Company Assets Moving Offshore

By DAVID CAY JOHNSTON

American companies have been rapidly shifting some of their most valuable assets to tax havens, where they pay little or no tax on profits, government data show.

Instead of moving their headquarters offshore, many companies are simply placing patents on drugs, ownership of corporate logos, techniques for manufacturing processes and other intangible assets in tax havens, tax lawyers say.

The companies then charge their subsidiaries in higher-tax locales, including the United States, for the use of these intellectual properties. This allows the companies to take profits in the havens and pay far less in taxes.

From 1983 to 1999 the value of American corporations' assets in Bermuda, the Cayman Islands and 11 other tax havens grew 44 percent more than their assets in Germany, England and other countries with tax rates similar to the United States, Commerce Department data show.

What is more, the havens were given especially lucrative assets, according to an analysis by Martin A. Sullivan, a former Treasury Department economist, published this week in the journal Tax Notes.

The reported profits in tax havens grew far faster than elsewhere. Tax haven profits rose 735 percent, to $92 billion, from 1983 to 1999, while profits in countries that are not tax havens grew only 130 percent, to $114.2 billion.

Bermuda and the other tax havens accounted for 45 percent of the total offshore profits in 1999, but only a fourth of those assets.

Actual taxes paid to the havens ranged from a fraction of 1 percent to 12.5 percent of profits, compared with an effective rate of 35.4 percent in the other countries, the Commerce Department data show.

In all, the 10,000 biggest American companies reported $758 billion in profits worldwide in 1999 and paid taxes to the United States of $154 billion, or 20 percent.

American multinational corporations routinely place ownership of patents, corporate logos and other valuable property in tax havens, said Richard E. Anderson, an international tax lawyer at Arnold & Porter in New York, calling it "international tax planning 101."

"You can't pick up a factory and move it to the Cayman Islands," Mr. Anderson said, "so most of the assets that are going to be relocated as part of a global repositioning are intellectual property. In today's economy that is where most of the profit is. When you buy a pair of sneakers for $250, it's the swoosh symbol, not the rubber" you pay for.

Though a small number of companies have been criticized for trying to move their nominal headquarters to a tax haven, thousands of companies are quietly moving their most valuable assets offshore to escape taxes while keeping their headquarters here, Dr. Sullivan said. The shift allows the companies to both make their domestic operation appear less profitable to the I.R.S. and to take a growing portion of their profits in havens.

A Boston tax lawyer who last summer published a study of assets in tax havens, Avi M. Lev, said that while hard data are not available, "anecdotal evidence suggest that significant intangible assets are beginning to flow offshore."

"The short-term problem is that we are reducing revenues to the United States Treasury from multinational corporations," Mr. Lev said.

Peter Merrill, chief Washington economist for PricewaterhouseCoopers, said that the surge in tax haven profits could be because valuable assets are being shifted out of the United States. But American companies might also be using new rules adopted during the Clinton administration to shift profits out of foreign countries with higher taxes to tax havens, he said.

As the corporate tax base erodes, the burden of supporting the federal government shifts to individuals. Corporations now generate about a tenth of federal tax revenues, down from about a sixth two decades ago.

For individuals, the portion of their incomes going to taxes rose to 14.8 cents of each dollar in 1999 from 13.1 cents in 1989, according to the Tax Foundation, a group that favors lower taxes.

The tax burden of the 400 highest-income Americans, however, was reduced by more than a fourth by a 1997 tax law. This group, whose average income was $110.5 million in 1998, paid 22 percent of their income in taxes that year, down from 30 percent in 1995, according to an I.R.S. report obtained last year by Professor Joel Slemrod of the University of Michigan.

The Commerce Department figures show that American companies paid 35.4 percent of their offshore profits in taxes in countries that are not tax havens and just 5.8 percent in the 13 tax havens.

Ingersoll-Rand, Nabors Industries and others that acquired an offshore address in the past year said that high rates of American tax forced them to expatriate. (Federal law gives companies a dollar-for-dollar credit of foreign taxes against the American corporate income tax.)

Before the election, both parties vowed to deny government contracts to companies that acquired an offshore address, a tactic that both Republicans and Democrats denounced as unpatriotic. But after the election, the Republicans reversed course. Republican legislation creating the Homeland Security Department allows such companies to win government contracts if the work is done by an American subsidiary.

The Bush Administration is studying ways to cut corporate taxes further. The Treasury is looking at big ideas, Kenneth Dam, deputy secretary of the Treasury, said at a dinner last week as reported in *Tax Notes*.

“Corporate tax rate reduction is a big idea,” the publication quoted him saying.

Last year, Congress passed a bill allowing companies to quickly write off the cost of new equipment purchased this year and in the next two years. The measure is expected to reduce corporate income taxes by $114 billion over three years, the equivalent of a one-quarter cut in corporate income taxes.