

**REPATRIATION OF FOREIGN EARNINGS  
AS A SOURCE OF FUNDING FOR  
THE HIGHWAY TRUST FUND**

---

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON SELECT REVENUE MEASURES  
OF THE  
COMMITTEE ON WAYS AND MEANS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION

JUNE 24, 2015

**Serial No. 114-TP02**

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PUBLISHING OFFICE

22-333

WASHINGTON : 2017

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

## **COMMITTEE ON WAYS AND MEANS**

PAUL RYAN, Wisconsin, *Chairman*

SAM JOHNSON, Texas	SANDER M. LEVIN, Michigan
KEVIN BRADY, Texas	CHARLES B. RANGEL, New York
DEVIN NUNES, California	JIM MCDERMOTT, Washington
PATRICK J. TIBERI, Ohio	JOHN LEWIS, Georgia
DAVID G. REICHERT, Washington	RICHARD E. NEAL, Massachusetts
CHARLES W. BOUSTANY, JR., Louisiana	XAVIER BECERRA, California
PETER J. ROSKAM, Illinois	LLOYD DOGGETT, Texas
TOM PRICE, Georgia	MIKE THOMPSON, California
VERN BUCHANAN, Florida	JOHN B. LARSON, Connecticut
ADRIAN SMITH, Nebraska	EARL BLUMENAUER, Oregon
LYNN JENKINS, Kansas	RON KIND, Wisconsin
ERIK PAULSEN, Minnesota	BILL PASCRELL, JR., New Jersey
KENNY MARCHANT, Texas	JOSEPH CROWLEY, New York
DIANE BLACK, Tennessee	DANNY DAVIS, Illinois
TOM REED, New York	LINDA SANCHEZ, California
TODD YOUNG, Indiana	
MIKE KELLY, Pennsylvania	
JIM RENACCI, Ohio	
PAT MEEHAN, Pennsylvania	
KRISTI NOEM, South Dakota	
GEORGE HOLDING, North Carolina	
JASON SMITH, Missouri	
ROBERT J. DOLD, Illinois	

JOYCE MYER, *Staff Director*

JANICE MAYS, *Minority Chief Counsel and Staff Director*

---

## **SUBCOMMITTEE ON SELECT REVENUE MEASURES**

DAVID G. REICHERT, Washington, *Chairman*

PATRICK J. TIBERI, Ohio	RICHARD E. NEAL, Massachusetts
ERIK PAULSEN, Minnesota	JOHN B. LARSON, Connecticut
TOM REED, New York	LINDA SANCHEZ, California
TODD YOUNG, Indiana	MIKE THOMPSON, California
MIKE KELLY, Pennsylvania	
JIM RENACCI, Ohio	

# CONTENTS

---

	Page
Advisory of June 24, 2015 announcing the hearing .....	2
WITNESSES	
Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation .....	4
Curtis S. Dubay, Research Fellow in Tax and Economic Policy, The Heritage Foundation .....	20
Jane G. Gravelle, Senior Specialist in Economic Policy, Congressional Research Service .....	36
Dirk Suringa, Partner, Covington & Burling LLP .....	27
SUBMISSIONS FOR THE RECORD	
American Chemistry Council (ACC) .....	73
American Road & Transportation Builders Association (ARTBA) .....	76
American Sustainable Business Council (ASBC) .....	80
American Traffic Safety Services Association (ATSSA) .....	82
National Retail Federation (NRF) .....	85
PeopleForBikes .....	88
Public Citizen .....	90
RATE Coalition .....	93
U.S. Chamber of Commerce .....	95





**REPATRIATION OF FOREIGN EARNINGS  
AS A SOURCE OF FUNDING FOR  
THE HIGHWAY TRUST FUND**

---

**WEDNESDAY, JUNE 24, 2015**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
SUBCOMMITTEE ON SELECT REVENUE MEASURES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:26 p.m., in Room 1100, Longworth House Office Building, Hon. Dave Reichert [Chairman of the Subcommittee] presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON SELECT REVENUE MEASURES

FOR IMMEDIATE RELEASE  
Thursday, June 17, 2015  
No. TP-02

CONTACT: (202) 225-3625

### **Chairman Reichert Announces Hearing on Repatriation of Foreign Earnings as a Source of Funding for the Highway Trust Fund**

Congressman David Reichert (R-WA), Chairman of the Subcommittee on Select Revenue Measures, today announced that the Subcommittee will hold a hearing on the taxation of the repatriation of foreign earnings as a funding mechanism for a multi-year highway bill. **The hearing will take place on Wednesday, June 24, 2015, in Room 1100 of the Longworth House Office Building, beginning at 2:00 p.m.**

Oral testimony at this hearing will be from the invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the on-line instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, July 8, 2015**. For questions, or if you encounter technical problems, please call (202) 225-3625 or (202) 225-2610.

#### **FORMATTING REQUIREMENTS:**

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

3. Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TDD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

**Note:** All Committee advisories and news releases are available online at <http://www.waysandmeans.house.gov/>.

---

Chairman REICHERT. Good afternoon. The Subcommittee will come to order. Thank you all for being here, especially the witnesses.

Today we have the opportunity to follow up on last week's hearing where we discussed long-term funding solutions to the Highway Trust Fund. Like many of my colleagues, I too believe we should secure a long-term funding source, but we need time to develop a solution.

As we continue these conversations on both sides of the Capitol, it is hard to ignore a topic often tied to these discussions: The repatriation of overseas earnings as a source of funding for a multi-year highway bill.

However, as you will hear today, current repatriation proposals are not that simple, nor are they without serious policy implications. That is why we are here today having this hearing—to drill down on what people mean when they say repatriation and how different forms of repatriation work. A key but often overlooked part of this discussion is that repatriation includes taxing earnings that have been reinvested abroad.

What we know to be true is that repatriation cannot be done as stand-alone policy. It must be a part of a transition to a more competitive system. I expect to hear today that, taken outside of the context of a transition, mandatory repatriation would be a tax increase, a tax increase that American companies would be forced to pay, unlike their foreign competitors.

Therefore, this hearing also provides a chance to talk about our current international tax system and how it should be modernized to boost the competitiveness of American companies. This is timely, timely because outside of our discussions the OECD BEPS project is moving forward and impacting the decisions of American companies operating globally today.

Thank you again to our witnesses, and I look forward to hearing from you about the key differences between current repatriation proposals.

Mr. Neal, you are recognized for your opening statement.

Mr. NEAL. Thank you, Mr. Chairman. And let me thank you for calling today's hearing.

The Highway Trust Fund's longstanding tradition has been based on a user-pays principle. We have long matched the cost, a gas tax, with the benefits of improved infrastructure. It is my hope that we will continue this long-held position and once again not let the lure of repatriated earnings distract us.

This is not the first time that Congress has debated using repatriation as a cure to fix our economy. Back in 2004, there are some of us on the Committee that still remember that debate as it played out. We were promised that with the cut in taxes for corporations' foreign earnings, those dollars would be brought back for the purpose of creating thousands of new jobs.

However, rather than invest the collective \$362 billion that these companies brought back, they reduced their American workforces and devoted less money for R&D and business investment. Instead, these companies increased executive pay, purchased shares, and paid dividends.

It's interesting that we are here again just 11 years later discussing how this new and improved version of repatriation will fix our ailing infrastructure. I hope we are going to learn from the history of how this was handled, and also point out that if we are not careful with the discussion of repatriation and we present another tax holiday, we will never get tax reform.

My last comment is not part of my official opening statement, but as you cited OECD, I had a chance to review some statistical data over the weekend and once again I'm presented with the interesting argument that as our NATO allies rushed to the bottom with corporate taxes, they simultaneously are reneging on their commitment to spend more on national defense, because in large measure they have had the best argument for national defense. It is called the American taxpayer.

Recall that even during the height of the Reagan years 6 percent of GDP was used for defense in America while our European allies were struggling to get to 1 or 2 percent. And if we are now reviewing the idea that it is still the American taxpayer and the American soldier that is going to pay for the national defense of our European friends, then they do have the opportunity to cut taxes.

So thanks for calling the hearing. And I hope that this will offer us an opportunity to discuss many of these measures.

Chairman REICHERT. Thank you, Mr. Neal.

Before I introduce today's witnesses, I ask unanimous consent that all Members' written statements be included in the record. Without objection, so ordered.

We will now turn to our panel of distinguished witnesses. I would like to welcome first, Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation; second, Mr. Curtis Dubay, Research Fellow in Tax and Economic Policy, The Heritage Foundation; third, Mr. Dirk Suringa, Partner, Covington & Burling LLP; and fourth, Ms. Jane Gravelle, Senior Specialist in Economic Policy, Congressional Research Service.

Thank you all for joining us today. You will each have 5 minutes to present your oral testimony. Your full written testimony has been submitted for the record.

And, Mr. Barthold, you are recognized first.

**STATEMENT OF THOMAS A. BARTHOLD,  
CHIEF OF STAFF, JOINT COMMITTEE ON TAXATION**

Mr. BARTHOLD. Well, thank you, Mr. Chairman and Mr. Neal. As you said, my name is Thomas Barthold, and I am the Chief of Staff of the Joint Committee on Taxation.

The Chairman asked me to provide an overview of three recent proposals to tax one time at reduced rates untaxed foreign earnings of foreign subsidiaries of U.S. parent companies. Just by way of background, the United States under present law taxes both the U.S. and foreign earnings of U.S. businesses. A U.S. multinational firm generally may delay or defer U.S. taxation of business earnings of its foreign subsidiaries by reinvesting those earnings rather than distributing those earnings.

The earnings, however, are subject to tax when a dividend is paid back or repatriated to the parent with a foreign tax credit allowed for any foreign taxes incurred on the foreign source income. Under special rules, as the Committee Members know, subpart F of the Code defines certain situations in which the earnings of a CFC are taxed on a current basis and for which foreign tax credits are already allowed.

So let me turn to three recent proposals to impose a one-time tax at reduced rates on untaxed foreign income of controlled foreign corporations. Two of these proposals were included as part of larger international tax reform initiatives, and the third is really a stand-alone targeted at directing funds to the Highway Trust Fund.

I will start first with H.R. 1 as introduced in the last Congress. That was the initiative of former Chairman Camp, his Tax Reform Act of 2014. Chairman Camp's international tax reform, which applies to earnings derived after the reform takes effect, has two broad features.

On one hand, it largely eliminates U.S. residual taxation of repatriations of untaxed CFC earnings by allowing a 95 percent deduction for dividends received by the U.S. parent company from their CFC. No foreign tax credit would be allowed. Consequently, the reform replaces the current U.S. credit system for eliminating double taxation.

On the other hand, former Chairman Camp's reform provided broad new rules intended to address shifting of profits out of the United States, in part by creating a new category of subpart F income, foreign-based company intangible income. H.R. 1 also proposed other changes in the international rules.

As a consequence, U.S. multinational corporations would be subject to a substantially different U.S. scheme for taxing cross-border income than under current law. And it was in this context that transition provisions were proposed to address the question of what should be the treatment of untaxed earnings that were derived before the tax reform was to take effect.

The proposal for the transition tax generally requires that for the last taxable year prior to when the participation exemption system comes into effect, that a U.S. shareholder of a foreign corporation must include a pro rata share of nonpreviously taxed, post-1986 foreign earnings of the corporation.

That inclusion was to occur in such a way that the shareholder was allowed a 90 percent deduction for noncash earnings and a 75 percent deduction for those earnings that were deemed to be held in cash or liquid form. The effect of that is that the effective maximum residual tax rate on the noncash earnings would be 3.5 percent, on the cash earnings, 8.75 percent.

The transition tax had special rules for inclusion of losses of CFCs, provided for a 10-year installment payment of the liabilities that were deemed to be incurred under the transition tax with a special rule for S corporation shareholding. Funds from the deemed repatriation tax were to be directed to the Highway Trust Fund.

Another proposal has recently been put forward by the Administration. The Administration has a broad set of international tax reform proposals as part of their 2016 budget. These include a mandatory 14 percent tax on foreign earnings.

Again, the Administration's reform starts by imposing a 19 percent minimum tax on CFC earnings and removes residual taxation of repatriations that are subject to that minimum tax. This minimum tax therefore also provides a partial exemption system for relief of double taxation. On the other hand, somewhat as in Chairman Camp's proposal, the Administration would strengthen certain anti-profit-shifting rules applicable to multinational corporations.

So as with former Chairman Camp's proposed reform, the 14 percent tax on untaxed foreign earnings answers the question of how historic earnings of the CFC should be treated in a transition to the new set of rules. In short, the proposal uses a different base of prior earnings than does Chairman Camp, all earnings prior to the date of enactment, as opposed to just 1986 earnings.

There are certain open questions not described by the Administration. But of some interest, the Administration, somewhat like Chairman Camp, would provide a 5-year installment period. The Administration said the intent was to direct those funds to Highway Trust Fund or other infrastructure purposes.

I realize I have run over. If you would grant me an additional 45 seconds, I wanted to briefly make note of the third proposal that the Chairman asked me about, and that is the Invest in Transportation Act introduced by Senator Paul and cosponsored by Senator Boxer.

Unlike the prior two proposals, this proposal would have a voluntary repatriation. The Invest in Transportation Act's voluntary repatriation is somewhat like that which the Congress enacted in 2004 as part of section 965. It differed in terms of measuring the base upon which the beneficial tax rate, which I should note is an effective residual tax rate of 6.5 percent, would apply; it also had some different provisions in terms of plan requirements for reinvestment of the earnings and would not permit the deduction for any company that was deemed to be an inverted corporation.

I provided, as you have before you, additional detail related to both of these proposals and the estimated revenue effects that my colleagues have estimated for those proposals, and I would be happy to answer any questions that the Members might have.

[The prepared statement of Mr. Barthold follows:]



JOINT COMMITTEE ON TAXATION  
June 24, 2015  
JCX-98-15

**TESTIMONY OF THE STAFF OF THE JOINT COMMITTEE ON TAXATION  
BEFORE THE SELECT REVENUE MEASURES SUBCOMMITTEE  
OF THE HOUSE COMMITTEE ON WAYS AND MEANS  
HEARING ON THE TAXATION OF THE REPATRIATION OF FOREIGN EARNINGS  
AS A FUNDING MECHANISM FOR A MULTI-YEAR HIGHWAY BILL<sup>1</sup>**

**JUNE 24, 2015**

My name is Thomas A. Barthold. I am Chief of Staff of the Joint Committee on Taxation.<sup>2</sup> It is my pleasure to present the testimony of the staff of the Joint Committee on Taxation today concerning present law and recent proposals related to the taxation of repatriated or deemed repatriated foreign business earnings of U.S. companies.

I will describe the manner in which the United States taxes foreign business earnings of U.S.-parented firms when those earnings are repatriated to the U.S. parent company. I will also give an overview of three recent proposals to tax, one time at reduced rates, untaxed foreign earnings of foreign subsidiaries of U.S. parent companies: former Ways and Means Committee Chairman Dave Camp's mandatory transition tax included in the international tax reform provisions of the Tax Reform Act of 2014; the Department of Treasury's mandatory transition tax included as part of the Administration's fiscal year 2016 international tax reform proposals; and legislation introduced by Senator Rand Paul and co-sponsored by Senator Barbara Boxer to tax voluntary repatriations during a five-year period at a reduced rate.<sup>3</sup> I will summarize former

<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Testimony of the Staff of the Joint Committee on Taxation Before the Select Revenue Measures Subcommittee of the House Committee on Ways and Means on the Repatriation of Foreign Earnings as a Funding Mechanism for a Multi-Year Highway Bill* (JCX-98-15), June 24, 2015. This publication can also be found at <http://www.jct.gov>.

<sup>2</sup> The staff of the Joint Committee on Taxation is nonpartisan and serves the entire Congress. The staff of the Joint Committee on Taxation includes experienced economists, attorneys, and accountants who assist Members of the majority and minority parties in both houses of Congress on tax legislation.

<sup>3</sup> H.R. 1, 113<sup>th</sup> Congress, 2d Session (2014), sec. 4003; Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals*, February 2015, p. 23; S. 981, 114<sup>th</sup> Congress, 1<sup>st</sup> Session (2015), secs. 2 and 3.

Chairman Camp's and the Administration's international tax reform proposals of which transition taxes were a part.

We have included in an appendix to our written testimony revenue tables prepared by the Joint Committee staff for former Chairman Camp's and the Administration's international tax reform proposals and for Senator Paul and Senator Boxer's temporarily reduced rate on dividend repatriations. We have also included a table comparing key features of the three one-time tax proposals that I will describe.

#### **U.S. taxation of repatriated foreign earnings**

The United States taxes both the U.S. and foreign earnings of U.S. businesses. A U.S. multinational firm generally may delay, or defer, U.S. taxation of the business earnings of its foreign subsidiaries by reinvesting rather than distributing those earnings. U.S. firms may delay taxation of foreign subsidiary earnings for two straightforward reasons. One, the Internal Revenue Code (the "Code") respects each corporation as a distinct taxable entity, and the income, expenses, and losses of one corporation in a group of companies generally are not attributed to another corporation in the group. And two, the Internal Revenue Code largely taxes only the U.S.-source earnings, and not the foreign-source earnings, of a foreign corporation. Accordingly, when a foreign subsidiary of a U.S. parent company derives income from business operations abroad, that income typically is not attributed to the U.S. parent corporation, and the Code does not tax the foreign subsidiary because for U.S. tax purposes a foreign corporation has derived foreign-source income. When, however, the foreign subsidiary distributes previously untaxed foreign earnings to its U.S. parent company, the United States taxes the earnings for a similarly simple reason: The earnings distribution from the foreign subsidiary to its U.S. parent company shareholder is treated as a taxable dividend under the general rules for the taxation of earnings distributions by corporations.

The Code treats a distribution of foreign earnings to a U.S. parent company differently from how it treats a purely domestic distribution of earnings in one principal respect. If another country has imposed tax on the foreign earnings out of which a distribution is paid, the United States allows the U.S. tax on the distribution to be offset by a credit for the foreign tax. This foreign tax credit is allowed for a corporation that owns at least 10 percent of the voting stock of a foreign corporation that has paid foreign tax and that distributes earnings on which the foreign tax has been paid. As a simple illustration, assume a foreign subsidiary pays a 10-percent tax on its foreign earnings and distributes those earnings to its U.S. parent company. The U.S. parent company will pay a 25-percent U.S. tax on the distributed earnings, which is the 35-percent U.S. statutory corporate tax rate less a credit for the 10-percent foreign tax.

I should note that the Code departs from the general scheme of deferral of U.S. taxation of foreign business earnings for certain kinds of income. The rules of subpart F of the Code tax a 10-percent U.S. shareholder of a controlled foreign corporation (a "CFC"), which is a foreign corporation that is majority owned by five or fewer 10-percent U.S. shareholders, on its proportionate share of certain kinds of income of the CFC in the year in which the income is derived, irrespective of whether the CFC pays a dividend to the U.S. shareholder. In particular, subpart F applies, with certain notable exceptions, to a CFC's investment income in the form of



dividends, interest, rents, royalties, and capital gains and to a CFC's income from some sales and services in transactions with related parties.

For non-subpart-F foreign earnings, a U.S. multinational firm may choose to delay U.S. taxation by reinvesting rather than repatriating those earnings because, by doing so, the firm can, if the foreign tax rate is less than the U.S. tax rate, reinvest a larger (pre-U.S.-tax) amount of earnings than it would be able to invest if it repatriated the earnings, paid residual U.S. tax on the repatriation, and reinvested the after-tax amount. The U.S. financial accounting rules also may encourage U.S. companies to delay repatriating foreign earnings because companies that assert that foreign earnings have been indefinitely reinvested are – in a departure from the general financial accounting rule of current recognition of income and taxes – not required to record a financial statement tax expense in relation to those reinvested earnings. According to one recent estimate, U.S. companies in the Russell 1000 index designated in their financial statements in 2014 a total of \$2.3 trillion of foreign earnings as being indefinitely reinvested.<sup>4</sup>

The Joint Committee staff has described in more detail in previous documents the U.S. system of worldwide taxation with deferral, the U.S. foreign tax credit rules, and the rules of subpart F.<sup>5</sup> We have also written extensively about policy considerations related to worldwide taxation with deferral.<sup>6</sup> I would be happy to answer any questions that you may have about any legal or policy matter related to the U.S. scheme for taxing cross-border income of multinational companies.

#### **One-time tax proposals**

Three recent proposals impose one-time taxation at reduced rates on untaxed foreign income of CFCs. Two of these proposals were included in larger international tax reform initiatives.

##### **Former Chairman Camp's Tax Reform Act of 2014**

In connection with transition to a participation exemption system for future foreign subsidiary earnings, former Chairman Camp's proposal includes a one-time mandatory tax on untaxed foreign earnings.

Former Chairman Camp's international tax reform, which applies to earnings derived after the reform takes effect, has two broad features. On the one hand, it largely eliminates U.S. residual taxation of repatriations of untaxed CFC earnings by allowing a 95-percent deduction for dividends received by U.S. parent companies from their CFCs. No foreign tax credit is

<sup>4</sup> Audit Analytics, "Untaxed Foreign Earnings Top \$2.3 Trillion in 2014," available at <http://www.auditanalytics.com/blog/untaxed-foreign-earnings-top-2-3-trillion-in-2014/> (last accessed June 23, 2015).

<sup>5</sup> See, for example, Joint Committee on Taxation, *Present Law and Selected Policy Issues in the U.S. Taxation of Cross-Border Income* (JCX-51-15), March 16, 2015.

<sup>6</sup> *Ibid.*

allowed for dividends for which the 95-percent deduction is allowed. Consequently, the reform replaces the current U.S. credit system for eliminating double taxation of repatriated foreign earnings with an exemption method of avoiding double taxation.

On the other hand, former Chairman Camp's reform provides broad new rules intended to address shifting of profits out of the United States. These rules include a new category of subpart F income, foreign base company intangible income, on which current U.S. taxation is imposed. Foreign base company intangible income generally is income of a CFC in excess of 10 percent of the CFC's total basis in its tangible, depreciable property. To the extent foreign base company intangible income is attributable to sales or services to foreign customers, the income is taxed (after a phase-in period) at a rate of 15 percent (less foreign tax credits). To the extent the foreign base company intangible income relates to sales or services to U.S. customers, the income is taxed at the bill's full statutory corporate tax rate of 25 percent (less foreign tax credits). Intangible income of the U.S. parent company, defined in a manner similar to the definition of foreign base company intangible income of a CFC, benefits from the same 15 percent rate to the extent the intangible income is from sales or services to foreign customers.

The international tax provisions of the Tax Reform Act of 2014 also modify the present law foreign tax credit rules; narrow the foreign base company sales income category of subpart F income; provide group-wide and external leverage tests to restrict the deduction for interest expense of U.S. members of a worldwide affiliated group that includes at least one CFC; and make a number of other changes to the current U.S. international tax rules. As a consequence, U.S. multinational companies would be subject to a substantially different U.S. scheme for taxing cross-border income than the current structure. In this context, the transition tax provisions described next address the question of the treatment of untaxed earnings that are derived before the reform takes effect.

#### Transition tax generally

The proposal generally requires that, for the last taxable year beginning before the participation exemption takes effect, any 10-percent (by vote) U.S. shareholder of a foreign corporation must include in income, under the rules of subpart F, its pro rata share of the non-previously-taxed post-1986 foreign earnings of the corporation.<sup>7</sup> Earnings subject to the transition tax are not reduced by distributions made during the year of the tax, and those distributions are subject to the normal tax rules for distributions of previously taxed earnings.

A 10-percent U.S. shareholder of a foreign corporation is allowed a deduction in an amount determined by reference to the portion of deferred earnings and profits that are held in cash or liquid assets. A shareholder is allowed a 90-percent deduction for the noncash portion of earnings (with the result that the maximum residual U.S. tax rate on this portion is 3.5 percent). A shareholder is allowed a 75-percent deduction for the portion of earnings represented by cash

---

<sup>7</sup> The transition tax applies to any foreign corporation that has at least one 10-percent (by vote) U.S. shareholder, not just to CFCs. Accordingly, the proposal broadens subpart F, which normally applies only to CFCs and their 10-percent U.S. shareholders, for purposes of taxing previously untaxed foreign earnings.

and other liquid assets (with the result that the maximum residual U.S. tax rate on this portion is 8.75 percent).

The credit for foreign tax imposed on earnings subject to the transition tax is allowed only for the nondeductible (taxable) portion of those earnings, and the section 78 inclusion of foreign taxes does not apply to the deductible portion of the earnings.

#### Reduction for loss corporations

The transition tax allows a 10-percent U.S. shareholder's income inclusion in respect of the earnings of one or more foreign corporations to be reduced by that shareholder's share of the earnings and profits deficit of any other foreign corporation in which the shareholder owns 10 percent of the stock. This loss offset provision departs from the structure of present law subpart F because subpart F outside the transition tax does not permit U.S. shareholders to offset inclusions in respect of one CFC with losses attributable to their ownership of the stock of other CFCs.

#### Installment payments

A 10-percent U.S. shareholder may elect to pay the net tax liability resulting from the mandatory inclusion of pre-effective-date undistributed earnings in eight installments. The net tax liability that may be paid in installments is the excess of the 10-percent U.S. shareholder's net income tax for the taxable year in which the pre-effective-date undistributed earnings are included in income over the taxpayer's net income tax for that year determined without regard to the inclusion. The timely payment of an installment does not incur interest.

A special rule permits an S corporation shareholder to defer its net tax liability until the occurrence of a triggering event such as a transfer of shares in the S corporation or a liquidation.

#### Highway Trust Fund

The proposal provides that income tax payments relating to the net tax liability for the deemed repatriation of pre-effective date foreign earnings are transferred to the Highway Trust Fund. The Highway Trust Fund, established in 1956, is divided into two accounts, a Highway Account and a Mass Transit Account, each of which is the funding source for specific programs. The Highway Trust Fund is currently funded by taxes on motor fuels (gasoline, kerosene, diesel fuel, and certain alternative fuels), a tax on heavy vehicle tires, a retail sales tax on certain trucks, trailers and tractors, and an annual use tax for heavy highway vehicles. Of the receipts received in the Treasury as a result of the deemed repatriation provision (and not otherwise appropriated), an amount equivalent to 20 percent is transferred to the Mass Transit Account, with the remaining balance transferred to the Highway Account.

#### Administration's fiscal year 2016 revenue proposals

As part of a broad set of international tax reform proposals included in the Administration's fiscal year 2016 revenue proposals, the Department of the Treasury has proposed a one-time, mandatory, 14-percent tax on untaxed foreign earnings.

The Administration's proposed reform, which generally applies to earnings derived after the reform takes effect, has two structural features similar to the principal features of former Chairman Camp's international tax reform provisions. The Administration's reform imposes a 19-percent minimum tax on CFC earnings and removes residual U.S. taxation of repatriations of earnings subject to this minimum tax. The minimum tax thereby provides a partial exemption system for avoiding double taxation of foreign earnings in place of the current credit system.

On the other hand, the Administration's reform includes broad anti-profit-shifting rules applicable to U.S. multinational companies. The minimum tax itself is one such rule addressed at profit shifting. The Administration also has proposed, among other things, introducing a new category of subpart F income for transactions involving digital goods or services; expanding foreign base company sales income to include income from manufacturing services arrangements; disallowing deductions for interest and royalties in transactions involving hybrid instruments, hybrid entities, or hybrid transfers; disallowing the CFC look-through and same-country exceptions under subpart F for certain transactions with reverse hybrid entities; making the rules for corporate inversions stricter, including by treating some inverted companies as domestic if the affiliated groups of which they are a part are managed and controlled in the United States; and amending certain technical features of the subpart F rules under which taxpayers now are able to avoid subpart F income.

As they would with former Chairman Camp's international tax reform, U.S. multinationals would operate under a substantially new set of international tax rules if the Administration's revenue proposals were enacted. The 14-percent tax on untaxed CFC earnings addresses the question of how historic earnings of CFCs should be treated in a transition to this new set of rules.

#### One-time tax on historic CFC earnings

The proposal imposes a one-time tax of 14 percent on untaxed earnings and profits of CFCs accumulated for taxable years beginning before January 1, 2016.

The proposal does not specify whether it applies to all U.S. 10-percent shareholders of CFCs or only to domestic corporate 10-percent shareholders of CFCs. If, as in former Chairman Camp's proposal, the transition tax were imposed by means of an increase in the subpart F income of a CFC by the amount of the CFC's untaxed earnings, and no modifications were made to subpart F's inclusion rules, all 10-percent U.S. shareholders, not just domestic corporate shareholders, would be taxed. In contrast, the 19-percent minimum tax proposal applies only to domestic corporations with respect to their CFCs.

The proposal does not explicitly address certain other technical questions including, for example, the treatment of actual dividend distributions in the taxable year of transition.

#### Foreign tax credit

The proposal allows a proportionate credit for the foreign taxes associated with earnings subject to the transition tax. Because the tax is at a 14 percent rate rather than the maximum statutory corporate tax rate of 35 percent, the credit rate is 14/35, or 40 percent of the otherwise available credit.

Installment payments

The one-time tax is payable ratably over five years. The proposal does not specify whether interest is imposed on the installment payments.

Highway Trust Fund

The Administration has stated that revenues from the one-time transition tax are to be used to fund its surface transportation reauthorization proposal and any shortfalls between surface transportation revenue and spending under present law for the proposal period.

Invest In Transportation Act

The Invest In Transportation Act, introduced by Senator Paul and co-sponsored by Senator Boxer, allows a domestic corporation to make a one-time election of an 81.4-percent dividends-received deduction ("DRD") for certain dividends received from CFCs during the five years following the election. At a 35-percent statutory corporate tax rate, the 81.4-percent deduction yields a maximum residual U.S. tax rate of 6.5-percent on dividends qualifying for the deduction.

The Invest In Transportation Act's voluntary repatriation provision is a modified version of the temporarily reduced taxation of CFC dividend repatriations enacted in 2004 in section 965. Section 965 allowed domestic corporations to elect an 85-percent DRD (for a maximum residual U.S. tax rate of 5.25 percent) for some dividends received from CFCs during a single taxable year, subject to a number of conditions and limitations. Included in these limitations were requirements that eligible dividends be: (1) in excess of a specified level of historical average repatriations; (2) no more than the greater of \$500 million or the amount of overseas earnings identified for financial accounting purposes as permanently reinvested abroad; and (3) reinvested in the United States under a dividend reinvestment plan approved by the management and board of directors of the electing corporation and meeting certain other criteria.

Senator Paul and Senator Boxer's bill differs from the 2004 temporary tax holiday in a number of ways in addition to the deduction percentage and the duration of the holiday. The bill limits the amount of dividends eligible for the deduction to the U.S. shareholder's proportionate share of the untaxed earnings of its CFCs as of the end of the last taxable year ending on or before December 31, 2014. Additionally, if in any year the amount taken into account under the elective DRD is less than 20 percent of the amount designated in the taxpayer's election, the amount of dividends allowed to be taken into account in future years is reduced by the shortfall. The bill also provides different domestic reinvestment plan requirements than the 2004 holiday. For example, the bill requires that a U.S. corporation's plan must provide that at least 25 percent of the dividends taken into account under the proposal will be used for at least one of a number of specified purposes including to increase employment, wages and benefits, or pension contributions; to provide for energy efficiency, environmental, or capital improvements; to invest in public infrastructure; for research and development; or for the acquisition of other businesses. The domestic reinvestment plan also must provide that none of the dividends taken into account under the bill will be used during the plan period to compensate certain highly paid employees.

The bill denies the deduction for companies that invert at any time in the 10-taxable-year period beginning with the first taxable year after 2013 to which the bill applies, and it imposes a tax of 20 percent of any amount elected by a corporation that inverts during this period. This 20-percent tax would apply in the year of the inversion.

The Invest in Transportation Act includes transfers to the Highway Trust Fund. The bill requires the Treasury Secretary to estimate the amount of revenues to be received before October 1, 2019 from income taxes imposed on dividends taken into account under the bill. Out of Treasury funds not otherwise appropriated, the bill appropriates to the Highway Account in the Highway Trust Fund 80 percent of the amount of revenues estimated to be received. The bill appropriates the remaining 20 percent to the Mass Transit Account in the Highway Trust Fund. The bill requires the Treasury Secretary to determine by October 1, 2023 the amount of revenues actually received from income taxes imposed on dividends taken into account under the bill, and to the extent the amount of actual revenues exceeds the earlier projected revenue amount, the bill directs that the excess be appropriated to the Highway Account and the Mass Transit Account in certain specified percentages.

#### **Conclusion**

Some of the matters that I have described in this testimony are addressed in more detail in the Joint Committee staff pamphlet prepared in connection with this hearing. I am happy to answer any questions that the committee may have at this time or in the future.

# APPENDIX 1: COMPARISON OF PROPOSALS TO TAX HISTORIC FOREIGN EARNINGS

	Rep. Camp – TRA2014 (H.R. 1, 113th Congress)	Administration Budget (Fiscal Year 2016)	Senators Paul and Boxer (S. 981, 114th Congress)
<b>Background</b>	Included as part of transition to a participation exemption system that permits 10-percent corporate shareholders of foreign corporations to deduct 95 percent of dividends.	Included as part of transition to a reformed international tax system that taxes foreign earnings of CFCs and foreign branches in the year earned or not at all.	Allows companies a one-time election to repatriate untaxed foreign earnings at a reduced tax rate over a limited period.
<b>Effective Tax Rate (Before Foreign Tax Credit)</b>	3.5 percent on foreign cash or cash equivalents 8.75 percent on all other foreign assets.	14 percent	6.5 percent
<b>Mandatory?</b>	Yes, irrespective of whether earnings are repatriated; no restrictions on use of funds if actually repatriated.	Yes, irrespective of whether earnings are repatriated; no restrictions on use of funds if actually repatriated.	No
<b>Applicable Earnings</b>	Accumulated deferred post-1986 foreign earnings	Accumulated deferred foreign earnings	Accumulated deferred foreign earnings, to extent the elected amount exceeds average repatriation in recent years.
<b>Conditions or Special Payment Rules</b>	At election of shareholders, transition tax may be paid in eight annual installments, at specified percentages, with certain additional relief for S corporations.	Transition tax is payable ratably over five years.	Actual repatriation is to be completed over five years, with repatriated funds to be used in the United States for hiring, compensation, research, energy efficiency and environmental improvements, public-private partnerships, capital improvements, or acquisitions. Tax due for taxable year of actual repatriation.
<b>JCT Estimate of Revenue Effect</b>	\$170.4 billion revenue gain 2014-2023	\$217.2 billion revenue gain 2015-2025	\$117.9 billion revenue loss 2015-2025

**APPENDIX 2: REVENUE TABLES**

Below are Joint Committee staff estimates of the revenue effects of the proposals described above.<sup>8</sup>

---

<sup>8</sup> The estimate of title IV of the Tax Reform Act of 2014 is adapted from the estimate included in Joint Committee on Taxation, *Estimated Revenue Effects of the "Tax Reform Act of 2014"* (JCX-20-14), February 26, 2014, pp. 11-12. The estimate of the international revenue provisions of the Administration's fiscal year 2016 budget proposals is adapted from the estimate included in Joint Committee on Taxation, *Estimated Budget Effects of the Revenue Provisions Contained in the President's Fiscal Year 2016 Budget Proposal* (JCX-50-15), March 6, 2015, pp. 1-2. The estimate of the proposal by Senators Paul and Boxer first appeared publicly as accompaniment to Stephanie Beasley, "Tax Repatriation for Highway Funding Not Viable Without Tax Overhaul, Says Rep. Ryan," *Bloomberg BNA Daily Tax Report*, May 1, 2015.



- Table 1 -  
ESTIMATED REVENUE EFFECTS OF INTERNATIONAL PROVISIONS CONTAINED IN  
THE "TAX REFORM ACT OF 2014" [1]

Fiscal Years 2014 - 2023

*[Billions of Dollars]*

Provision	Effective	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014-18	2014-23
<b>Participation Exemption System for the Taxation of Foreign Income</b>													
A. Treatment of Deferred Foreign Income Upon Transition to Participation Exemption System of Taxation and Modifications to OFL Rules [2].....	[3]	-1.2	12.3	23.3	20.5	11.6	11.8	16.6	24.8	31.4	19.0	66.5	170.4
B. Establishment of Exemption System.....	[4]	-7.3	-15.8	-21.1	-24.9	-25.2	-25.0	-25.0	-25.9	-26.7	-28.2	-94.2	-225.1
C. Modifications Related to Foreign Tax Credit System.....	[4]	---	0.2	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.9	1.8
D. Rules Related to Passive and Mobile Income.....	[4]	-3.0	8.7	15.5	12.9	12.8	14.3	15.9	15.3	14.7	14.0	46.9	121.2
<b>NET TOTAL .....</b>		<b>-11.5</b>	<b>5.4</b>	<b>18.0</b>	<b>8.7</b>	<b>-0.6</b>	<b>1.3</b>	<b>7.7</b>	<b>14.4</b>	<b>19.6</b>	<b>5.0</b>	<b>20.1</b>	<b>68.3</b>

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

[1] Estimate as reported in JCX-20-14 on February 26, 2014.

[2] Funds designated under section 965 for the Highway Trust Fund included in item IV.A.....

2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2014-18	2014-23
---	5.1	10.1	10.1	10.1	10.1	14.5	22.1	28.5	15.8	35.4	126.5

[3] Effective for the last taxable year of foreign corporations beginning before January 1, 2015, and to taxable years of the U.S. shareholders in which or with which such taxable years of foreign corporations end.

[4] Generally effective for taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

- Table 2 -  
ESTIMATED REVENUE EFFECTS OF INTERNATIONAL PROVISIONS CONTAINED IN  
THE PRESIDENT'S FISCAL YEAR 2016 BUDGET PROPOSAL [1]

Fiscal Years 2015 - 2025

*[Billions of Dollars]*

Provision	Effective	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015-20	2015-25
<b>Reform U.S. International Tax System</b>														
A. Impose a 14-Percent One-Time Tax on Previously														
Untaxed Foreign Income.....	[2]	7.5	53.9	48.1	49.0	50.1	43.1	-8.1	-6.5	-6.7	-6.9	-6.6	251.9	217.2
B. Impose a 19-Percent Minimum Tax on Foreign Income	tyba 12/31/15	—	15.3	30.0	28.3	28.2	28.9	29.7	28.2	26.1	24.8	22.7	130.7	262.3
C. Other Rules Related to Foreign Income.....	various	-3.6	-2.5	2.0	2.9	3.5	4.4	5.9	7.3	8.2	9.6	11.2	6.8	49.1
<b>NET TOTAL .....</b>		<b>4.0</b>	<b>66.7</b>	<b>80.1</b>	<b>80.3</b>	<b>81.9</b>	<b>76.4</b>	<b>27.6</b>	<b>29.1</b>	<b>27.7</b>	<b>27.5</b>	<b>27.3</b>	<b>389.4</b>	<b>528.6</b>

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column: tyba = taxable years beginning after

[1] Estimate as reported in JCX-50-15 on March 6, 2015.

[2] Effective on the date of enactment and would apply to earnings accumulated for taxable years beginning before January 1, 2016.

- Table 3 -  
ESTIMATED REVENUE EFFECTS OF A PROPOSAL BY SENATOR RAND PAUL AND SENATOR BARBARA BOXER  
FOR A TEMPORARY REDUCED RATE ON CERTAIN DIVIDEND REPATRIATIONS FROM FOREIGN SUBSIDIARIES OF U.S. CORPORATIONS [1]

Fiscal Years 2015 - 2025

*[Billions of Dollars]*

Provision	Effective	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015-20	2015-25
Allow U.S. Corporations to Make a One-Time Election of an 81.4-Percent Dividends-Received Deduction for Certain Dividends They Receive from Their Controlled Foreign Corporations During the Five Years Following the Election.....	tyba DOE	4.3	24.5	1.0	-5.8	-12.5	-12.4	-15.9	-23.0	-27.1	-26.6	-24.4	-0.9	-117.9

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column:

DOE = date of enactment

tyba = taxable years beginning after

[1] Estimate as reported by Bloomberg BNA on April 30, 2015.

Chairman REICHERT. Thank you.  
Mr. Dubay, you are recognized for 5 minutes.

**STATEMENT OF CURTIS S. DUBAY, RESEARCH FELLOW IN TAX  
AND ECONOMIC POLICY, THE HERITAGE FOUNDATION**

Mr. DUBAY. Good afternoon, Chairman Reichert, Ranking Member Neal, distinguished Members of the Committee. Thank you for inviting me here today. My name is Curtis Dubay. I am Research Fellow in Tax and Economic Policy at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Changes to repatriation policy have been spoken about often as a way to fill the hole in the Highway Trust Fund, but details have been scant. There may be confusion caused by this because there are usually two distinct policy options discussed when it comes to using changes to repatriation as a way to fill up the gap in the Highway Trust Fund. It is important to differentiate between those two options, because they would have distinctly different ramifications.

The first option would be Congress either granting a repatriation holiday on the untaxed overseas earnings of U.S. businesses at a lower rate than under current law or deeming those earnings repatriated and taxing them at a lower rate. In this option, repatriation would be a stand-alone policy to fund the Highway Trust Fund.

The second option would be to establish a territorial system in place of our current worldwide one and deem the foreign earnings repatriated to help facilitate the transition to that better system.

The stand-alone option would not be sound policy. A territorial system would strongly boost economic growth. It is badly needed because the current worldwide system is one of the biggest inhibitors of growth for the U.S. economy today.

Moving to a territorial system, no matter in the context of fundamental tax reform, business-owing tax reform, or as an independent policy improvement, would be a boon for job creation and wage growth for American families.

Under the current worldwide system, with deferral, businesses understandably delay paying U.S. tax on their earnings because paying it would make them highly uncompetitive compared to their foreign competition.

Regardless of how Congress proceeds on tax reform, changes to the repatriation policy should always be handled in conjunction with international reform that switches from the worldwide system to a territorial one. After all, the worldwide system has caused businesses to compile those earnings abroad. It only makes sense that changes to how they are taxed be used to repair the harm that it caused.

Deeming those earnings repatriated and taxing them at a lower rate than under current law would make moving to a territorial system easier. The revenue can be used to offset the tax cut that JCT is likely to score a territorial system as. And the revenue can also be used to compensate those businesses that stand to lose because of the devaluation of deferred tax assets. This is not a tax hike because it would be part of a broader reform.

Making changes to repatriation policy within tax reform that establishes a territorial system stands in stark contrast to using repatriation changes to fund the Highway Trust Fund without moving to a territorial system. Taxing the overseas earnings of U.S. businesses to fund the Highway Trust Fund would break the sensible user-pay principle that has long underpinned the Highway Trust Fund.

There is no connection between U.S. multinational businesses and domestic highway use. A repatriation holiday, one of the policies offered by some under the stand-alone option, is unlikely to raise revenue in the traditional 10-year budget window. To counteract this some have floated a stand-alone deemed repatriation because it would unambiguously raise revenue.

As a stand-alone measure, deemed repatriation is a tax hike, even though the rate applied to the overseas income would likely be less than under current law. This makes a stand-alone deemed repatriation yet another tax-and-spend scheme. In addition to that, it is also more troubling than a holiday because it is compulsory rather than voluntary.

Either a repatriation holiday or a stand-alone deemed repatriation would be a temporary fix. Congress should instead focus on other reforms to the highway program that would be sustainable, would not break the user-pays principle, and would not raise taxes.

Thank you, again, and I look forward to your questions.

[The prepared statement of Mr. Dubay follows:]



214 Massachusetts Avenue, NE • Washington DC 20002 • (202) 546-4400 • [heritage.org](http://heritage.org)

*CONGRESSIONAL TESTIMONY*

---

**Congress Should Only Make Changes  
to Repatriation Policy When  
Establishing a Territorial System**

**Testimony before the  
Subcommittee on Select Revenue Measures of the  
Committee on Ways and Means  
United States House of Representatives**

**June 24, 2015**

**Curtis S. Dubay  
Research Fellow in Tax and Economic Policy  
The Heritage Foundation**

My name is Curtis S. Dubay. I am Research Fellow in Tax and Economic Policy at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

#### **Confusion Over Repatriation and Highway Trust Fund Needs Clearing**

Changes to repatriation policy have been spoken about often as a way to fill the hole in the Highway Trust Fund (HTF). Although the conversations have been frequent, details about what such a policy would entail have been scant. By holding this hearing, the Committee is taking an important step to clear up any confusion that may exist.

There are usually two options discussed when it comes to using changes to repatriation policy as a way to fill the gap in the HTF.

The first would be Congress either granting a repatriation tax holiday on the untaxed overseas earnings of U.S. businesses at a lower rate than current law, or deeming those earnings repatriated and taxing them at a rate lower than under current law. In this option, repatriation would be a stand-alone policy to fund the HTF.

The second option would be to establish a territorial system (or dividend-exemption system) in place of our current worldwide one, and deem the foreign earnings repatriated to help pay for the transition to that better system.

The first option would not be sound policy; the second one would strongly boost economic growth.

#### **Changes to Repatriation Should Be Done Exclusively in Tax Reform**

The country needs tax reform because the current tax code is holding the economy back from growing as strongly as it should. The biggest factor holding back growth is the antiquated way the tax code treats businesses. In addition to having the highest corporate tax rate in the developed world, as defined by the Organization for Economic Co-operation and Development (OECD), the worldwide system that taxes U.S. businesses on their foreign earnings is the biggest reason the business tax system is so outdated.

It would be best if Congress passed fundamental tax reform, where it would reform both individual and business taxes. However, since the need for business reform is so pressing, it makes sense to focus on business-only first if that is what is achievable.<sup>1</sup>

Business tax reform contains many pieces, such as lowering tax rates, moving to expensing of capital purchases, and establishing a territorial system. It would be better to pass those policies

---

<sup>1</sup>Curtis S. Dubay and David R. Burton, "How Congress Should Reform Business Taxes," Heritage Foundation *Background* No. 3022, June 4, 2015, <http://www.heritage.org/research/reports/2015/06/how-congress-should-reform-business-taxes>.

together since they are all necessary to fully alleviate the burden business taxes put on the economy, but passing them separately would still move the tax code in a pro-growth direction.

Under the current worldwide system, businesses retain earnings abroad because they do not pay U.S. tax until they bring the money back to the U.S., a policy known as deferral. Businesses delay paying U.S. tax on those earnings because paying the extra U.S. tax on them would make them highly uncompetitive against their foreign competition.

Regardless of how Congress proceeds on tax reform, changes to repatriation policy should always be handled in conjunction with international reform that switches from the worldwide system to a territorial, or dividend-exemption, system.<sup>2</sup> The worldwide system has caused businesses to compile those earnings abroad. It only makes sense that changes to how they are taxed be used to repair the harm it causes.

The Joint Committee on Taxation (JCT) is likely to score switching to territorial as a tax cut, at least initially. A dynamic score, which it is now required to provide, should reduce the tax cut compared to a static score.

Some have estimated that U.S. corporations have earned an estimated \$2.1 trillion overseas that has not been repatriated and subject to U.S. tax.<sup>3</sup> As part of moving toward a territorial tax system, this income should be deemed to be repatriated and taxed at a reasonable rate. The businesses that earned this foreign source income expected to pay tax on this money eventually and to exempt it from tax entirely would constitute an unwarranted windfall gain. However, because current law allows for deferral and because of the time value of money, taxing this income under a deemed repatriation at the full corporate rate would be equally unfair. The new revenue from this deemed repatriation can make a substantial contribution to funding other positive aspects of business tax reform.

One of those ways would be to help offset the resulting tax cut from switching to a territorial system. For instance, in his tax reform proposal, then-Chairman of the House Ways and Means Committee Dave Camp (R-MI) incorporated deemed repatriation as a transition method to a territorial system in his 2014 revenue-neutral tax reform proposal.<sup>4</sup> It is acceptable to do this because it is part of broader tax reform—it is not a tax hike and it makes way for a badly needed, and long overdue, territorial system.

An additional use for the revenue raised from repatriation within international reform would be to compensate those businesses that are harmed by tax reform. Tax reform creates winners that

<sup>2</sup>Curtis S. Dubay, “Changes to Repatriation Policy Best Left to Tax Reform,” Heritage Foundation *Issue Brief* No. 4347, February 17, 2015, <http://www.heritage.org/research/reports/2015/02/changes-to-repatriation-policy-best-left-to-tax-reform>.

<sup>3</sup>Richard Rubin, “U.S. Companies Are Stashing \$2.1 Trillion Overseas to Avoid U.S. Taxes,” Bloomberg, March 4, 2015, <http://www.bloomberg.com/news/articles/2015-03-04/u-s-companies-are-stashing-2-1-trillion-overseas-to-avoid-taxes> (accessed June 19, 2015).

<sup>4</sup>Curtis S. Dubay and David R. Burton, “Chairman Camp’s Tax Reform Plan Keeps Debate Alive Despite Flaws,” Heritage Foundation *Backgrounder* No. 2890, March 14, 2014, <http://www.heritage.org/research/reports/2014/03/chairman-camps-tax-reform-plan-keeps-debate-alive-despite-flaws>.



experience windfall gains and losers that see the decline in deferred tax assets, such as foreign tax credits, loss carrybacks, and others.

A territorial system would free U.S. businesses to invest more abroad by making investments profitable that are unprofitable under the current worldwide system. The increase in foreign investment would increase domestic investment by businesses in support of their foreign operations and their efficiency and competitiveness as well. This would create jobs and raise wages for U.S. workers.<sup>5</sup> It would be a tremendous benefit to the economy.

A territorial system requires a robust set of policies to prevent improper base erosion and profit shifting. Without such policies, U.S. businesses could shift income earned in the U.S. to countries with lower tax rates. Shifting income that should be taxable in the U.S. abroad would improperly narrow the tax base and force tax rates to be higher on domestic-only businesses and families. Higher tax rates hurt growth and are therefore antithetical to the core purpose of engaging in tax reform.

Congress should craft its own set of base erosion and profit-shifting policies. It should not be beholden to international efforts such as are ongoing currently with the OECD's Base Erosion and Profit Shifting project.

#### **Stand-Alone Changes to Repatriation to Fund HTF Would Be Poor Policy**

Making changes to repatriation policy within tax reform that establishes a territorial system stands in stark contrast to the other set of options on the table, which would use repatriation changes to fund the HTF without moving to a territorial system. Changing repatriation policy without establishing a territorial system would make achieving territoriality more difficult in the future because the revenue that could be raised will no longer be available to aid in transition.

Furthermore, the HTF is based on the sensible user-pays principle. Drivers pay the federal gas tax which is supposed to fund highway spending, although a large portion of it is diverted to spending in other areas. The more drivers use the highways, and the more wear and tear they put on roads based on the size and weight of their vehicle, the more gas they buy. When they buy more gas, they pay more tax. This is a fair and practical way to pay for highway spending.

Taxing the overseas earnings of U.S. businesses to fund the HTF would break the user-pays principle. There is no connection between U.S. multinational businesses and domestic highway use.

A repatriation holiday is one of the policies offered by some under the stand-alone option. Under a repatriation holiday, businesses choose whether they want to exploit a lower tax rate on their foreign earnings Congress offers them during a set period of time, for instance 2 years.

---

<sup>5</sup>Curtis S. Dubay, "A Territorial Tax System Would Create Jobs and Raise Wages for U.S. Workers," Heritage Foundation *Background* No. 2843, September 12, 2013, <http://www.heritage.org/research/reports/2013/09/a-territorial-tax-system-would-create-jobs-and-raise-wages-for-us-workers>.

However, it is highly questionable whether a holiday would lower or raise revenues in the traditional 10-year budget window. Whether it does or does not depends almost entirely on how much foreign income the JCT anticipates businesses will repatriate over the next decade under current law. Given a one-year or two-year span, there is little doubt that a holiday would shift revenue forward to those years. Hence, a holiday could raise more revenue in those years even though it would cut taxes over the entire 10-year period relative to the current baseline.

Since Congress is beholden to the 10-year window, some have floated a more troubling change to repatriation policy that would unambiguously raise revenue in that window. In order for Congress to make sure it would raise revenue through changes to repatriation policy, it would have to treat U.S. businesses' overseas earnings as deemed repatriated without making other changes to the international tax system.

Under deemed repatriation, unlike a repatriation holiday, businesses have no choice whether to pay tax on their foreign earnings. Instead, it assumes they have already brought all their accumulated foreign earnings back to the U.S. and applies a tax on that income immediately, even if businesses never actually bring the money back to the U.S. or never intended to do so.

As a stand-alone measure, deemed repatriation is a tax hike, even though the rate applied to the overseas income would likely be less than under current law. It would be a tax hike because it would force businesses to pay tax on their foreign income before they planned to, and it would tax income that these businesses never planned to repatriate, and thus would never have paid U.S. tax on. This makes a stand-alone deemed repatriation yet another tax-and-spend scheme. In addition to that, it is also more troubling than a holiday because it is compulsory rather than voluntary.

Either a repatriation holiday or deemed repatriation (as a stand-alone option) would be a temporary fix. Congress would be back looking for other sources of revenue in a few years if it took this path. It should instead focus on other reforms to the highway program that would be sustainable, would not break the user-pays principle, and would not raise taxes.

### **Conclusion**

This year, in addition to making certain expiring provisions permanent, such as 50 percent expensing, which is often called bonus depreciation, Congress has the chance to advance the cause of tax reform by improving the way the tax code handles international taxation. Finally moving to a territorial system would be strongly pro-growth and improve opportunities for American families of all income levels.

If Congress changed repatriation policy as a stand-alone measure to cover a hole in the HTF, it would create less incentive to change the tax policy from a worldwide system to a territorial system. Instead, Congress should focus on establishing a territorial system and reserve changes to repatriation policy for aiding that sizeable improvement to the tax code.

Chairman REICHERT. Thank you.  
Mr. Suringa, you are recognized.

**STATEMENT OF DIRK SURINGA,  
PARTNER, COVINGTON & BURLING LLP**

Mr. SURINGA. Chairman Reichert, Ranking Member Neal, and Members of the Committee, my name is Dirk Suringa. I am a partner with the law firm of Covington & Burling. I appreciate very much the opportunity to testify today before you. I appear before you on my own behalf and not on behalf of my firm or any firm client.

I would like to make three basic points. My first point is that international tax reform is needed now to address the increased risk of double taxation faced by U.S. companies operating abroad. Reform also is needed to address new foreign tax incentives, so-called patent boxes, that are intended to lure U.S. researchers and innovators to relocate abroad.

You may have heard of the OECD's BEPS, Base Erosion and Profit Shifting project. This is a think tank project that was started in 2013 to try to come up with ways to tax so-called stateless income or income that is not subject to tax anywhere. The project is still ongoing, but the results to date are disturbing. The main result so far has been to encourage foreign countries to come up with new and creative ways to tax U.S. companies operating abroad. This has led to increased double taxation of their foreign income.

At the same time, many foreign countries have started to adopt patent box tax incentives over recent years. These are incentives for intangible income arising out of research activities performed in their country. These incentives, combined with threats of increased taxation under BEPS, are putting more and more pressure on U.S. companies to move themselves and their high-skilled jobs outside this country.

My second point is that adopting an innovation-friendly exemption system and our own version of an innovation box would help to address these problems. Of course, the best way to address these problems would be to adopt comprehensive tax reform, including rate reductions. But these specific problems also can be addressed in sequence by first adopting an exemption system and a U.S. innovation regime and then moving on to broader reform. Countries like the United Kingdom, Japan, Spain, and others have shown that this can be done. Each of those countries adopted an exemption system and then in subsequent years reduced corporate tax rates.

The adoption of an exemption system would help reduce the immediate risk of double taxation caused by BEPS. Under current law, active foreign income is subject to tax at 35 percent when repatriated and a foreign tax credit is allowed for foreign taxes imposed on that income. But the foreign tax credit is subject to many limitations under current law, and U.S. companies, as a practical matter, are not able to credit all of the taxes asserted by countries under BEPS.

Under an exemption system, active foreign income would simply be exempt from U.S. tax. There would be no threat of current or residual U.S. tax on the same income. An exemption system also

would end the lockout effect on foreign earnings and level the playing field in foreign markets for U.S. companies.

The adoption of a U.S. innovation box would help to counteract the incentive to move U.S. research activity abroad. The innovation box would be broad in terms of the technology covered and the returns to IP covered, but it could be narrow, and I think it should be narrow, in requiring the underlying research to be performed in the United States.

My third point is that any tax revenue raised by changing to an exemption system should be used in the design of that system to encourage U.S. job growth and innovation. Active foreign earnings are currently subject to tax at 35 percent when they are brought home. Under an exemption system, active foreign earnings going forward would be largely exempt from tax when they are brought home. Rather than requiring companies to trace which pools of earnings are exempt and which are still subject to the deferred taxation, it would make sense to have a transition rule to tax those earnings at a low rate over an extended period of time.

The reason for the low rate and the extended time period is because a majority of those earnings are invested in foreign operating assets that cannot readily be sold to pay the tax. Most importantly, however, any tax revenue generated by the transition tax should be used to design an exemption system and an innovation regime that favor U.S. job creation and U.S. research.

There are many different ways to design an exemption system, including ways that increase taxes on the very same companies that are now confronting BEPS and foreign tax incentives to relocate. At the same time, there has been a discussion of imposing a one-time tax on foreign earnings that have been permanently reinvested abroad—again, a tax on the same companies that are confronting these foreign tax pressures.

From a policy perspective, it would make the most sense to use any revenue generated from taxing those earnings to provide tax relief to the companies that are paying those taxes. Congress can, of course, choose to credit those revenues to the Highway Trust Fund accounts upon receipt should it so desire. But the transition tax revenue should be used in designing an international tax system that solves the problems that U.S. companies are now facing.

Thank you for allowing me to testify, and I look forward to your questions.

[The prepared statement of Mr. Suringa follows:]

STATEMENT OF DIRK SURINGA  
BEFORE THE SUBCOMMITTEE ON SELECT REVENUE MEASURES  
OF THE  
COMMITTEE ON WAYS & MEANS  
OF THE  
U.S. HOUSE OF REPRESENTATIVES  
ON THE SUBJECT OF  
THE REPATRIATION OF FOREIGN EARNINGS AS A  
SOURCE OF FUNDING FOR THE HIGHWAY TRUST FUND

JUNE 24, 2015

Chairman Reichert, Ranking Member Neal, and Members of the Committee:

My name is Dirk Suringa. I am a partner in the law firm of Covington and Burling LLP. From 2000 to 2003, I served as an Attorney-Advisor in the Office of International Tax Counsel in the Department of the Treasury. I appreciate very much the opportunity to testify today before the Committee. I appear before you today on my own behalf and not on behalf of my firm or any firm client.<sup>1</sup>

I am testifying as a practitioner who works with the existing rules for the taxation of U.S. companies operating abroad. I would like to focus my testimony on two recent developments, which may be important to the Committee as it addresses the topic of the repatriation of foreign earnings. These two developments are, first, the OECD's Base Erosion and Profits Shifting ("BEPS") Project, which has led to increased double taxation of U.S. companies operating abroad; and, second, the recent proliferation of foreign research tax incentives called "patent boxes," a phenomenon which is expected to accelerate in the coming years. These and other related developments have increased the urgency for reform of the U.S. rules for taxing the foreign operations of U.S. companies.

Started at the behest of the G-20 in 2013, the OECD's BEPS Project has developed 15 Action Items, addressing technical tax topics ranging from transfer pricing of intangibles to the taxation of digital goods and services to the threshold for source-country taxation under the "permanent establishment" standard.<sup>2</sup> From its inception, the OECD's primary purpose in this Project has been to propose measures that governments can adopt to tax so-called "stateless income," defined as income not subject to current taxation by any country.<sup>3</sup>

<sup>1</sup> Covington represents clients in the technology and pharmaceutical industries, among others, which have an interest in the matters discussed before the Committee today. We are not currently registered to lobby on behalf of these clients for such matters, but it is our expectation that we will register for one or more such clients in the near future.

<sup>2</sup> See Organisation for Economic Co-operation and Development [OECD], *Action Plan on Base Erosion and Profit Shifting*, at 13–27 (July 2013).

<sup>3</sup> See *id.* at 10 ("BEPS relates chiefly to instances where the interaction of different tax rules leads to double non-taxation or less than single taxation.").

The BEPS Project assumes stateless income to be a pervasive problem and one that must be addressed by expanding the taxation of cross-border income. However, the BEPS Project does not clearly distinguish between stateless income from income earned in a country that decides for its own policy reasons not to tax it, or income that is subject to deferred taxation in the taxpayer's country of residence, such as the U.S. system of taxing certain foreign business income on a deferred basis.<sup>4</sup> Instead, the BEPS Project starts from the premise that multinationals—and in particular U.S. multinationals—are using “base erosion and profits shifting” techniques to avoid foreign income taxation, and it proceeds immediately to the conclusion that new and largely untested methods of taxation, or of allocating income to a country, must be devised to capture that tax revenue.<sup>5</sup>

So far, 7 of the 15 planned BEPS “deliverables” have been issued, and the remainder are expected this Fall.<sup>6</sup> However, the main practical effect of the BEPS Project already is being felt by U.S. companies operating abroad. The effect so far has been to undermine whatever consensus may have existed on several longstanding tenets of international taxation, such as the threshold level of activity required for a source country to tax a nonresident enterprise and the arm's length standard for transfer pricing—without replacing them with any new consensus. Countries thus have responded to the BEPS Project through a series of unilateral tax measures, such as the “Diverted Profits Tax,” a tax regime adopted by the United Kingdom in April 2015 primarily to tax U.S. technology companies that were not subject to tax under the permanent establishment definition that existed before BEPS.<sup>7</sup> The U.K. is not alone in adopting or considering such measures.<sup>8</sup>

BEPS also has become a common pretext for aggressive foreign tax audits of U.S. companies. It has become a running joke among international tax practitioners that BEPS stands for “Basically Everything is a Profit Split,” since many countries appear to be abandoning the arm's length standard in favor of taxing whatever they perceive to be their “fair share” of tax revenue from international trade.<sup>9</sup> Under one BEPS action item, “country-by-country reporting,” the IRS plans to collect data from U.S. companies, including how much revenue and profit they earn in each country around the world, and the IRS would then share this information with

<sup>4</sup> *Cf. id.* at 9–11.

<sup>5</sup> *See, e.g., id.* at 8.

<sup>6</sup> *See id.* at 29–40 (laying out the BEPS deliverables timeline).

<sup>7</sup> *See* Kevin A. Bell, *U.S., U.K., OECD Delegates Differ On Evaluation of BEPS Project*, 34 T.M.W.R. 749 (June 15, 2015) (reporting on the “disappointment” of the U.S. Deputy Assistant Treasury Secretary for International Tax Affairs with the current status of the BEPS Project and recent unilateral action by the U.K. and Australia).

<sup>8</sup> *See id.*

<sup>9</sup> *See, e.g.,* David D. Stewart and Stephanie Soong Johnston, *Australian Tax Chief Challenges Multinationals' Claims*, 78 Tax Notes Int'l 327 (Apr. 27, 2015) (reporting on the hearings before the Australian Senate).

foreign governments.<sup>10</sup> Although this information is not intended to be used by foreign governments to lay claim to a share of the tax revenue allocated to other countries, it is difficult to imagine that it will not be used for that very purpose. As a result of these and other BEPS deliverables, U.S. companies operating abroad are becoming subject to double taxation of their income in an increasing number of cases. The new aggressiveness of foreign tax audits already is being reflected in the number of requests for treaty relief from foreign-initiated audit adjustments.<sup>11</sup>

A second development, related in part to BEPS, is the proliferation of foreign “patent box” regimes, which are foreign tax incentives designed to encourage companies to relocate research and development activities into the country offering the incentive. Although such regimes come in many varieties, in general terms, they are designed to grant a concessionary tax rate for income from the development and exploitation of intangible property, particularly patents, within a jurisdiction.<sup>12</sup> The OECD recently identified 15 separate preferential intangible regimes within OECD member states and associate countries: Belgium, Colombia, France, Hungary, Israel, Luxembourg, Portugal, the Netherlands, Spain (3 separate regimes), Switzerland (2 separate regimes), Turkey, and the United Kingdom.<sup>13</sup>

These incentive regimes are expected to spread further to other countries and, going forward, to concentrate more specifically on the relocation of skilled professionals.<sup>14</sup> In 2010, the existing preferential intangible regimes were subjected to scrutiny by the OECD and

<sup>10</sup> See OECD, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting—Action 13: 2014 Deliverable* (Sept. 2014).

<sup>11</sup> See Dolores Gregory, *IRS Releases MAP Statistics for 2014 Showing Jump in Filings and Inventory*, 23 T.M.T.R. 1606 (Apr. 30, 2015) (“Requests for double tax relief jumped significantly in 2014, adding to a growing inventory of mutual agreement procedure (MAP) cases before the Internal Revenue Service, an agency official said, citing a report released April 16.”).

<sup>12</sup> Joint Comm. on Tax’n, *Present Law And Selected Policy Issues In The U.S. Taxation Of Cross-Border Income*, JCX-51-15, at 41–47 (2015) [hereinafter *JCX-51-15*] (describing the general idea motivating the patent box along with differences between various patent box regimes).

<sup>13</sup> See OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance—Action 5: 2014 Deliverable*, at 59 (Sept. 2014) [hereinafter *Action 5 Deliverable*]. See also European Commission [EC], *A Study on R&D Tax Incentives: Final Report*, Working Paper N. 52 – 2014, at 53 (Nov. 2014) [hereinafter *Working Paper N. 52 – 2014*] (identifying eleven European countries with patent boxes).

<sup>14</sup> See, e.g., *Working Paper N. 52 – 2014*, at 5 (Nov. 2014) (“Tax benefits applying to income from innovation (mostly patent boxes) are proliferating. At the moment of writing, eleven EU member states offered corporate tax reduction for income resulting from to [sic] intellectual property.”); *JCX-51-15*, at 46 (“Policymakers have also pursued intellectual property regimes under the premise that the location of legal entitlements to intellectual property influences where companies make investments related to that intellectual property.”).

by the European Union as potentially “harmful” tax practices.<sup>15</sup> In February 2015, however, a consensus was reached, which in general terms states that patent boxes are permissible if there is a nexus between the tax benefit provided by a country and research performed within that country, even if the tax benefits extend to the income derived from the intangible and not just the performance of research.<sup>16</sup> Now that a clear consensus has been reached, additional countries (such as Ireland and Italy) may be expected to adopt such incentives, and the existing incentives may be expected to target more directly the relocation of research operations to those countries.

The combination of aggressive source taxation of U.S. multinationals with new tax incentives to relocate their research personnel abroad put further pressure on the U.S. tax system and present a compelling case for addressing at least some aspects of international tax reform now. The most effective way to address these challenges would be comprehensive U.S. tax reform, in which the United States brings its corporate income tax rate, as well as its approach to taxing foreign income, into closer conformity with that of its major trading partners. It is well known that the U.S. corporate income tax headline rate is the highest in the OECD, and approximately 15 percentage points above the OECD median.<sup>17</sup> While effective rates of tax vary by industry and some industries bear lower effective tax rates, statutory rates do matter to companies in making investment decisions.<sup>18</sup>

Although comprehensive tax reform should remain the ultimate goal, the recent pressures that are being exerted on U.S. companies as a result of the BEPS Project and foreign patent box regimes can and should be addressed now, through a subset of measures that can be accomplished in advance of comprehensive international tax reform. As discussed below, the adoption of an innovation-friendly exemption system for taxing foreign income, and the adoption of a U.S. innovation box, could be taken as first steps towards more comprehensive tax reform.

In this regard, the recent examples of the United Kingdom and Japan are instructive. Both countries adopted an exemption system first, and then lowered their corporate income tax rate. The United Kingdom adopted an exemption system in 2009, and it followed up with reductions to its corporate tax rate in 2011 and then additional rate cuts.<sup>19</sup> Between the adoption of an exemption system in 2009 and 2015, the United Kingdom’s corporate tax rate has

<sup>15</sup> See *Action 5 Deliverable*, at 55–56 (Sept. 2014) (“The current review of member country regimes commenced in late 2010 with the preparation of a preliminary survey of preferential tax regimes in member countries, based on publicly available information and without any judgment as to the potential harmfulness of any of the regimes included.”).

<sup>16</sup> See OECD, *Action 5: Agreement on Modified Nexus Approach for IP Regimes* (Feb. 2015).

<sup>17</sup> See Joint Comm. on Tax’n, *Present Law and Background Related to Proposals to Reform the Taxation of Income of Multinational Enterprises*, JCX-90-14, at 38 (2014).

<sup>18</sup> See *id.* at 38–39.

<sup>19</sup> See *JCX-51-15*, at 39; PricewaterhouseCoopers, *Evolution of Territorial Tax Systems in the OECD*, at 6 (2013) [hereinafter *Territorial Tax Systems Report*].



fallen from 28 percent to 20 percent.<sup>20</sup> Japan also adopted an exemption system in 2009 and started to reduce its corporate income tax rate in 2013.<sup>21</sup> Between 2012 and 2015, Japan's corporate tax rate has fallen from 39.54 percent to 32.11 percent, and the Japanese government hopes to reduce it below 30 percent.<sup>22</sup> Other countries, such as Spain and New Zealand, have followed a similar pattern.<sup>23</sup> As these examples illustrate, adoption of an exemption system for the relief of double taxation can be a first step towards rate reduction, and changing the system for relieving double taxation does not present an obstacle to further reform.

Adoption of an exemption system would help to address the increased risk of double taxation stemming from the BEPS Project. As discussed, U.S. companies are confronting increasingly aggressive assertions of taxing jurisdiction by foreign countries, which now use the BEPS "stateless income" argument as a pretext for taxing profits that are either subject to current U.S. taxation or to residual U.S. taxation upon repatriation. There is considerable concern that these assertions will result in foreign taxes for which no U.S. foreign tax credit will be allowed by the IRS, resulting in economic double taxation.<sup>24</sup> This outcome would create a serious competitive disadvantage for U.S. companies operating in foreign markets.

The adoption of an exemption system would help to address these concerns by mitigating the risk of international double taxation. Under an exemption system, foreign taxes imposed on active income would no longer be creditable against U.S. income taxes, as they are under the current system. Because foreign active income would be wholly or partly exempt, however, there would be no threat of current or residual U.S. taxation of the same income.<sup>25</sup> Although this solution will not prevent taxation by multiple foreign taxing authorities, it would at

<sup>20</sup> See JCX-51-15, at 39; Table II.1. *Corporate Income Tax Rate*, OECD STAT EXTRACTS (June 22, 2015), <http://stats.oecd.org/Index.aspx?QueryId=58204>.

<sup>21</sup> See *id.* at 39; *Territorial Tax Systems Report*, at 5.

<sup>22</sup> See JCX-51-15, at 39; Table II.1. *Corporate Income Tax Rate*, OECD STAT EXTRACTS (June 22, 2015), <http://stats.oecd.org/Index.aspx?QueryId=58204>; Tetsushi Kajimoto and Antoni Slodkowski, *Japan's Abe Unveils Plan to Cut Corporate Tax Rate to Spur Growth*, Reuters (June 13, 2014, 8:06 AM), <http://www.reuters.com/article/2014/06/13/us-japan-economy-abe-idUSKBN0EO0K320140613>.

<sup>23</sup> See *id.* at 39; *Territorial Tax Systems Report*, at 5–6.

<sup>24</sup> In 2013, the Supreme Court considered whether a novel income tax imposed by the United Kingdom was eligible for the foreign tax credit. See *PPL Corp. v. Commissioner*, 133 S.Ct. 1897 (2013). Although the taxpayer prevailed in that case, it raises concerns that the IRS might oppose a foreign tax credit for some of the novel taxes imposed in the name of preventing BEPS.

<sup>25</sup> See Joint Comm. on Tax'n, *Present Law and Background Related to the Repatriation of Foreign Earnings*, JCX-96-15, at 13 (2015) [hereinafter *JCX-96-15*] ("However, the question of whether the government can credibly commit to a one-time deemed repatriation under the Camp and Administration proposals is less relevant, or irrelevant, because, prospectively, active income earned by CFCs bears little or no residual U.S. tax, so that the stock of untaxed CFC earnings may accumulate slowly over time (if at all). If this is the case, little or no revenue can be collected from another deemed repatriation.").

least ensure that the United States does not also tax the same income. Of equal importance, adoption of an exemption system would lower the significant tax barrier in current law to repatriating foreign profits for investment in U.S. economic activity and job creation, and a properly designed exemption system would help to level the playing field for U.S. companies competing for customers in foreign markets.

If an exemption system were to be adopted, it has long been accepted that a transition rule would be needed to address the treatment of foreign earnings that are already invested abroad.<sup>26</sup> Under current law, those earnings are subject to residual U.S. federal income taxation at the full corporate tax rate of 35 percent. Nevertheless, these earnings typically are invested in foreign operations, joint ventures, and other long-term investments. Because they are indefinitely invested abroad, they are already effectively exempt from U.S. taxation, provided that they are never repatriated. Forced acceleration of a residual tax liability for those earnings, at the full 35 percent corporate tax rate, would cause significant economic disruption, as companies in many cases would be forced to sell business assets to raise the cash necessary to pay the tax. There are other practical barriers to repatriation as well, such as exchange control restrictions and corporate-law limits on distributions. Any transition tax regime should take such factors into account by lowering the applicable tax rate and providing an extended, interest-free transition period for the payment of any transition tax liability. Such a regime also should provide relief for U.S. companies with overall foreign losses, earnings deficits, and other tax attributes that would distort the amount of tax due in the transition period.

The funds generated by the transition to an exemption system relate to the adoption of that system and should be used in designing a system that favors job creation and technological innovation in the United States. Various legislative proposals have been offered regarding the use of tax revenue from the deemed repatriation of foreign earnings, including proposals to tax those earnings now for spending unrelated to tax reform.<sup>27</sup> Without challenging the validity of the goals sought by those proposals, they would amount to a tax increase on the very companies that already face an increasing risk of foreign taxation and competitive pressure to relocate their operations abroad. The best use of any revenue generated by the move to an exemption system would be to design the system in a way that provides meaningful tax relief to the companies paying the tax and that encourages job creation and the creation of intellectual property in the United States. Once these revenues are received by the Federal Government, their allocation to Highway Trust Fund accounts does not raise international tax policy concerns.

A U.S. incentive for the conduct of innovative research within the United States would be a further, appropriate response to the expansion of foreign research incentives—a U.S.

<sup>26</sup> Joint Comm. on Tax'n, *Background and Selected Issues Related to the U.S. International Tax System and Systems that Exempt Foreign Business Income*, JCX-33-11, at 13 (2011) ("If the United States adopted a territorial system of taxation, various transition issues would need to be considered. One issue is the treatment of earnings attributable to periods before the enactment of the territorial legislation.").

<sup>27</sup> See *JCX-96-15*, at 8–12 (describing proposals forwarded by former House Ways and Means Committee Chairman David Camp and the Administration).

innovation box comparable to the foreign regimes now endorsed by the BEPS Project. An effective U.S. innovation box would broadly define the type of technology covered, but it would narrowly define the geographic nexus of the underlying research to require that it be performed within the United States. Regarding the scope of the technology covered, neither the existing U.S. research credit nor the innovation box regimes adopted by countries such as the United Kingdom limit their scope to patented technology only.<sup>28</sup> A narrowly defined, patent-only box would raise complex allocation issues and might exclude innovative research for which no patent has been sought for trade secrecy reasons, or for which a patent has been applied but not granted, or for which a patent has been granted but has subsequently expired. In terms of geographic scope, by contrast, the U.S. innovation box could be limited to research activities conducted within the United States in order to encourage retention of high-skilled jobs in the United States.

Neither an exemption system nor an innovation box are complete solutions, but they would serve as important first steps towards comprehensive international tax reform and would serve as an important legislative response to recent international developments. Thank you again for inviting me to present my views to the Committee on these important subjects.

---

<sup>28</sup> See *JCX-51-15*, at 42–44.

Chairman REICHERT. Thank you for your testimony.  
Ms. Gravelle, you are recognized.

**STATEMENT OF JANE G. GRAVELLE, SENIOR SPECIALIST IN  
ECONOMIC POLICY, CONGRESSIONAL RESEARCH SERVICE**

Ms. GRAVELLE. Thank you very much.

Traditionally, the Highway Trust Fund has been financed by user fees, primarily gasoline tax. The collections from these taxes have declined, both because they have not been adjusted for inflation—if they were, the 18.3 cents per gallon excise tax on gasoline would be 31 cents now—and because of increases in fuel economy. As a result, the Highway Trust Fund faces a shortfall in revenues relative to spending.

Proposals have been made to finance the shortfall with a repatriation holiday. To be a little repetitive of Tom, under current law firms pay taxes on worldwide income but not for foreign subsidiaries until the income is paid as a dividend to the parent, or repatriated. Firms have a substantial amount of untaxed earnings abroad that they have not returned to the United States, perhaps because of the 35 percent corporate rate and perhaps because it is reinvested in physical assets. A repatriation holiday would allow additional earnings to be returned and taxed at a lower rate.

There are several issues surrounding the use of taxes on the repatriation of accumulated earnings as a source of revenue for the Highway Trust Fund. First, even if these proposals could raise revenue, they are transitory and will not address the long-term needs of the Trust Fund. Voluntary repatriations, or “holidays,” which allow firms to choose to repatriate additional earnings, are scored as revenue losers rather than revenue gainers.

For example, the Paul-Boxer Invest in Transportation Act would tax these voluntary repatriations at a rate of 6.5 percent by allowing an 81.4 percent exclusion. The Joint Committee on Taxation estimated that the proposal, while gaining \$30 billion in the first 3 years, loses \$148 billion over the next 8 years for a total loss of \$117.9 billion from fiscal year 2015 to fiscal year 2025. All of the other estimates of repatriation holidays have projected an overall revenue loss in the budget horizon.

A different type of repatriation, called deemed repatriation, has also been proposed to be used for infrastructure spending. A deemed repatriation would impose a tax on the stock of untaxed overseas earnings, and it is normally part of a transition in an international tax reform. The Tax Reform Act of 2014, introduced in the 113th Congress by then Chairman of the Ways and Means Committee Dave Camp, would have transferred \$126.5 billion of taxes to the Trust Fund through a deemed repatriation. That would have left the remainder of that revenue bill at a revenue loss over the 10-year period.

The Administration’s fiscal year 2016 budget proposals also include a deemed repatriation as a transition to a new international system allocating \$205 billion to surface transportation.

Deemed repatriations subject to a mandatory tax have never been suggested as stand-alone policy. If they were, they might also lose revenue, and they raise important policy concerns. Estimates indicate that over half of the \$2.1 trillion of untaxed income abroad

is invested in physical assets, such as plant and equipment. These earnings cannot be returned and imposing a tax on them is just a lump sum tax on assets.

A deemed repatriation could be imposed on cash. However, depending on the tax rate, a deemed repatriation of either type could lose revenue—could lose revenue—because it would allow firms to reduce future repatriations, which would have been subject to a higher tax rate.

It is important to note that the revenue gain in the Camp proposal is not a guide to the revenue effect of a deemed repatriation, because it is estimated under the assumption and other provisions of the bill that future dividends would be taxed at close to a zero rate rather than a 35 percent rate. When you look at revenue estimates, it is very important to look at where they are stacked in order of estimation.

Deemed repatriations as a transition rule for a shift to a new type of international tax system would lead to numerous contentious and difficult issues that are currently far from agreed upon and that are unrelated to the more narrow concern about the Highway Trust Fund.

In addition, much of the interest in international tax reform has been associated with the proposal to lower the corporate tax rate, which introduces some further issues, and that in turn with an overall individual and corporate tax reform.

If there is a desire to link spending on transportation infrastructure with increased revenue from foreign source income, however, there are numerous proposals that have been advanced to address profit shifting and other issues in the international system. Some of them are in the President's budget proposals.

Thank you.

[The prepared statement of Ms. Gravelle follows:]

Statement of Jane G. Gravelle  
Senior Specialist in Economic Policy  
Congressional Research Service  
Before  
The House Ways and Means Subcommittee on Select Revenue Measures  
United States House of Representatives  
June 24, 2015  
on  
Repatriation of Foreign Earnings as a Source of Funding for the  
Highway Trust Fund

Traditionally, the highway trust fund has been financed by user fees, primarily the gasoline tax and to a lesser extent the tax on diesel fuels. The collections from these taxes have declined both because they have not been adjusted for inflation (if they were, the 18.3 cents per gallon excise tax on gasoline would be 31 cents) and because of increases in fuel economy. As a result, the highway trust fund faces a shortfall in revenues relative to spending.<sup>1</sup>

Proposals have been made to use taxes on the repatriation of previously untaxed foreign earnings of U.S. multinationals to fund investment in highways or infrastructure, including the Invest in Transportation Act (S. 981), introduced by Senators Paul and

---

<sup>1</sup> For a discussion of the financing of the trust fund, see CRS Report RL30304, *The Federal Excise Tax on Motor Fuels and the Highway Trust Fund: Current Law and Legislative History*, by Sean Lowry. See also Joint Committee on Taxation, Long-Term Financing of the Highway Trust Fund, JCX-92-15, June 15, 2015, at <https://www.jct.gov/publications.html?func=startdown&id=4790>, for data and estimates of inflation indexed rates. H.R. 680 would increase fuel taxes to address financing.

Boxer. This proposal would rely on taxing a voluntary repatriation at a lower rate. A different type of repatriation, called deemed repatriation, as an element of a broader tax reform proposal, has also been proposed to be used for infrastructure spending. A deemed repatriation would impose a tax on the stock of untaxed overseas earnings and is normally discussed as part of a transition in an international tax reform. The Tax Reform Act of 2014 (H.R. 1) introduced in the 113<sup>th</sup> Congress by then Chairman of the Ways and Means Committee, Dave Camp, would have transferred \$126.5 billion of taxes to the trust fund through a deemed repatriation.<sup>2</sup> This bill embedded transition provisions in a broad individual and corporate income tax reform. The administration's FY2016 budget proposals also include a deemed repatriation as a transition to a new international system embedded in a general business tax reform proposal. In the proposal, the revenues from the tax on the current stock of unrepatriated earnings (\$205 billion) are allocated to surface transportation (both new spending and shortfalls in the trust fund).<sup>3</sup>

There are several issues surrounding the use of taxes on the repatriation of accumulated earnings as a source of revenue for the highway trust fund. First, these are one-time sources of funding, and will not address the long-term needs of the trust fund. Second, voluntary repatriations, or "holidays" are scored as revenue losers rather than revenue gainers. Third, deemed repatriations, subject to a mandatory tax, have never been suggested as a stand-alone policy; if they were, they might also lose revenue. Past proposals for deemed repatriations were for a transition rule for a shift to a new type of

<sup>2</sup> See Ways and Means Committee, Tax Reform Act of 2014 Discussion Draft Section-by-Section, p. 143, [http://waysandmeans.house.gov/UploadedFiles/Ways\\_and\\_Means\\_Section\\_by\\_Section\\_Summary\\_FINAL\\_022614.pdf](http://waysandmeans.house.gov/UploadedFiles/Ways_and_Means_Section_by_Section_Summary_FINAL_022614.pdf). The tax raised \$170 billion, including income taxes on dividends paid by U.S. multinationals to their shareholders, as a result of access to the deemed repatriations.

<sup>3</sup> U.S. Department of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals (Green Book), Washington, DC, February 2015, <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf>.

international tax system, which involves numerous contentious and difficult issues that are unrelated to the more narrow concern about highway trust fund finance. In addition, much of the interest in international tax reform has been associated with a proposal to lower the corporate statutory tax rate, which would require a broader corporate reform. That corporate reform, in turn, has implications for unincorporated businesses and may lead to an even broader reform involving the individual income tax, as in the case of the Camp proposal.

If, however, there is a desire to link spending on transportation infrastructure with increased revenue from foreign source income, there are a number of anti-abuse proposals that have been presented in previous administration budgets that could be considered to fill the gap in highway trust fund revenues on a permanent basis.

#### **A Repatriation Holiday**

The U.S. tax system imposes a tax on worldwide income, with a credit against U.S. tax liability allowed for income taxes paid to foreign countries. Income from foreign subsidiaries of U.S. firms is not taxed until it is repatriated, or paid to the U.S. parent as a dividend. This feature of the tax code produces an incentive to retain earnings abroad that have not been subject to significant foreign taxes. This effect may be more important because of profit shifting to low-tax jurisdictions, which has been increasing due to the growth of intangible assets.<sup>4</sup>

In 2004, the American Jobs Creation Act of 2004 (P.L. 108-357) provided for a repatriation “holiday.” Firms were allowed a deduction equal to 85% of the increase in foreign earnings repatriated. At a corporate statutory rate of 35%, the effective rate on

---

<sup>4</sup> See CRS Report R40623, *Tax Havens: International Tax Avoidance and Evasion*, by Jane G. Gravelle, pp. 16-19 for a discussion of the evidence on the magnitude and growth of profit shifting by U.S. multinational firms.



repatriated earnings was 5.25%. Proportional foreign tax credits were allowed. The rationale for the provision was to increase investment and employment in the United States by bringing back cash that was trapped abroad. The legislation restricted certain uses of funds, including the payment of dividends to the U.S. parent's shareholders.

Since money is fungible, there was no way to effectively enforce the restrictions on use. Subsequent studies indicated that most of the repatriated funds were used for share repurchase (equivalent to a dividend payment), acquisition of other firms, or debt reduction.<sup>5</sup> These effects would not increase investment or stimulate the economy, thus undermining the stimulus justification for a repatriation holiday.

Moreover, repatriation holidays are expected to lose, not gain, revenue. A proposal in 2014 to provide a one-time repatriation provision similar to that in 2004, with an 85% deduction (equivalent to a 5.25% rate given the 35% corporate rate) was estimated by the Joint Committee on Taxation (JCT) to lose \$95.8 billion over FY2014-FY2024.<sup>6</sup> The JCT estimated that the Paul-Boxer proposal, which imposes a slightly higher rate (an 81.4% deduction for a 6.5% rate), but allows for a longer time period to repatriate, would, while gaining \$30 billion in the first three years, lose \$148 billion over the next eight years, for a total loss of \$117.9 billion from FY2015-FY2025.<sup>7</sup>

These voluntary repatriation proposals lose revenue because some of the funds would have been repatriated in any case, but would have been taxed at the statutory tax

<sup>5</sup> Most of these studies are reviewed in CRS Report R40178, *Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis*, by Donald J. Marples and Jane G. Gravelle. See also Thomas J. Brennan, *Where the Money Really Went: A New Understanding of the AJCA Tax Holiday*, Northwestern Law and Economics Research Paper 13-35, March 6, 2014.

<sup>6</sup> Letter to Honorable Orrin Hatch, from Thomas Barthold, Staff Director, Joint Committee on Taxation, June 6, 2014, [http://www.hatch.senate.gov/public/\\_cache/files/1b24c4cf-6005-4a4e-bab7-3d9e3820c509/JCT%206-6-14.pdf](http://www.hatch.senate.gov/public/_cache/files/1b24c4cf-6005-4a4e-bab7-3d9e3820c509/JCT%206-6-14.pdf).

<sup>7</sup> Letter from Thomas Barthold, Staff Director, Joint Committee on Taxation, April 30, 2015, [http://newsletters.usdbriefs.com/2015/Tax/TNV/150501\\_2suppA.pdf](http://newsletters.usdbriefs.com/2015/Tax/TNV/150501_2suppA.pdf).

rate of 35%. For each dollar that falls into this category during the budget horizon, there is an overall revenue loss due to the difference in the normal tax rate and the lower repatriation rate. They also lose revenue because repatriation holidays create an incentive to delay future repatriations in anticipation of future holidays. Although there is some gain in revenue due to individual income taxes on dividends paid from repatriated funds to shareholders, overall the losses offset the gains, as illustrated by the JCT cost estimates cited above.

Increasing the tax rate applying to the repatriations during the holiday may reduce the revenue loss but is unlikely to result in significant (or any) gain. In 2011, a revenue estimate provided to Representative Doggett estimated a 10-year revenue loss of \$78.7 billion for a 5.25% rate for a tax holiday; the revenue estimate for doubling the rate to 10.5% was a \$41.7 billion loss.<sup>8</sup> As the rate rises, firms would be expected to repatriate less so that the loss shrinks, but a gain is still unlikely.

#### **A Stand Alone Deemed (Mandatory) Repatriation**

As noted above, there have been proposals for a deemed, or mandatory, repatriation tax. These proposals deem the accumulated untaxed earnings abroad subject to a repatriation tax (although there is no requirement to actually repatriate them). To date, all of these deemed or mandatory repatriation proposals have been part of are transitions to an alternative international tax system.

Such a deemed repatriation tax could be made as stand-alone policy. Recent estimates by Credit Suisse indicate that at the end of 2014, \$2.1 trillion of unrepatriated

---

<sup>8</sup> See letter to Honorable Lloyd Doggett from Thomas Barthold, Chief of Staff, Joint Committee on Taxation, April 15, 2011, at [http://doggett.house.gov/images/pdf/jct\\_repatriation\\_score.pdf](http://doggett.house.gov/images/pdf/jct_repatriation_score.pdf).

earnings were held abroad.<sup>9</sup> For the companies that disclosed cash (accounting for \$1.5 trillion of the total), the cash share was 45%. The authors of the study suggest the percentage held in cash might be less if the firms that did not disclose cash had smaller holdings.

If an objective, in addition to gaining revenue, is to unlock earnings abroad, it is important to separate the two types of earnings. Some portion of the earnings (apparently over half) is invested in physical assets such as plant and equipment. Short of liquidating property, these funds would not be repatriated in any case and imposing a mandatory stand-alone tax is basically a lump sum tax on assets. (The Camp bill imposed a lower tax rate of 3.5% on these types of holdings investments as part of its transition rule, compared to an 8.75% rate on cash holdings.)

Unless a large tax is imposed to include physical plant and equipment abroad, which cannot be repatriated, it is unlikely that a stand-alone deemed tax will raise revenue. If a tax is imposed on deemed cash held abroad at the rate of the Paul-Boxer bill (6.5%), the deemed repatriation tax could raise slightly over \$60 billion (45% of \$2.1 trillion times 0.065) from the repatriation tax.<sup>10</sup> Some of this tax would be offset, however, by the foreign tax credit. If the offset is similar to the foreign tax credit offset reported for the 2004 holiday, the yield would decline by 11.4% or to \$54 billion.<sup>11</sup> Potential revenues would also be reduced by the regular tax that would have been paid on the portion of funds that would otherwise be repatriated. There would be an additional

<sup>9</sup> David Zion, Ravi Gomatam, and Ron Graziano Parking A-Lot Overseas, Credit Suisse, March 17, 2015.

<sup>10</sup> If it were imposed on all earnings abroad including plant and equipment, at the same rate, it would initially raise \$136.5 billion, offset to some extent by foreign tax credits as well.

<sup>11</sup> Melissa Redmiles, The One-Time Received Dividend Deduction, Internal Revenue Service Statistics of Income <http://www.irs.gov/pub/irs-soi/08codivdeductbul.pdf> <http://www.irs.gov/pub/irs-soi/08codivdeductbul.pdf>.

revenue gain from dividend taxes to the extent cash was used to pay the shareholders of the parent firm, which amounts to about \$44 billion.<sup>12</sup> But once earnings abroad have been subject to tax and are available to return to the parent company, these earnings could be used to satisfy cash needs, such as dividend payment, and reduce the need to repatriate future earnings. Thus there would still be an offsetting negative effect that would likely overwhelm the deemed repatriation tax.<sup>13</sup>

It is important to note that the estimates of a revenue gain in the Camp proposal of \$170 billion (\$126 billion in transition taxes by the firm and the remainder from dividend taxes of the U.S. parent's shareholders) is not a useful guide for the revenue gain from a stand-alone deemed repatriation, even if the same rates were used. The revenue gain estimate was stacked after the shift to a territorial tax; that is, it was made under the assumption that future repatriations would be subject to a virtually zero tax rate.<sup>14</sup> Thus, there would be no offsetting loss of significance from reductions in future repatriations.

#### **A Deemed (Mandatory) Repatriation as a Part of Tax Reform**

Both the Camp proposal in the 113<sup>th</sup> Congress and the Administration's current budget proposal, as well as a set of tax reform discussion papers released by the Senate Finance Committee in 2013 under Chairman Baucus, have two items in common: they all proposed moving to a system of taxation of foreign source income where repatriation no longer triggers a tax<sup>15</sup> and they both embedded the international proposals in a broader

<sup>12</sup> The estimate of dividend tax payments in the Camp bill, the difference between the total gain of \$170 billion and the amount dedicated to the highway trust fund, was \$44 billion.

<sup>13</sup> The positive revenue gain from the repatriation tax would be eliminated if future repatriations were reduced by 18.4% of the deemed cash repatriation (which would occur if the revenue from the repatriation tax were dividend by 0.35). A somewhat larger effect would be required to offset the dividend tax.

<sup>14</sup> Because of the 5% "haircut," 5% of future dividends would be subject to tax, which at a 25% rate would be a 1.25% tax.

<sup>15</sup> As noted in the previous footnote, the inclusion of 5% of dividends in income creates a small repatriation tax of 1.25%.

tax reform proposal. The move to a system where foreign source income would not trigger a tax on repatriation meant that a mechanism was needed to address the existing accumulated untaxed earnings abroad. H.R. 625 (Delaney) would begin with a stand-alone deemed repatriation at an 8.25% rate, but the bill also has a trigger that would automatically enact an unspecified international reform after 18 months if such a reform is not separately adopted.<sup>16</sup>

These three international tax reform proposals (Camp, the Administration, and the Baucus discussion proposals) are quite different in the details. Achieving tax reform, even a narrow one that focused on international reform, could be difficult because of major disagreements about elements of the reform. Questions that would have to be agreed upon to move forward with international reform include:

- Is there a revenue gain, loss, or neutrality? The Camp international provisions, excluding the transition gains, lose \$102 billion over ten years: the Administration proposal gains \$34 billion—not enough revenue to close the highway trust fund spending gap for the next few years.<sup>17</sup>
- What rate is imposed going forward? The Camp proposal was 1.25% on dividends, the Administration proposal would impose a 19% minimum tax on earnings per country regardless of repatriation, and the Senate Finance draft discussion from 2013 would tax all foreign earnings at 80% of the tax rate (which had not been determined, but would have been 20% at a

<sup>16</sup> Absent such action a minimum tax, similar to that of the administration, but smaller, would go into effect.

<sup>17</sup> See Joint Committee on Taxation, Estimated Revenue Effects of the Tax Reform Act of 2014, JCX-February 26, 2014, <https://www.jct.gov/publications.html?func=startdown&id=4562> for estimates of the Camp proposal and U.S. Department of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals (Green Book), Washington, DC, February 2015, <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf>.

statutory 25% tax rate) or alternatively taxing active income at 60% and passive at 100%.

- What rate would be imposed on the existing accumulated untaxed earnings abroad? The Camp proposal would have imposed a 3.5% tax on non-cash investments and 8.75% on cash investments; the Administration proposal would impose a 14% rate.
- There are numerous other technical issues. Among them are what types of anti-abuse provisions are included to deal with profit shifting (both through leveraging and transfer pricing of intangibles); changes to the existing Subpart F income provisions (which taxes income easily subject to relocation), including how to treat the now expired “extender” that exempts active financing income from Subpart F; whether relief should be provided for royalties as the new systems eliminate most or all excess foreign tax credits that have been used in the past to shield foreign royalties; provisions to address earnings stripping by foreign parents of U.S. subsidiaries; provisions to deal with inversions; and whether special provisions are needed to address reinsurance and the extractive industries.

In short, while there is some common ground in these proposals, there are also broad differences in the details and numerous issues to discuss which may make adoption of an overall international reform difficult.

There is also some uncertainty as to whether a stand-alone international reform would be considered. Much of the interest by the corporate sector in tax reform is to lower the statutory corporate tax rate. A corporate tax reform which lowers the rate

would, however, rely on base broadening provisions that would affect both corporations and unincorporated businesses (such as slower depreciation). Not only would many other issues arise in determining what provisions would be revised, but an increase in taxes on unincorporated firms may be a barrier to a corporate-only tax reform.

Even a reform limited to corporate-only tax reform may not be feasible. While administration proposals have focused on corporate or business reform, interest in Congress has generally been for broader reform that would encompass changes in the individual income tax, a major policy initiative that raises broader issues than revenue for the highway trust fund. The Camp proposal, once revenue is allocated to the trust fund, has an overall general revenue loss that may be of concern, with even larger losses likely in the future. The Camp proposal, the only recent fully developed broad tax reform plan, did not advance in the legislative process, and no proposal is yet under consideration at the committee level.

#### **Permanent International Provisions to Finance the Highway Trust Fund**

An issue with using repatriation taxes is both that they are unlikely to yield sufficient (or even positive) revenue and they are transitory. If there is a desire to use taxes on foreign source income for a permanent revenue source, a number of proposals have been made by the Obama Administration over the years. They include disallowing interest and overhead deductions for the share of the firm's income that is earned abroad and not currently repatriated and taxed, and allowing foreign tax credits only in proportion to the income repatriated. The most recent administration budget proposal eliminated some of these provisions because of the proposal for an international tax reform, but the previous FY2015 budget contains a number of provisions, which at that

time were projected to raise \$276 billion in revenue.<sup>18</sup> They are also discussed in a CRS report on international taxation.<sup>19</sup>

---

<sup>18</sup> U.S. Department of Treasury, and U.S. Department of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals (Green Book), Washington, DC, February 2015, <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2015.pdf>.

<sup>19</sup> See CRS RL34115, *Reform of U.S. International Taxation: Alternatives*, by Jane G. Gravelle, pp. 19-20.



Chairman REICHERT. Well, thank you all for your testimony. And now Members of the panel, I am sure, would like to ask some questions regarding your testimony to drill down a little bit on some of the information you provided. It also gives us an opportunity to learn a little bit.

So, Mr. Barthold, in our full Committee hearing last week on the Highway Trust Fund some of the witnesses testified that a permanent solution to the Trust Fund shortfall would take several years to implement. I believe we need to get there and that we will eventually, but it seems we are in need of an interim option.

Mr. Barthold, can a deemed repatriation of foreign earnings that is used as a transition rule or moving to an exemption system in a pro-growth revenue-neutral package help us to get to an interim option?

Mr. BARTHOLD. Well, thank you, Mr. Chairman.

Perhaps the best model to look at to answer your question is to return back to former Chairman Camp's H.R. 1. In his comprehensive reform bill, the legislation itself would have directed revenues from the deemed repatriation to the Highway Trust Fund. His plan had payments directed to the Highway Trust Fund. Taxpayers themselves had up to 10 years to pay.

So if you are asking a question about cash flow and what cash goes to the Trust Fund as opposed to a unified budget, it would seem that if the Congress chose to use funds from a repatriation in the way that Chairman Camp did, that you could direct that in pretty much any scale and over any time period that you would choose to the Highway Trust Fund.

Chairman REICHERT. So we could direct that to any scale or any timeframe. Do you think we can design it to provide a specific amount of revenue to the Highway Trust Fund on an annual basis for the duration of a multi-year highway authorization?

Mr. BARTHOLD. Well, that would depend upon, as I think your question anticipates, the design. Former Chairman Camp's proposal provided for a 10-year installment payment. Now, that was at the election of the taxpayer. Some taxpayers might choose to accelerate their payments, depending upon their business situation. Others might choose the full 10 years. So if you were trying to think of the payments that the taxpayers made and link them up on a year-by-year basis, you might want to revisit the design.

Chairman REICHERT. Thank you.

Mr. Suringa, I hear concerns that if we reform our uncompetitive international tax rules now, we will lose momentum for the very important goal, which I share and am committed to achieving, of reducing the corporate rate.

In your testimony you describe how the U.K. and Japan, the two most recent major economies to shift from a worldwide system to an exemption system, first enacted legislation transitioning systems in 2009. Shortly thereafter, both countries reduced their corporate rates by about 8 points.

Mr. Suringa, should the experience of the U.K. and Japan reassure us to some degree that if we act now to reform our international tax rules to meet risks, such as the OECD BEPS project, there will still be sufficient political momentum, not to mention

economic need, to reduce our high corporate rate in the next couple of years?

Mr. SURINGA. Thank you, Mr. Chairman.

I do think there is going to be continued momentum to get the corporate rate down regardless of what is done with respect to this particular issue. I think in terms of transitioning to an exemption system, that is probably the most important thing to do to relieve double taxation of U.S. companies operating abroad and to end the lockout effect, to bring that money, the untaxed foreign earnings home and also to level the playing field in foreign markets between U.S. companies and their competitors.

I think that is a narrow enough reform that the domestic reform push in terms of lowering the rate and the other measures that have been suggested in Chairman Camp's draft and the other proposals will continue to face a lot of pressure to be taken up in the near term. My testimony is really focused on the pressures in the international sphere that companies are now facing. I think these are measures that are appropriate to take in the short term.

Chairman REICHERT. Thank you.

Mr. Neal.

Mr. NEAL. Thank you, Mr. Chairman.

We have heard a number of times—this is a point of clarification for some of our panelists—we have heard a number of times that there are a huge amount of earnings stashed overseas by multinational companies. In fact, a recent report by Credit Suisse claims that as much as \$2.1 trillion in foreign earnings is invested overseas.

Now, some of that is reported on company statements as permanently reinvested overseas—that is, in actual buildings, brick and mortar, or in operations—while some in cash is being held overseas and not being taxed under current deferral rules until that cash is repatriated.

Ms. Gravelle, could you discuss what portion of that approximately \$2.1 trillion in cash and easy to repatriate, what portion is permanently invested overseas and more difficult to liquidate?

Ms. GRAVELLE. Well, according to the Credit Suisse report, they based their analysis on financial reports, and for the companies that reported cash holdings, they found that about 45 percent of the assets abroad were held in cash. So a little over half was in plant and equipment. Now, they really don't know for sure how to extrapolate to other firms, but that should be sort of a reasonable measure of how much of those assets are invested.

They also had some very interesting data on which firms had these cash holdings with actually a handful of firms, about five or six firms, I believe, holding about half of it.

Mr. NEAL. Okay. And, Mr. Barthold, I assume that you and your colleagues at the Joint Committee have done estimates of the makeup of the overseas earnings. Can you elaborate for us on those findings?

Mr. BARTHOLD. Thank you, Mr. Neal. I believe you are, again, referring to our estimates of former Chairman Camp's proposal, since he would have applied a differential tax rate to the unrepatriated earnings of foreign corporations based upon whether it is cash, liquid assets, or nonliquid assets.

I can't actually give you the details of our breakdown on the estimate on that partly just because one of my colleagues is currently in Scotland attending the commencement of his son from the University of Glasgow and he was the primary economist working on that. But I can tell you that from our background work, we looked at some of the work that Ms. Gravelle reported. There is also some academic work based on 10 years of data by Blouin, Krull, and Robinson which suggests that perhaps maybe 45 percent of retained earnings are held in cash or liquid forms.

In terms of doing our estimate, and in terms of your potential policy design, there are a number of difficult questions to think about. Do you treat working capital the same as nonworking capital? How do you treat some of the portfolio investments that a business might have in a related enterprise, where in order to gain partial control of an entity that is in your line of business, you are perhaps a 25 percent shareholder in an otherwise public corporation, would that be considered invested in a business, bricks and mortar, or would that be considered a portfolio holding?

Those are some of the issues that we looked at in terms of analyzing Chairman Camp's proposal.

Mr. NEAL. Could you provide the Members of the Subcommittee with a breakdown of the estimated \$2.1 trillion that is overseas and at that point let us know what is liquid, what is illiquid, and some further detail on the financial industry's holdings overseas given that oftentimes the local sovereign reserve requirements really make holding cash overseas a lot more comfortable than something permanently invested more in the nature of bricks and mortar?

And I call that question up, Mr. Chairman, because I think that number, \$2.1 trillion, is easily thrown around. When you have a chance to drill down on the statistical data, you come to a very different conclusion. And I hope that with Mr. Barthold and his staff, they can provide us some of that information. I think it would be helpful to the totality of the conversation.

Mr. BARTHOLD. Mr. Neal, Mr. Chairman, my colleagues and I will provide some additional information of the sort you mentioned. If I could indulge you for an additional minute, we have done some work based—and I should note that the reported \$2.1 trillion, and in our testimony we reported \$2.3 trillion, of indefinitely reinvested earnings, remember, that is a financial statement concept and that is different than what we look at in terms of tax returns.

Some U.S. businesses may invest funds abroad but do not list them for financial statement purposes as indefinitely reinvested, which means that they don't have to carry a deferred tax liability on their income statement. But if they were to pay a dividend back, there would still be a cash tax liability in the United States. To look at some of the cash tax liabilities, we have looked at in detail a lot of the reported controlled foreign corporation returns that the parent companies must provide to the IRS.

And to go a little bit to your question about the insurance, banking, and other financial sectors, looking at industries that report themselves to be in insurance, banking, other foreign services, we found in the 2010 data that approximately 10 percent of total untaxed unrepatriated foreign earnings were in the banking, insur-

ance, and other financial services sector. So about 10 percent of whatever the total might be.

But my colleagues and I will provide a little bit more detailed discussion in a written response.

Chairman REICHERT. The gentleman's time has expired.

Mr. NEAL. Thank you.

Chairman REICHERT. I appreciate the detailed answer. I let you go a little bit longer than usual. This is a highly interesting, complicated, and important topic. So I appreciate that. But if you could provide the additional information in writing.

Mr. BARTHOLD. I will.

Chairman REICHERT. Thank you.

Mr. Tiberi.

Mr. TIBERI. Thank you, Mr. Chairman. Thank you for holding this hearing as we try to come up with a long-term solution to fund our country's roads and infrastructure, and also urgently try to fix our international tax system to make U.S. multinationals more competitive in today's global marketplace and hopefully not taken over by a foreign competitor.

And it seems, Mr. Chairman, we have an opportunity to address both of these policies in the coming year, in the coming months, and hopefully the issues that we are discussing today at this hearing, including repatriation, will move us one step closer toward those goals.

If the only thing that you understand today is one thing from these panelists, I hope it is that not all forms of repatriation are created equally.

Mr. Dubay and Mr. Suringa, thank you. Thank you for explaining that precisely to the point. There are two significant pieces of Camp's draft, one is that repatriation is done as a transition from a worldwide system to an exemption system—we have to put a dollar in a bowl, Mr. Dubay, if we say territorial system—so exemption system. That was a joke, and no one laughed. I guess not. I should keep my day job.

But the other point is that illiquid assets are treated differently than liquid assets. Liquid assets are taxed at a higher rate than illiquid. So anyway, that's a really good point.

One thing is clear, a highway bill is urgently needed. Just this morning a markup in the Senate occurred on the Inhofe-Boxer 6-year bill that requires \$107 billion, billion with a "B", for the Highway Trust Fund. Others have said they prefer to extend it through the election, which is about a \$25 billion nut for the Trust Fund. We have to come up with that. They don't.

Another thing is clear, Speaker Boehner has made this clear, a gas tax is not going to happen. Chairman Ryan made that clear last week. And I think most of us agree that a user-pay system is the way to go for funding our highways and our infrastructure.

At last week's hearing we heard about different alternatives. We also heard from witnesses that a vehicle miles traveled tax would take years to implement. So we want to continue to look at those issues, but nothing is imminent in terms of user pays this year.

So we have a couple of other options to come up with \$25 billion to \$100 billion. We can cobble together a bunch of revenue raisers, either \$25 billion through the election or \$100 billion. We have

done that in the past. People in this room up here usually aren't unanimously happy. I wouldn't be happy with a number of random pay-fors. The low-hanging fruit is gone.

So we really have two options as I see it. We can cobble together a bunch of things or we can explore this option that Chairman Camp had in his draft. And by doing that, by the way, we transition our U.S. multinationals to an exemption system that makes them more competitive. That is the key. Reporters and others throw around repatriation like it is all the same stuff. It is not all the same stuff. Policy matters. How it is done matters. Going to an exemption system is critically important to making this work.

So, Mr. Suringa, Mr. Dubay, based upon your testimony, what do you think? Is it better policy to cobble together a bunch of revenue raisers or to do repatriation the right way, which we clearly did not do in 2004, going to an exemption system treating illiquid assets differently than liquid assets?

Mr. Suringa.

Mr. SURINGA. Thank you, Congressman Tiberi.

I think doing a 6-year repatriation-related funding measure would make the most sense to give Congress the opportunity to look for a more permanent solution that we can all get behind, and repatriation is a good way to do it, particularly and really only if it can be used as a way to transition to a new system for taxing foreign income of U.S. multinationals.

Mr. TIBERI. Mr. Dubay.

Mr. DUBAY. Thank you. As long as you are transitioning to an exemption system and using repatriation to help grease the skids for that improvement, I think it could be doable. I would just say that you can't spend the same dollar twice, although I don't want to discount Congress' ability to do that.

Mr. TIBERI. That was a joke, right?

Mr. DUBAY. Yes, that was a joke.

So you have to have some revenue to pay for the tax cut that Mr. Barthold and JCT will score moving to an exemption system rule. And in tax reform there is always winners and losers, so just keep in mind when doing that, there are other needs for the revenue that pertain specifically to tax reform.

Chairman REICHERT. Thank you.

Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman. Thank you for holding the hearing.

And, witnesses, thank you all very, very much for being here.

I just wanted to reiterate something that Mr. Neal said in his opening testimony, and I just want to make sure that everybody got the full gravity of that. He basically pointed out that we, American taxpayers, are subsidizing the European tax rates in large part because of our defense budget. I think it is really important to have that understanding when we look at how we are dealing with this issue, probably as important as the explanation from the witnesses today that the previously thought of \$1.2 trillion, if you recognize the fact that some of those assets aren't liquid, you are really talking about a trillion dollars. And those are just some basic facts that we ought to have at hand while we are doing this hearing.

Much has been said about Chairman Camp's previous draft, and I think it has been pointed out by a number of folks that there was a little budget trickery or double counting that went into that too. So I think we would be much better off if we all were working with the same set of facts rather than what we may perceive as the bottom line, and I just think that is critically important.

Ms. GRAVELLE, if a tax holiday loses the government money, a mandatory repatriation is politically unpopular and the revenue effects are unknown because it depends on the rate, that leaves repatriation as part of international or business tax reform. However, if we use the revenue to fund lower corporate rates and/or make other international reforms, where does that leave funding for the Highway Trust Fund?

Ms. GRAVELLE. Well, I think that is the problem with this discussion of the Camp transition. The \$126 billion is supposed to go to the Trust Fund, but then it is supposed to go to offset the revenue losses in the bill. If you take the \$226 billion out of the bill, then you have approximately a \$120 billion revenue loss. So I think that is where the double counting is.

So certainly in isolation that deemed repatriation will raise revenue, particularly if it is stacked after no tax on any—zero tax. But you can't use it—well, maybe you can try to use it twice, but technically speaking, it is only there once. So that is a problem.

Mr. THOMPSON. So you can't spend the money twice?

Ms. GRAVELLE. Right.

Mr. THOMPSON. Can you think of any economically efficient way to invest in the Highway Trust Fund using repatriation?

Ms. GRAVELLE. Well, frankly, I am puzzled about how one is supposed to be connected with the other. I mean, I think the sort of natural thought you would have is we have traditionally always financed roads with user fees. Economists approve of those in a lot of ways, because they really mimic the private market as closely as you can for any public good. So they are viewed as benefiting the people, the people who benefit pay. So if I were a Martian coming down here I might wonder why that is not kind of an obvious solution. But, of course, CRS never recommends anything. So—

Mr. THOMPSON. Could we use repatriation to both fund the Trust Fund and do business tax reform and do it effectively?

Ms. GRAVELLE. Well, you can't—I mean, if you wanted to make true revenue-neutral tax reform, say, for the Camp proposal, and you want to use that money for the Highway Trust Fund, then you need to set it up so it raises, if you want to make it neutral with the budget, so it raises \$126 billion. And I think adding to that is the fact that outside of the budget window, it is actually going to lose a lot of revenue.

Mr. THOMPSON. Mr. Barthold, is this double counting, budget trickery? Can we spend the money twice?

Mr. BARTHOLD. Let me tell you what we estimated. The Joint Committee estimates on a unified budget basis for the Members, and Congress decides what they do with the unified budget. I mean, there are many proposals that Congress has considered that have effects. We report, for example, an effect for excise taxes that are dedicated to the Highway Trust Fund as having offsetting effects on payroll tax and income tax receipts, but we report to the Con-

gress on a unified basis. What we reported for Chairman Camp's bill was on a unified basis.

Mr. THOMPSON. If we can spend it twice, we can solve a lot of problems. It would be good to get an answer on that.

Chairman REICHERT. Could you provide that in writing for us, Mr. Barthold? Thank you.

Mr. BARTHOLD. I will provide our scoring in writing, yes, sir.

Mr. THOMPSON. Thank you.

Chairman REICHERT. Mr. Paulsen.

Mr. PAULSEN. Thank you, Mr. Chairman, for calling this hearing. It is obviously sort of a combination hearing, right? I mean, we have had the components of the transportation funding and then you have the issue of fixing the international Tax Code.

If you look back, I think there is a reason that Chairman Camp, when he did his three different drafts of different white papers that came out on how to adjust the Tax Code, I mean, I think there is a reason that the international tax component was the first one that he looked at, right, and it is this issue of making sure that we are competitive vis-a-vis the rest of the world. The Tax Code has clearly not kept pace with the modern economy, and certainly not with the international Tax Code.

So if you look at 1960 where 17 of the top 20 companies in the world were U.S. companies, and then by 1985 there were only 13, and then today we are in the single digits, and so there is a reason, again, that Chairman Camp, I think, wanted to focus on this, rightfully so. And this modernization is needed now to stop the Tax Code from causing our companies here in the United States to be acquired by foreign companies.

Let me just ask you, Mr. Suringa, there have been a lot of additional news reports about U.S. companies that are being acquired by foreign companies with substantial tax savings as a part of that, and that is being cited as the driving factor for those acquisitions. Do our tax rules provide incentives currently for foreign competitors to acquire U.S. companies?

Mr. SURINGA. Yes, I think they do. I think the way that the current rules are structured places U.S. companies that have competitors that have inverted at a competitive disadvantage, and that is what tax departments in a lot of cases are ending up looking at. Their competitors have moved to Ireland and now are paying tax at 12% or less, and management is saying: Can we compete with these people now that they are paying so much less, and the investors are looking to us to say, hey, why haven't you guys done this too.

It is very disturbing, and I think the foreign tax incentives for research are going to make it more disturbing, because historically you would think of an inversion as having two main benefits. One benefit is that the inverted company can try to extract earnings from the offshore subsidiaries at the former U.S. parent without paying the residual tax, they would distribute it up to the foreign parent and not pay the U.S. tax in the middle.

The second benefit was and continues to be base erosion, which is putting deductible payments in the U.S. system and making those deductible payments deductible at 35 percent and includable at the foreign parent at some lower tax rate to get a net tax ben-

efit. But historically, there wasn't as much of a concern that the U.S. activities would be, other than through base erosion, that the U.S. activities would not have a reduced rate of taxation. They would still be taxed at the full 35 percent rate.

The concern with the foreign tax research tax incentives is now you have a foreign tax incentive to actually move the people who are doing the work, the high-skilled jobs that are creating innovation in the United States, to move that offshore as well. And that is something that is new and particularly disturbing.

Mr. PAULSEN. So since it is new, should our tax rules provide such incentives as well?

Mr. SURINGA. Well, I think as a part of a change to a new system we should put that on the table, because that is where 28 out of the 34 countries in the OECD are using exemption systems. It used to be that it was sort of half and half, but over the last few years more and more countries have gone to exemption systems for relieving double taxation.

Now you have 15-plus countries that have introduced patent box regimes. I think that is the trend of where corporate international taxation is going and our companies are at a competitive disadvantage when they deal with our rules instead of their rules.

Mr. PAULSEN. And it seems like, of course, as the headquarters move overseas, the jobs move overseas as well.

Mr. DUBAY. Would you say this illustrates more of an immediate need as well for the modernization of our antiquated international tax regime?

Mr. DUBAY. Thanks for the question. I think it is important that we modernize quickly because I think our businesses do look very enticing to foreign competition. They are just more valuable as a foreign company than they are as a U.S. company because our tax rate is so out of whack and because of the worldwide system.

I think the recent wave of inversions has now ended. I don't think we are going to see another inversion. I think the next step is going to be a moderate-sized European or foreign business buying a really big U.S. business. They are not going to bother with the inversion, they are just going to buy it outright. It is going to be similar to what InBev did with Anheuser-Busch a few years ago. And as was mentioned, it is dangerous because you start losing highly-skilled, highly-talented people to those foreign locations.

Mr. PAULSEN. Thank you, Mr. Chairman.

Chairman REICHERT. Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman. And I want to thank the witnesses for joining us here today.

You know, there hasn't been a whole lot of debate on how to address the insolvency in the Highway Trust Fund until last week when the Ways and Means Committee finally took up this issue. And I am sitting here wondering why, because we can't continue to use the lack of funding in the Highway Trust Fund as a political football when our infrastructure is crumbling. Our economy cannot continue to run if we don't have the infrastructure to move goods and people efficiently throughout the country.

But that is what we have been doing for quite some time. Since 1998 there have been 24 short-term patches to the Highway Trust



Fund, including one that just occurred last month. And we are watching literally our infrastructure crumble because of the inability to act, to come up with some ideas for fixing the problem. We want to talk about them, and I guess Congress is pretty good at talking, but there comes a day when you really have to put up or shut up, as my father used to say, and you have to do something about it, you can't just discuss it. We cannot continue to kick the can down the road.

I think short-term patches to our Highway Trust Fund are not the way to go. They don't provide certainty for local jurisdictions to plan their budgets and get construction projects underway, construction projects, I might add, that create millions of jobs.

But it is my belief, in having listened to the testimony, that a repatriation holiday isn't a viable solution to the problem because a one-time repatriation, which has been offered as a solution to the Highway Trust Fund issue, we have already seen in the past what a one-time repatriation does to our economy.

My colleagues have mentioned that in 2004 repatriating firms didn't reinvest that money to create U.S. jobs here in the United States. Instead, they repurchased their own stock and paid bigger dividends to their shareholders. So I am, quite honestly, a little bit baffled why we think that this is such a great panacea for fixing a very real need that we have.

Companies that have the resources to transfer profits and jobs abroad have an unfair advantage, in my opinion, over truly domestic companies that do their research here, that provide good-paying jobs here, that manufacture their products here in the United States. And we can't, in my opinion, allow multinational corporations to avoid paying taxes on almost \$2 trillion without doing something to level the playing field.

So while it is great that we can have this discussion about the international tax regime, we need to have that broader discussion again, a serious one about overall comprehensive tax reform, because without that we are not going to get to a fairer, simpler solution for our tax fund, and again we are not going to really focus in on what the steps are that we can take to shore up the Highway Trust Fund.

With that, I am going to ask Ms. Gravelle, we are discussing international-only reforms, which creates an advantage, a competitive advantage against our domestic manufacturers, so how can we use the Tax Code instead to help create good-paying jobs here in the United States so that our domestic manufacturers aren't at a competitive disadvantage?

Ms. GRAVELLE. Well, there are some provisions that we could shift to favor lower tax rates in the United States compared to abroad. Our biggest corporate tax expenditure is deferral of foreign-source income, so we don't have to move to a territorial system, and that would probably encourage more investment abroad.

We can also look at things among the extenders. R&D tax credit might be something to think about, but there are also some international extenders that could go the other way. But I think ultimately there is a limit to how much you can do with tax provisions because taxes, corporate taxes aren't that big.

But there are a lot of spending things, one of them being infrastructure. I mean, infrastructure is crucial to productivity. If you can't move around, you can't produce. And also things like education, even health, all of those things that include the workforce, productivity of the workforce, would be beneficial to productivity and wages of workers.

Ms. SANCHEZ. So if I were to ask you, like, how could we specifically tailor—the Tax Code is a system of carrots and sticks, fundamentally boiled down, and raises revenue obviously for the Federal coffers. But how could we specifically tailor the Tax Code to sort of help domestic businesses who take on the risk of doing research and development and manufacturing here in the United States?

Ms. GRAVELLE. Well, I think we already help them with very generous tax incentives. We could go further in encouraging the investment up-front, like with the R&D credit and the expensing of R&D. Those create negative tax rates already. We could expand those, because there is a justification for subsidizing R&D.

But I am not sure whether economic theory supports a patent box, because some economic theory actually says it is better to have the subsidy at the beginning instead of the end because the government shares in risk taking as well as returns. So there are a lot of theories that say doing up-front subsidies is better.

Chairman REICHERT. The gentlelady's time has expired.

Ms. SANCHEZ. Thank you, Mr. Chairman.

Chairman REICHERT. Mr. Reed.

Mr. REED. Thank you, Mr. Chairman.

Thank you to our witnesses. This is an important issue and I am glad to have this conversation.

Ms. Gravelle, you just said tax extenders, maybe there is something to do on R&D. I would assume that you think the permanency of those tax extenders should be taken into consideration and therefore I would assume that you support permanent extension of those tax extenders for business planning purposes. Yes or no?

Ms. GRAVELLE. CRS does not support any.

Mr. REED. All right, very good.

Ms. GRAVELLE. But I would say, if you give me a second, that there is a lot of evidence that the social return to R&D on average is considerably larger than the private return, which would create a reason to have very significant, potentially, incentives for R&D.

Mr. REED. And so to make it a permanent policy, I would just assume that is a much better way for businesses to have those social returns and the benefits of such a tax policy.

Ms. GRAVELLE. There is just a general argument for certainty in the Tax Code so that if you are going to have it, and we have had it since 1981, there is certainly an argument for throwing the towel in and saying we are making it permanent.

Mr. REED. I appreciate you recognizing that argument.

A question for you, just to get into the nuts and bolts and the practical effect of switching from the present system to a new system. I am very interested and concerned about the complexity of that transition, especially with the old earnings, if you would, that are trapped overseas. Because when I was in my private life, in

private business, cash is king. And a lot of these investments, it is my understanding, are tied up in inventory, facilities, capital investments, capital structures, equipment, et cetera.

How would you recommend—I am going with Mr. Dubay—how would you recommend the best way to avoid that complexity and also allow that cash flow consequence to be minimized to the extent practicable?

Mr. DUBAY. Thank you. I think the best way is to give ample time for the businesses to figure out what to do with it. So like Chairman Camp did last year, give the full 10-year window and then close it off. So you give them a full decade to figure out how to unwind that. And you do give them a lower rate in the interim period, because they started to pay tax at the 35 percent rate with the foreign tax credit on the overseas earnings.

That stays in place, as far as I understand how the law goes, if you move to a territorial system, but it just makes sense to get everything over to the territorial system as soon as you can, but give them time to figure it out on their own and not try to write too many rules.

Mr. REED. How would you write that legislation, essentially just saying it is up to you to determine how much you are going to pay each year of that 10-year window?

Mr. DUBAY. I would give them a lot of discretion as to when they pay it back during the 10-year window, but I would not allow it to go past the window.

Mr. REED. Okay. And then how would you define what is qualifying trapped foreign earnings versus nonqualifying?

Mr. DUBAY. I would have to think about it more, I haven't looked into that too much, but, I mean, I think you are looking at—everything that has not been repatriated I think is where you start and then you start looking at the stuff that has been permanently reinvested and figure out and try to break that into buckets like we do with—

Mr. REED. So does that not create an unintended consequence of those foreign earnings if someone sees the reform coming down the pipeline to immediately make those investments into capital structures, capital equipment, and other items overseas rather than what we want them to do, and that is bring the cash back and make investments on American soil?

Mr. DUBAY. I think it certainly does, and I think that is something that will have to be grappled with.

Mr. REED. I appreciate it.

Mr. Suringa, can you offer any insight into that?

Mr. SURINGA. I think I would agree that a long period and a relatively low concessionary rate on the earnings are the best way to ensure that it can be done smoothly.

Mr. REED. And then how about the unintended consequence that I potentially saw on the horizon, how would you minimize that?

Mr. SURINGA. I think if that was a significant concern—and I also would have to look at sort of exactly how it would be derived, because what you would presumably do is take a snapshot of the earnings and profits as of the date of enactment or a particular date that is chosen by Congress and then spread that out over the

period and say the tax associated with those earnings has to come back in.

So I think the way to deal with it would be to provide one rate and let people sort it out for themselves rather than try to say, well, we are going to give a concessionary rate to this piece and not to that piece, because then you have people interested in——

Mr. REED. One rate for the old earnings and the new earnings.

Mr. SURINGA. To my mind, one rate is easier. I mean, it certainly is easier to administer. There may be companies that come in and say: No, that just isn't going to work for us. But you have a lot of complexity associated with trying to categorize assets and you may have gamesmanship.

Mr. REED. And that is one of the big concerns I have too as we go down this path. If one of our fundamental goals of tax reform is to simplify the Code, both corporate and individuals, I am fully in on both, does this not generate much more complexity and isn't that a concern that has to be taken into serious consideration as we go forward?

Mr. SURINGA. Well, this particular complexity would only be with respect to the transition rule, then it would be done. So the system as a whole could be much simpler going forward than it is now. It wouldn't be hard for it to be simpler than it is now.

Mr. REED. Very good. I appreciate that.

I yield back, Mr. Chairman. Thank you.

Chairman REICHERT. Mr. Larson, you are recognized.

Mr. LARSON. Thank you, Mr. Chairman. I thank you and Mr. Neal for holding this hearing. I thank the witnesses.

I wish we had an opportunity to further delve into some proposals made by our colleagues, Mr. Renacci, Mr. Pascrell, and Mr. Blumenauer, to really tackle this issue. But we are talking about repatriation. Is repatriation an economic term or is it a political term of art?

Mr. Dubay. I mean, what does it mean economically, or is it a political term of art?

Mr. DUBAY. I think I am going to go with political.

Mr. LARSON. Is it political, Mr. Suringa?

Mr. SURINGA. I only see things from a tax perspective, so I view it as a tax term of art.

Mr. LARSON. A tax term of art. So repatriation, what would patriation be as a tax term?

Mr. SURINGA. So patriation refers to the United States.

Mr. LARSON. Oh, it is the United States?

Mr. SURINGA. Yes.

Mr. LARSON. Well, I am just trying to help out the people at Augie & Ray's who are trying to figure out when we talk about this repatriation, patriation is United States, repatriation is——

Mr. SURINGA. Bringing it back to the United States.

Mr. LARSON. Bringing it back because it went where?

Mr. SURINGA. It was earned abroad and we are bringing it home.

Mr. LARSON. Oh, it is earned abroad, so it is overseas. So then what would deemed repatriation be?

Mr. SURINGA. Even if you didn't bring it back, we treat you as if you did.

Mr. LARSON. Okay, so patriation is United States, repatriation is bringing it back, and deemed is we deemed it so even if you didn't?

Mr. SURINGA. Yes.

Mr. LARSON. And those are economic policies?

Ms. Gravelle, do you agree with that or—

Ms. GRAVELLE. Well, there are economic concerns and considerations with repatriation because our laws limit in some ways the freedom with which you can use the money abroad, although experience with 2004 showed that it didn't have anything to do with investment.

So without some kind of a scheme, which these gentlemen or at least you may know more about it than I do, to try to get that money back without paying the tax, you are not supposed to use it for investment in your own firm or for paying dividends to your shareholders. So it does matter.

Mr. LARSON. Mr. Barthold, deemed, what does that mean when we say it is deemed? Because, again, I am trying to just help out the people back home trying to figure out this policy, because we are dealing with infrastructure, and yet we are dealing with patriated, repatriated, deemed repatriated, and it is kind of confusing, I would daresay even to Members of Congress.

Mr. BARTHOLD. Well, as Mr. Suringa pointed out, when we talk about a proposal about deemed repatriation, we are first of all talking about subjecting to current U.S. tax foreign-source earnings. We permit under present law the tax on foreign-source earnings to be deferred until you repatriate or bring the money back to the parent corporation. Deemed repatriation says, regardless of what you actually do with that money, we are going to pretend that you bring it back and subject it to taxes.

Mr. LARSON. I think that phrase, "regardless of what we do," I think that is the operative phrase.

Mr. BARTHOLD. Regardless of what the business does.

Mr. LARSON. And so this hearing, while I wish it was delving into the very substantive proposals that our colleagues on both sides of the aisle have addressed, we are going to deem as kicking the can down the road because it is politically not safe to make decisions, whether it relates to a gas tax, whether it relates to a carbon tax, whether it relates to any of the solid proposals that are out there, because you are never going to get profiles in courage when the country is crumbling around us. We have these faux hearings on a complicated set of terms when all American citizens want us to do is reinvest and rebuild the country as it is crumbling around us.

And deeming it so doesn't make it so. And I think this Congress and this Committee has to face up to its responsibility, and that is to make sure that in order for commerce to travel, as a number of you have pointed out, we need to make those very investments which will continue to help our economy flourish.

Mr. Chairman, I do thank you for this opportunity. I do hope we get to our colleagues' proposals. But let's all be clear about this. This is all punting until after the session, deeming until after this session is over to an opportunity politically to maybe put a big bow around an omnibus bill. And I have said this before and I will say

it again, that the House of Representatives and this Committee shouldn't be a sophisticated messaging body. We should actually legislate.

And with that, I will yield back my time.

Chairman REICHERT. Thank you, Mr. Larson.

Mr. Young.

Mr. YOUNG. Well, I thank the Chairman, and I will begin the same way I began last week as we discuss the Highway Trust Fund and the need to invest in infrastructure. I think it is important, Mr. Chairman, that we are focusing on this issue and I thank our witnesses.

So start beyond that by acknowledging there are things beyond direct funding that we can be doing to help solve our longer-term infrastructure problems, and some of that pertains to tax policy that encourages the development of public-private partnerships, and I think we need to do more of that. I also want to be clear that I understand the need to safeguard the Highway Trust Fund so it can fund more of these infrastructure improvement projects.

I am opposed to the enactment, as are so many of my colleagues and for so many of the same reasons, of a one-time repatriation. So go on record with that, but do not rehash the same questions.

I think if a repatriation is done, it is going to have to be done in conjunction with broader improvements in our own competitive international tax system. That is really where I want to go with my line of questioning.

Companies are being forced in my home State of Indiana and across this country to move their operations overseas. And so many foreign countries are getting a jump on us with respect to changing their tax rules in a way that will cause more U.S. companies to leave unless we act fairly quickly here.

Indiana on a per capita basis is the biggest U.S. manufacturing State we have, and we have a robust life sciences industry. So research and development on both the manufacturing side and the life sciences side is quite important. Some countries have already changed their tax rules, so it will effectively force these types of companies to move operations overseas.

And I want to get your sense, Mr. Dubay and Mr. Suringa, as to why this is happening, just from a very basic standpoint. Why are they locating operations from our manufacturing and life science companies in Indiana overseas?

Mr. DUBAY. Thank you for the question.

I think there are two reasons why. First is nontax, and that is that overseas markets are growing, that is where the growth markets are, so you will see businesses opening up operations there to meet those growing demands. And as I always point out when the issue of jobs overseas and outsourcing comes up, is let's not lose sight of the fact that if a U.S. business' products are in more demand around the world, that is a good thing for the business and for the United States. Let's not denigrate that.

There also is certainly a tax aspect to it. It is just more advantageous, it is more profitable to locate overseas. Tax rates are lower, there are other issues besides just the tax rate that go into it. But it just is more profitable to invest overseas right now than it is here in the United States because of our high rate.

Mr. YOUNG. Mr. Suringa, focusing not on the demand-related reasons, but specifically the tax-related component, please.

Mr. SURINGA. So I think it is a combination of lower rates, it is an increasing prevalence of tax incentives, and it is also pressure to make those tax incentives specifically focus on moving people. So part of BEPS is that tax policy should follow where the people are. And so countries that have these—historically the patent box regime was where you just registered a patent in a tax haven, it didn't matter where it was created, you got a special tax rate. Now you have to move the people there.

Mr. YOUNG. So, Mr. Dubay, I know you work at Heritage, you are here representing yourself. Heritage, as someone who worked there for a very short period of time, I know is not just a think tank, but you also take into account political factors when it comes time to making policy recommendations. So I would ask you if you could factor in what is realistic, what can Congress do between now and, say, the end of the year to help address some of these dynamics that are hurting Indiana workers?

Mr. DUBAY. Sure. Thanks again for the question.

So recently I released a paper that hit on this very topic. I don't think there is time left in this year for broad fundamental tax reform. I think the window is closing on business owner reform, but I thought for a while there was a window with President Obama and Congress where there was interest on both sides for business or corporate tax reform. I think that is less likely as time goes on.

But I see no problem with not only breaking down to business individual, but breaking down business into its component parts, which would be a lower rate or fixing the cumbersome and outdated depreciation rules or moving to international. Any of those three pieces would be tremendously beneficial. You could also do things like make bonus depreciation permanent, and that is a big step in the right direction on depreciation.

Mr. YOUNG. Thank you. I yield back.

Chairman REICHERT. Mr. Doggett.

I might point out that Mr. Doggett and Mr. Blumenauer and Mr. Pascrell, who just disappeared, are not Subcommittee Members, but they are part of the full Ways and Means Committee and are invited here.

And we are pleased to have you.

And they will be asking questions.

Mr. DOGGETT. Thank you, Mr. Chairman. I am just following you from our last Subcommittee working together.

I want to begin by commending the National Association of Manufacturers, the Business Roundtable, the Alliance for Competitive Taxation, and the National Retail Federation for speaking out this week against repatriation as a means of financing the highway system which needs not only moneys, but it needs certainty. These groups have noted that this is not the way to go either for our highway system or for our tax system.

These various repatriation proposals are certainly a loser for the United States Treasury. And the suggestion that, well, we are going to have repatriation and it is only a step to moving toward a territorial system that we can't get this year, but maybe we will get it after the election, or maybe we will get it in 5 or 6 years,

is really misleading. All we are really doing is just repeating the failure of 2004, the so-called American Jobs Creation Act, when it came through this Committee and the floor of the House.

And I think it is understandable why this approach is being advanced. Indeed, one of the Members of this Subcommittee is quoted this afternoon in *Politico* as saying that repatriation is the only thing the Republicans can agree on as a means of financing our highway system. And it is extremely appealing. You have a handful of multinational companies that benefited in 2004, that really got away with highway robbery in paying a nickel on the dollar, a deal that any American working family would love to have as their tax rate on all their earnings, 5, 6 cents, less whatever credit they might have had overseas.

And they are out there saying we would love the government to tax this, just don't tax us more than a nickel, a dime would be extortion, don't tax us more than a nickel on a dollar of our earnings. And all this money is available right now, we are begging you to take it, so we can bring back our earnings as we did in 2004 and pay our executives more and give more stock buybacks and dividends, but not create jobs with it as we promised we would do.

That kind of system is extremely appealing when the only other alternatives which could be initiated immediately and should have been initiated years ago are to provide reliance on a user-pay system, which built our highway system beginning with President Eisenhower and which has been the means of bipartisan support for transportation infrastructure in the past.

The cost of moving to repatriation in any form is very, very real. That is one of the reasons as far as any kind of temporary system that Senator Grassley with the Senate Finance Committee promised that it would be one time only when it was done in 2004, because he realized what a costly approach it was. Of course, it is not one time only because ever since then there have been those whose appetite was whetted by this one-time opportunity and what they got away with, and so they are asking it be done again, and they will ask that it be done again if this is permitted.

These profits that are allegedly trapped offshore are often at work right here in America. They can be invested in Treasury bills here, they can be invested in a hedge fund, they can be invested elsewhere. They just can't be used to pay executives more money or stockholders more dividends.

The deemed repatriation approach, Dr. Gravelle, that you talked about, isn't it true that even if the—they call it deemed, it is really forced repatriation, and in the case of some businesses it really amounts to tax on wealth as held abroad, a concept that hasn't been a principle of our taxation system here in the United States. But isn't the effect really revenue-wise likely to be a loss for the Treasury, whether you call it forced mandatory repatriation or voluntary repatriation?

Ms. GRAVELLE. Well, it depends on the rate and whether, of course, you have a large rate on this fixed wealth amount or the stuff that can't be brought back anyway. So it would depend. But the point is at the rates, for example, in the Camp bill, there would probably be a revenue loss at those low rates because it will still allow you, if you had it within our current system, that is a stand-



alone, because it would still say that you don't then have in the future to repatriate at 35 percent. You have already done it, you already got that money to send back without paying tax. And plus you again have this moral hazard sort of problem, this incentive to say: Well, they gave us a great deal here, so maybe we will get one in the future, so better to stash your money abroad.

Chairman REICHERT. The gentleman's time has expired.

Mr. DOGETT. Thank you.

Chairman REICHERT. Thank you.

Mr. Renacci.

Mr. RENACCI. Thank you, Mr. Chairman. It is really clear—and I appreciate you having this hearing and I appreciate what I have heard from the witnesses—but it is really clear that our international tax system is outdated and anticompetitive, our current rules discourage domestic investment and make U.S. companies vulnerable to foreign takeovers.

I also recognize the urgency for reform. I am aware that actions resulting from the BEPS project will not only further erode the U.S. tax base, but also force U.S. multinationals to consider relocating their skilled professionals abroad. I think I heard one of the witnesses say that. That is why I really believe reforming our international tax rules to make the U.S. companies more competitive in the global marketplace is one of the most important things this Congress can do this year.

We need to stabilize our tax base, to ensure that we still have that tax base when we actually have an Administration that is serious about engaging in comprehensive tax reform.

What I have heard so far, though, I think there is a consensus, at least with Mr. Dubay and Mr. Suringa, is there is a consensus that in conjunction with moving to a territorial-based dividend exemption system, some form of deemed repatriation is acceptable.

Mr. Dubay, do you agree with that?

Mr. DUBAY. Yes, I agree.

Mr. RENACCI. Mr. Suringa, do you agree with that?

Mr. SURINGA. Yes, sir.

Mr. RENACCI. The purpose, though, is not really to talk about good repatriation, bad repatriation. And one of the things that is important to me—and I do have a bill out there with several colleagues and it really says we need to look at all these options, and repatriation is one of the options we should look at. But bad repatriation or good repatriation in my mind wasn't the purpose of this hearing. This hearing is really to understand better repatriation of foreign earnings as a source of funding for the Highway Trust Fund.

So I was trying to make some notes. Mr. Suringa, you said actually in your testimony: "The best use of any revenue generated by the move to an exemption system would be to design the system in a way that provides meaningful tax relief to the companies paying the tax and encourages job creation and creation of intellectual property in the United States." I assume you agree with that comment.

Mr. SURINGA. I do.

Mr. RENACCI. You also made a comment earlier, though, to Mr. Tiberi that the use of the revenue could be used for the Highway Trust Fund.

Mr. SURINGA. I think that is more of a—that is a government accounting issue. I am not an expert on government accounting, but it seems the money comes in and how it is allocated from the general fund to the Highway Trust Fund is a matter Congress can decide.

Mr. RENACCI. But you would agree the best use would be to design the system in a way that provides meaningful tax relief to those individuals—

Mr. SURINGA. Yes, sir.

Mr. RENACCI. I am trying to really again better understand repatriation and what some of your thoughts are.

Mr. Barthold, do you have the expertise on whether repatriation—and, again, this just gets back to, is repatriation a good idea for the Highway Trust Fund? I am looking for that answer. Do you have the expertise on whether repatriation of foreign earnings is a viable source of funding for the Highway Trust Fund?

Mr. BARTHOLD. Mr. Renacci, that really isn't a question for me representing the Joint Committee to answer. We try to provide the Members with information about technical policy aspects, economic aspects of different proposals that you consider, but I wasn't elected to make a tough decision like that one.

Mr. RENACCI. Okay, I appreciate that answer, that is why I am asking the question.

Mr. Suringa, do you have the expertise on whether repatriation of foreign earnings is a viable source of funding for the Highway Trust Fund?

Mr. SURINGA. My focus is international tax, but what I guess I could say is, look, it is 6 years' worth of revenue and it gives you time to think of a long-term funding solution, which I think we all agree is necessary for the Highway Trust Fund. So to the extent it scores like that, I think it is worth thinking about, it is worth putting it on the table.

Mr. RENACCI. So if it all went to the Highway Trust Fund—

Mr. SURINGA. That is right.

Mr. RENACCI [continuing]. But you have also said that the best use is to lower the tax rates for—

Mr. SURINGA. That is right, that is right, sir.

Mr. RENACCI. Mr. Dubay, do you have the expertise to tell me whether repatriation of foreign earnings is a viable source of funding for the Highway Trust Fund?

Mr. DUBAY. Partially. As long as enough revenue is available to facilitate the change to the territorial system or a dividend exemption regime from the worldwide system, how the rest of the revenue is used I will leave to the budget experts to decide whether that is good or bad policy. Enough revenue needs to be used to make sure that you can get to a good and proper dividend exemption regime, and that does require a portion of the money that would be raised from deemed repatriation.

Mr. RENACCI. Thank you.

I do believe it is important for Congress to act this year to make our international tax rules more competitive, although I do have

concerns on whether international tax reform can truly be a source of funding. I appreciate your comments. I do know that we need to address a long-term, sustainable Highway Trust Fund. And we cannot continue to pass this on to our children and grandchildren.

Mr. Chairman, I yield back.

Chairman REICHERT. Thank you, Mr. Renacci.

Mr. Blumenauer is recognized.

Mr. BLUMENAUER. Thank you, Mr. Chairman. I appreciate your courtesy and Mr. Neal allowing us to sit in on the proceedings. It has been fascinating. I appreciate the big picture that is being asked. There are those who float repatriation as sort of a Holy Grail, that it is a painless way to somehow weave our way through the minefield that has eluded us for 22 years with the Transportation Trust Fund.

And I think the breadth of testimony indicates that there are some complexities here. There are policy questions, there are severe questions about tradeoffs, cost to the general fund. As has been pointed out, this is not free money, depending on how it is structured. It may well just be deferred money that ultimately will have a cost. And there are competing interests.

I think all of us who have worked on the Ways and Means Committee for more than 15 seconds agree that we need to make significant adjustments to the corporate tax scheme. And we appreciate our colleague, Chairman Camp, working hard on that in a number of sessions that we were involved. I thought some progress was made.

And I think it is important to approach it in the way that you have done. And this for me, I think, points out that this, even if it meets the criteria that I think are necessary for meeting the needs of the Highway Trust Fund, that is, it has to be enough money, it has to be dedicated, and it has to be sustainable, so that we are not back in the same pickle in 2 years, or 4 years, or 6 years. And so I think what I am hearing is there are some questions about that based on the give and take that we have had at this point.

I would just make one point, and I won't take my full 3 minutes, but I do think that it is important to note that we are making this slightly more complex than it needs to be. There is an action that this Committee could take 1 week after we come back from the 4th of July recess.

The gas tax is not complex. It is extraordinarily simple, it is a one-page bill. The gas tax is not something that is expensive to administer, the mechanism is right there. I have had extensive conversations, as I know others have, with our friend the Chairman of the T&I Committee, Mr. Shuster, and Ranking Member DeFazio, who are chomping at the bit to be able to come forward with reauthorization. But the key is they have to have a number, they have to know what they are working with.

And if Congress in its wisdom, with the Ways and Means Committee following regular order, with men and women who have been in this hearing room over the last 10 days, really dove in with this for 2 or 3 days of extensive hearings like we used to do, I mean, real work sessions, a markup, we could answer the questions that people have about the economic impact, the burden, the costs,

and consequences. And before the month of July is out, we could give them a number, and they could give us a transportation bill before the end of the fiscal year, September 30. They can do this.

The other thing that I am struck with, and I really like how our leadership, Mr. Boehner, Mrs. Pelosi, the three committees of jurisdiction, came together on the SGR fix. That kind of felt good. We had, I don't know, 290 votes or whatever it was, we jammed the Senate for a change. And did something that eluded us for over 15 years.

And I just think we could have at this dais at the next hearing the president of the AFL-CIO, the president of the U.S. Chamber, we could have truckers and AAA, local government, we could have bicyclists and people who care about transit and the people who build and maintain roads, we could have this room filled with experts who were all on the same page, supporting what has happened already this year in six Republican States, raising the gas tax.

So I think this is helpful to provide the context. I appreciate the role this Subcommittee has played in the past. And I hope that we would consider maybe having a couple, 3 days someday doing a deeper dive on the gas tax, because we can provide Mr. Shuster with what he wants in 2 weeks.

Thank you. I am sorry, I did take the 3 minutes. I apologize.

Chairman REICHERT. Yes, you did.

Mr. BLUMENAUER. Thank you for your courtesy.

Chairman REICHERT. I thank the gentlemen for his comments.

We are going to go to Mr. Pascrell next. Mr. Kelly wanted to be present for your comments.

Mr. PASCRELL. I am glad he is here. Kelly and I, Kelly and Pascrell will end on a very docile note, I am sure it will be peaceful.

Mr. Barthold, thank you, by the way, for your service. Can you explain briefly why a repatriation holiday would create revenue at first, but then add billions to the deficit in subsequent years? Can you explain that?

Mr. BARTHOLD. I will try for a brief version, Mr. Pascrell.

Mr. PASCRELL. Thank you.

Mr. BARTHOLD. Remember, we start from baseline projections. One thing to observe is that foreign-source income of U.S. persons is growing. There is repatriation under present law under the baseline on which there is residual income tax paid. And so there are multiple effects that go into our analysis of a proposal such as the Paul-Boxer proposal for a repatriation holiday.

In terms of early year pluses, we think that the attractiveness of the lower rate does mean that companies will try to pay back more dividends. Even at the low rate, if more comes back that can lead to an increase in cash receipts to the Treasury.

I should note that as part of that analysis we recognize that when companies repatriate some of the earnings, that they also have had in the past a tendency to increase dividends paid to individual shareholders or to engage in share buyback programs in lieu of dividends. Both of those are taxable events under the individual income tax, so that is another source of increased cash receipts to the Treasury in the early years.

As a longer-term matter, we view some of the repatriated earnings that would occur during the qualifying period—and in the Paul-Boxer bill that is a 5-year period—as being earnings that potentially would have been repatriated later in the budget window. And so that means what is a plus in the front of the budget period is a negative in the back of the budget period.

And then also, as has been noted, having elective repeated holidays does give an incentive to perhaps shift more of the U.S. corporate tax base abroad to affirmatively make an investment decision to invest abroad rather than in the United States, which lowers, over the long haul, the corporate tax base. That is another factor in our estimate that this loses money in the outyears.

Mr. PASCRELL. Thank you very much, I appreciate that.

I don't sense a sense of urgency here on this. I mean, we only had our first hearing just recently, and now we have a second hearing thanks to the Chairman. I don't sense urgency at all.

In recent years everything has changed. I am trying to change what is being changed to break through the political games that are being played here.

Our Federal Highway Trust Fund is dead broke. In the past 10 years no one has had the political courage to fix it. I have serious concerns with the proposals that we have seen both in the House and the Senate. The tax-deferred corporate income or repatriation to temporarily fund the Highway Trust Fund, that is not urgency, that is not a long-term solution.

Let's look at the record. We have heard today, 2004 is the last time we did this, the repatriation holiday, and what happened? Most of that money, the top 15 corporations which, combined, repatriated more than \$150 billion during the holiday, cut their workforces by 21,000 employees between 2004 and 2007.

I also worry that enacting a tax holiday would only create incentives for corporations to keep holding cash abroad. Why would a corporation invest earnings in the United States and pay full taxes on it when they can keep it in a tax haven, then be rewarded with a lower repatriation tax and use the earnings to pay themselves? Let's talk about all of the folks that got paid themselves through that money that was available in 2004.

No, I think the bipartisan Bridge to Sustainable Infrastructure Act, which myself and my good friend from Ohio, Mr. Renacci, have sponsored, is a good way to do this, a bicameral commission to fund, find a way to fund the Highway Trust Fund, a long-term, sustainable way. If the commission tells us that the repatriation is part of the solution, I would have to consider it as part of the solution.

But I cannot stress enough that whatever we do, we must also reinstitute the policy of users paying for our transportation system and address the long-term revenue. The fact is that repatriation cannot and must not be just a more complicated and expensive patch which allows the Congress to avoid the hard decisionmaking on our highway system.

Today's hearing should give pause to those banking on repatriation. Our witness last week said VMT will take 10 years.

Chairman REICHERT. The gentleman is over his time.

Mr. PASCRELL. I will yield back to the Chairman.

Chairman REICHERT. Thank you, Mr. Pascrell.

Mr. Kelly.

Mr. KELLY. Thank you, Chairman.

Mr. Pascrell, it's always good being with you.

And, panel, thanks for being here.

Mr. Suringa, just so I have this clear, you said that if we were to do the repatriation, it would be a 6-year window, depending on the percentage that we charge to bring this money back. It would provide enough money, is that correct, for the Highway Trust Fund for 6 years? Did I understand that correctly?

Mr. SURINGA. That is my understanding based on the revenue score from Chairman Camp's proposal and the estimates that I have read of the needs for the Highway Trust Fund. But I would defer to experts on the Highway Trust Fund.

Mr. KELLY. And I understand about referring to experts. I have to tell you, these hearings are oftentimes very complicated. I know Mr. Larson was trying to get down to everyday terms of what people understand and what they don't understand.

And I appreciate my friends on the other side who may talk about in 2004 we had an opportunity for repatriation, we brought the money back, and we gave the money to the people, they paid a low percentage on it, then they got to spend their money the way they wanted to. I am assuming they probably bought some other things and maybe created jobs in that market. I think there is a bounce effect with that.

But I also know that in 2009, with the American Recovery and Reinvestment Act, we spent \$800 billion-plus of taxpayers' future money, and with interest now it is \$1 trillion. I would have loved to have seen the same appetite then for the Highway Trust Fund, because we used about \$30 billion of that \$800-and-some billion to actually put into shovel-ready projects. My God, if that wasn't a jobs bill, what the hell was? That was an opportunity to change the face of this country and put us in a much better position. And the residual benefits of it would have been phenomenal.

My son just came back. I am in the automobile business. We meet quarterly, and they call it a 20 Group, and they sit down and they exchange their financial statements and they talk about best business practices.

I would just say that what we are talking about today, we don't live in a void, we know what is going on around the world, and for us to sit here with hands over both eyes and plugs in our ears and say: No, I don't want to hear what is going on overseas because, quite frankly, that doesn't appeal to me, is wrong.

People are not leaving this country because they are not patriotic. They are leaving this country because they are not going to stand here and try to operate a business model where the exact people who depend on their profitability for the revenue to drive the machine make it hard for them, whether through taxes or through regulations. You all have looked at these things.

Now, Mr. Barthold, you are in a very interesting position. You are a statistics guy. You can tell. If the manager for the Nationals asked you, "Listen, how is my lineup doing? Pretty good? How should I change it?"

"I don't tell you how to change it. All I can tell you is you have the 3, 4 and 5 hitters that are not doing what they are supposed to do."

So I understand where you are coming from. But for the rest, you see it every day. Mr. Dubay, you see it. Mr. Suringa, you see it. Ms. Gravelle, you see it. There is no reason for this country with its assets to be sitting where it is and looking at crumbling infrastructure. It is a lack of political will to get it done.

It just doesn't seem like it should be that hard. And whether it is Mr. Pascrell's and Mr. Renacci's bill, it really doesn't matter to me as long as we get these things fixed.

The upside from an economic standpoint of how this country would profit from that is off the charts. The problem is how do you get the money and where do you get it from? And I will tell you this, a drowning man grasps at all straws. Right now we have an opportunity at repatriation which will help us to a certain degree, but if we don't have comprehensive tax reform, both internationally and right here at home, we are still in the middle of a really bad situation.

I want to go back to what you said. So tell me again about this. Repatriation now would supply enough revenue to do—is it a 6-year? And not just to get us through the end of the year, but going forward, if we were able to do repatriation and dedicate that money to infrastructure, would that not raise the profitability of all the people that live in this country, the companies that work in this country, wouldn't that also just by the very nature of becoming more profitable raise tax revenue?

Mr. SURINGA. I think it would.

Mr. KELLY. Well, I mean, you can't say you think it would. It absolutely would. It is just math. I mean, the President says all the time do the arithmetic on it. More profitable companies pay more taxes, right? We are hoping for tax revenue, how do we get there? We get there by roads, rivers, railways, and runways.

So why in the heck do we sit back and let it unravel on us when we do have things available? This repatriation is a very important part of an overall fix, yes or no, to all of you, just tell me? I know you can't talk Tom.

Mr. DUBAY. As long as a dividend exemption regime or territorial system is established beforehand and the money is there to make sure that that gets established, I see it could possibly be a solution, yes.

Mr. KELLY. Okay.

Mr. SURINGA. I would think it also is important to consider an innovation box to keep research jobs here, highly-skilled jobs here.

Mr. KELLY. Yes. Ms. Gravelle.

Ms. GRAVELLE. A holiday loses money. Most deem repatriation stand-alone would lose money. And with tax reform it is used to finance other parts of tax reform. So it is hard for me to see how repatriation would play a role in financing the highways.

Mr. KELLY. No role at all?

Ms. GRAVELLE. It is hard to see it.

Mr. KELLY. It is hard to see it?

Ms. GRAVELLE. Yes.

Mr. KELLY. Okay. So revenue that could possibly come back in, I mean, it is part of it.

I would just say this. The other thing is when you collect this money, why not spend it on the people that put it in? I have to tell you, the people that I represent back home say: Listen, we don't mind paying more money, just don't use it for something else, keep it where it is supposed to be.

We have an excellent opportunity right now to bring this around and turn the whole country around. It is going to be through fixing our highways and our railways and our rivers and our runways. It is just that simple. This isn't magic. The old saying it is magic just doesn't ring true. Pulling a rabbit out of the hat isn't magic, it is how you get the rabbit in the hat to begin with.

So thanks to all of you for being here.

And, Chairman, thank you.

Chairman REICHERT. Thank you, Mr. Kelly.

Our last two speakers were interesting. It kind of brings me back to my old profession of police officer, hostage negotiator. We have differences of opinion that we need to smooth over, and we will continue the discussion at a later time.

But thank you all for the time that you took today to be here with us, because this is complicated. And I think, as Mr. Larson said, all of us are in a learning mode and trying to understand this and how it may help us or may not help us. There have been, as you heard last week, a lot of ideas on how we might move ahead on a permanent basis to fund our highway trust fund.

Here is what I heard today from folks on the panel. We are in agreement that we can't continue to kick the can down the road. We are in agreement that user fees are a must have in any solution as we move forward. And we are in agreement this is critical to our Nation, its productiveness, and our ability to lead in a global economy.

So, once again, I thank all of you for your testimony.

I have to read one last paragraph here because it is part of the rules. That concludes today's hearing. Please be advised that Members may submit written questions to the witnesses. Those questions and the witnesses' answers will be made a part of the record.

I would also like to thank all of our witnesses for appearing today. It has been an educational discussion.

And with that, the Committee is adjourned.

[Whereupon, at 4:15 p.m., the Subcommittee was adjourned.]

[Submissions for the Record follow:]





**American Chemistry Council Statement for the Record**

**Repatriation of Foreign Earnings as a Source of Funding for the Highway Trust Fund  
Submitted to the Subcommittee on Select Revenue Measures,  
Committee on Ways and Means**

**June 24, 2015  
(submitted July 8, 2015)**

Thank you Chairman Reichert and Ranking Member Neal for holding this important hearing. The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC member companies apply the science of chemistry to create innovative products and services that make people's lives better, healthier and safer. The business of chemistry is an \$801 billion enterprise and a major contributor to the nation's economy, accounting for fourteen cents of every export dollar. Last year, the chemical industry spent \$59 billion on research and development. For every job created by the business of chemistry, 6.3 jobs are generated elsewhere in the economy, totaling six million American jobs.

ACC appreciates the opportunity to file a statement for the record following the Select Revenue Measures Subcommittee hearing on June 24, 2015 entitled "Repatriation of Foreign Earnings as a Source of Funding for the Highway Trust Fund."

ACC would be interested in playing a constructive role in broader international tax reform discussions. However, there is much uncertainty and an apparent lack of understanding on Capitol Hill with respect to the complexity of issues surrounding repatriation of foreign earnings. ACC strongly opposes proposals to tax historical foreign earnings, particularly if attempted outside the context of broader international tax reform. For that reason, ACC offers the following observations and comments.

For most chemical manufacturers, such proposals would tax earnings from previous years that have been reinvested abroad in physical plant and equipment and in the working capital necessary to serve our customers and grow our businesses in very capital-intensive foreign operations. In the case of the chemical industry, the capital expenditure necessary for construction of a world-class plant can be in the billions of dollars. A common scenario for the U.S. chemical industry when making a significant overseas capital investment in a chemical facility is the need to be near competitively-priced and ample sources of feedstocks and to be close to the prime markets for the products, with earnings often then reinvested in facility infrastructure or new physical versus paper investments.



July 8, 2015  
Page 2 of 3

In most cases, earnings are not held offshore as cash or cash equivalents, except for that level of working capital necessary to support the local businesses. It is critical to understand this, in contrast to the business models of some industries that require little or no reinvestment of foreign earnings in high-cost plant and equipment.

Among proposals under consideration for raising tax revenue to pay for highway and infrastructure projects, and subject of the June 24 hearing, is the device sometimes referred to as "deemed repatriation" of dividends from foreign subsidiary companies (also described as "mandatory repatriation"). Under deemed repatriation, the accumulated earnings of foreign subsidiary companies would be considered actually to have been paid to U.S. parent corporations as dividends, even though there is no pool of cash from which the subsidiaries could remit actual dividends. This is in contrast to proposals also under discussion for "voluntary repatriation" of dividends from foreign subsidiaries, under which dividends of cash actually would occur.

In the case of the chemical industry, reinvestment of foreign earnings in plant, equipment, and operating assets means, as noted, little or no cash actually available from which to pay dividends to the U.S. parent companies. With the exception of relatively small amounts of working capital to pay local taxes and receivables and meet other current expenses, foreign subsidiaries typically retain only incidental amounts of cash. Accordingly, for the chemical industry, the distinction between actual and deemed dividends is very real and has very serious economic consequences. Reinvestment of foreign earnings means there is insufficient cash available for dividends to the U.S. parent corporation from which the parent could satisfy tax liability arising from the deemed repatriation. The term "repatriation" in this context is inaccurate and misleading because the proposals do not require nor anticipate any actual return of cash. The deemed repatriation proposals simply mandate U.S. tax on foreign earnings as though the earnings *were* distributed to U.S. parent corporations as dividends.

ACC member companies oppose proposals for deemed repatriation all the more when such proposals are taken without regard to efforts to enact international business tax reform. Reformers regard the U.S. worldwide system of taxation as obsolete, with the U.S. virtually alone among developed countries retaining the system. Practically and fundamentally, deemed repatriation would disregard global economic and business realities to which the key sector of chemical manufacturing is subject. The timing of these proposals is unfortunate, given the unprecedented growth in domestic manufacturing as a result of the chemical industry's continued and looming expansion.

The chemical industry has budgeted over \$140 billion over the coming years for facilities to take advantage of shale gas resources beginning to come on line. Shale gas will restore a historical cost advantage enjoyed in past years by U.S. chemical manufacturers. The new cost advantage will result in lower supply costs for all manufacturing sectors, because virtually all rely upon chemical products. The effects of shale gas should create a "manufacturing renaissance" expanding jobs and the U.S. economy, as well as growth of U.S. export markets. However, deemed repatriation and its demands against capital otherwise available to the chemical industry would slow and perhaps undermine construction of chemical facilities to exploit shale gas development.



July 8, 2015  
Page 3 of 3

ACC provides this statement for the record with the hopes that it will inform the discussion on broader international tax reform, as well as clearly articulate the inappropriateness of utilizing such proposals as a temporary fix for the Highway Trust Fund. Deemed repatriation has very real consequences for the manufacturing sector, and in particular the chemical industry. International tax reform may well be a topic of serious consideration in coming months, and we are hopeful that the complexities of deemed repatriation will be fairly understood for an informed discussion.

\*\*\*\*\*





**Testimony of the American Road &  
Transportation Builders Association**

**Repatriation of Foreign Earnings as a Source of  
Funding for the Highway Trust Fund**

**House Ways & Means Committee  
June 24, 2015**

Chairman Reichert and Representative Neal, we appreciate you scheduling today's hearing to discuss potential alternatives to stabilize the Highway Trust Fund. The American Road & Transportation Builders Association (ARTBA) is pleased to provide this statement for the subcommittee's deliberations on this important topic.

**Highway Trust Fund Needs a Permanent Solution**

The federal highway and public transportation programs are already on their second temporary extension since the 2012 surface transportation law, the "Moving Ahead for Progress in the 21<sup>st</sup> Century Act" (MAP-21), expired more than eight months ago. President Obama and leaders of both parties and both chambers have all routinely pointed to a long-term surface transportation reauthorization bill as an area of common ground where meaningful progress could be achieved in 2015. That will not happen unless and until the Highway Trust Fund's revenue stream is stabilized and increased.

While we understand the focus of today's hearing is the potent for repatriation of foreign earnings as source of revenue to temporarily stabilize the Highway Trust fund, it is important that all members appreciate why the fund continues to experience revenue shortfalls. The root of the trust fund's challenge is not an antiquated gas tax, alternative-fueled vehicles dominating the U.S. automobile fleet, or improved vehicle fuel economy, but a more direct and obvious flaw: the federal motor fuels tax rates and other highway user fee rates have not been adjusted for 20 years. As such, it should surprise no one that the Highway Trust Fund is on the verge of insolvency. The only surprising thing is that it did not happen sooner.

Allowing the Highway Trust Fund's structural revenue deficit to persist has forced five separate revenue shortfalls since 2008 and a sixth crisis is looming later this summer. Instead of generating sufficient resources to support needed federal investment in the nation's surface transportation network, Congress has chosen to infuse the trust fund with more than \$60 billion from non-transportation portions of the budget—\$50 billion of which added to the deficit. The U.S. Department of Transportation (DOT) will be forced to begin rationing reimbursements to state departments of transportation in August unless the trust fund is stabilized. Further, the Congressional Budget Office (CBO) projects that without new resources the trust fund will be unable to support any new spending when FY 2016 begins—requiring a one-time cut in surface transportation investment of nearly \$49 billion. This uncertainty about future federal investment has caused seven states in 2015 to delay roughly \$1.6 billion in planned highway improvements.

Mr. Chairman, the Highway Trust Fund's revenue shortfall is not going away. In fact, the CBO March baseline shows failing to permanently address this situation will allow the problem to get dramatically worse. The gap between incoming revenues and existing levels of highway and public transportation investment will be \$11 billion in FY 2016. The shortfall would grow to \$23 billion by FY 2025.

### **Getting Beyond Gridlock**

Supplementing the Highway Trust Fund's existing revenue stream with the proceeds of a new repatriation tax on foreign earnings of U.S. based multi-national companies has been frequently discussed as a way to temporarily stabilize the trust fund. Repatriation—like the “pension smoothing” mechanism used in 2012 and 2014—is a temporary solution to a permanent problem.

If repatriation revenues were used to support a six-year surface transportation reauthorization bill, Congress would again be confronted with a Highway Trust Fund revenue shortfall. This time, however, the annual gap would be \$19 billion instead of the \$11 to \$16 billion Congress is seeking over the next six years. By comparison, the trust fund shortfall at the end of six years under the Obama Administration repatriation plan would exceed \$30 billion.

If repatriation is, indeed, politically viable, the anticipated revenue could be used in a creative way—to pay for a federal tax rebate—that would assure a sustainable, long-term revenue stream for federal highway and transit investments long beyond when the repatriation window closes.

ARTBA's "Getting Beyond Gridlock" (GBG) plan would marry a 15 cents-per-gallon increase in the federal gas and diesel motor fuels tax—if politically necessary—with a 100 percent offsetting federal tax rebate for middle and lower income Americans for six years. The plan would fund a \$401 billion, six-year highway and mass transit capital investment program and provide sustainable, user-based funds to support it for at least the next 10 years.

Under the GBG plan, a single tax filer with an Adjusted Gross Income (AGI) of \$100K or less would receive a \$90 per year tax rebate—the average annual cost to them of a 15 cent gas tax increase. Joint filers with an AGI of \$200K or less would receive a \$180 rebate. Internal Revenue Service data show the rebate would completely offset the gas tax increase for 94 percent of American tax filers.

There is recent precedent for such federal tax rebates. During the Bush Administration, Congress provided tax rebate checks of up to \$600 for individual filers and \$1,200 for joint filers in 2008. A similar tax rebate plan was enacted in 2001.

The GBG tax rebate proposal would require \$103.3 billion over six years. A one-time federal repatriation transition tax could pay for it.

The Obama Administration has proposed using a 14 percent transition tax to augment the existing HTF revenue stream and fund its \$478 billion six-year transportation proposal.

Last year, former House Ways & Means Committee Chairman Dave Camp (R-Mich.) proposed raising \$126.5 billion over 10 years through a repatriation transition tax for the HTF to fund an eight-year status quo surface transportation investment authorization as part of his comprehensive tax reform plan.

This year, Rep. John Delaney (D-Maryland) has introduced legislation to use deemed repatriation at an 8.75 percent tax rate to generate an additional \$120 billion to the HTF for six years.

The GBG proposal provides an answer for those who believe Americans are not willing or able to invest another \$90 a year to improve their mobility and help keep the cost of just about everything they buy down. The proposed additional gas tax cost over a year is less than we all pay each month for cell phone service.

A 15 cent motor fuels tax increase would generate an additional \$27 billion per year for HTF investments. That would end the eight-year HTF revenue crises cycle. With the additional

revenue, the existing core highway and transit programs could keep pace with forecasted inflation. Given that the FHWA forecasts truck traffic will increase 56 percent between now and 2040, we recommend using a significant portion of the remaining newly generated user revenue—about \$12 billion per year—to fund federal investments in multi-modal capital projects that upgrade the U.S. freight network and help reduce traffic congestion bottlenecks on it.

The GBG proposal gives the Congress additional time to fully explore, and if deemed appropriate and workable, transition to other user-related mechanisms that have been discussed for funding future transportation infrastructure investments—like dedicated energy development fees, per barrel or refinery fees, VMT fees or Interstate tolling. In the meantime, state programs and the mobility of U.S. businesses and all Americans won't be held hostage to indecision in Washington.

Chairman Reichert, Representative Neal and all subcommittee members, thank you again for convening today's hearing. ARTBA and its members look forward to working with you to develop and enact a long-term Highway Trust Fund fix that will enable needed highway, bridge and public transportation improvements to move forward.



June 23, 2015

The Honorable Dave Reichert  
Chairman Select Revenue Measures SC  
House Ways and Means Committee  
Washington, DC 20515

Dear Representative Reichert,

The American Sustainable Business Council (ASBC) opposes the use of repatriated foreign earnings to finance the Highway Trust Fund. A tax holiday is the most likely way for Congress to repatriate the offshore profits, but these one-off events do not work.

Senators Rand Paul (R-KY) and Barbara Boxer (D-CA) have introduced a tax holiday bill (S. 981) to let companies repatriate offshore profits at a 6.5 percent tax rate instead of the usual 35 percent. The tax revenue would go into the Highway Trust Fund and one-quarter of the rest of the money would have to go into new U.S. jobs and research among other things.

This has been done before, in 2004 under the American Jobs Creation Act, and it failed badly, according to a 2011 report by the majority staff of the Senate's Permanent Subcommittee on Investigations. The AJCA taxed repatriated funds at a 5.25 percent rate and like the Paul-Boxer bill required the funds to go into U.S. job creation and research.

Despite that tax holiday's \$3.3 billion cost in lost tax revenues, the number of U.S. jobs fell rather than grew. After repatriating \$150 billion, the top 15 repatriating corporations cut their U.S. workforce by 21,000 jobs. They also reduced their U.S. research.

The AJCA said the funds couldn't go to stock buybacks, yet the top 15 corporations boosted their stock buybacks. It said the funds couldn't go to executive compensation, yet executive compensation grew at those same 15 corporations.

The 2004 tax holiday did nothing to slow the use of tax havens although most of the funds had been repatriated from tax havens. In fact, the firms that had repatriated the most money during the holiday, moved funds offshore at a faster rate after the holiday.

TEL: 202.595.9302  
1401 NEW YORK AVE. NW  
SUITE 1225  
WASHINGTON DC 20005

ASBCOUNCIL.ORG



The 2004 holiday did little for the larger U.S. economy. To be sure, U.S. multinationals in the pharmaceutical and technology industries got tax breaks on the \$140 billion they brought home. But U.S. domestic companies – with no money offshore – got nothing. In effect, that tax holiday put them at a competitive disadvantage.

ASBC believes that all businesses must pay their fair share of taxes. Many businesses that had no profits offshore continue to pay their full share of the essential investments and services that no individual or business can make alone. Every business operating in the U.S. relies on these investments for their success. They should not have to carry this burden alone. U.S. multinationals must pay their fair share.

Another holiday would once again reward our multinationals for avoiding the taxes they owe on their offshore profits. It would once again encourage them to send even more money offshore. It will not fix the Highway Trust Fund's financing problem.

President Obama has a proposal that would repatriate offshore profits as a part of corporate tax reform. Under this, U.S. multinationals would pay a one-time 14 percent tax on all of their current offshore profits and then a 19 percent minimum tax on all subsequent foreign earnings. Whatever the merits of this – and ASBC believes that the 14 percent repatriation rate is too low – there's no prospect that corporate tax reform will happen this year.

Congress needs to pass a long-term highway bill now and not at some indeterminate time down the road. The current funding patch is the 33<sup>rd</sup> such patch. That's irresponsible. Businesses know intimately how badly U.S. roads and bridges need to be upgraded. Congress must take responsibility now and not resort to another failed tax holiday.

ASBC is the leading business advocacy group working to implement public policies that build a sustainable economy. Through its national member network it represents more than 200,000 businesses and more than 325,000 entrepreneurs, executives, managers and investors.

Sincerely,

A handwritten signature in black ink that reads "David Levine". The signature is fluid and cursive, with the first name "David" and last name "Levine" clearly distinguishable.

David Levine  
CEO and co-founder





United States House of Representatives  
Committee on Ways and Means  
Subcommittee on Select Revenue Measures  
Hon. Dave Reichert, Chairman

Testimony of:  
Mr. Scott Seeley, Chairman  
American Traffic Safety Services Association (ATSSA)

July 24, 2015

Chairman Reichert, Ranking Member Neal and members of the Subcommittee – thank you for accepting my testimony on behalf of the American Traffic Safety Services Association (ATSSA). My name is Scott Seeley, and I serve as Chairman of the Board of ATSSA. In addition, I am Vice President of Ennis-Flint, the world's largest pavement marking manufacturer.

ATSSA's 1,600 members manufacture, distribute and install roadway safety infrastructure devices such as traffic signs, pavement markings, rumble strips, guardrail and cable barrier and work zone safety devices, among others. Our mission is ***"To Advance Roadway Safety"*** with the goal of reducing roadway fatalities toward zero.

A decade ago, more than 43,000 people were killed annually on U.S. roads. Today, that number has been reduced to less than 33,000. However, 33,000 fatalities are still unacceptable. We know that roadway safety advancements help save lives. In fact, nearly 61,000 men, women and children are alive today because of improvements. Investments in roadway safety are critical and must be continued in the reauthorization of the MAP-21 legislation.

In order for ATSSA members and roadway safety professionals across the nation to continue to move toward zero deaths on our roads, Congress *must* take action and pass a robustly-funded, long-term highway bill. However, in order for this to occur, the Highway Trust Fund (HTF) needs to be financially stable. At a time of growing transportation investment needs, we cannot allow the HTF to become insolvent.

ATSSA supports an increase in the federal gas and diesel excise taxes. While we understand the hesitancy of Congress to increase these user fees, these are an efficient, proven and easily administered method for raising the revenue needed for transportation projects across the country. The Federal gas tax is currently 18.4 cents and has stayed fixed since 1993. Adjusted for inflation over those 22 years those dollars would now be equivalent to 11.2 cents. This is not sustainable and we have already seen for several years now the effect of not properly funding our Nation's transportation needs. To get us to where we should be based on 18.4 cents back in 1993, adjusted for inflation, we are asking for the gas tax to be immediately increased to \$30.2 cents

If Members of Congress remain unwilling to support an increase in these direct user fees, then another option to fund the federal transportation program is to use repatriated foreign earnings. ATSSA supports an initiative to use these dollars for transportation projects, especially if a percentage of that investment is dedicated to infrastructure safety which will reduce roadway fatalities.

In addition to finding a funding solution, ATSSA supports efforts to provide financing options as well. The ability to leverage private funds through public-private partnerships (PPP) - for a public good, such as transportation projects - can be an important tool for certain situations.

Are PPPs a panacea? We do not believe so; however, in this era of funding challenges across the board, it is an option that must be considered.

ATSSA supports your efforts to investigate, find solutions, and most importantly, find the revenue needed for Congress to pass a long-term, safety-focused transportation bill.

Chairman Reichert, Ranking Member Neal and members of the Subcommittee, thank you for the opportunity to submit testimony on behalf of the men and women who work daily to reduce roadway fatalities toward zero.





**Submission for the Record**  
**to the**  
**Select Revenue Measures Subcommittee**  
**of the**  
**House Ways and Means Committee**  
**on behalf of**  
**The National Retail Federation**  
**for the**  
**Hearing on Repatriation of Foreign Earnings as a Source of Funding for the Highway**  
**Trust Fund**

**Rachelle Bernstein**  
*Vice President, Tax Counsel*  
National Retail Federation  
202.626.8168  
[bernsteinr@nrf.com](mailto:bernsteinr@nrf.com)

NATIONAL RETAIL FEDERATION  
1101 New York Avenue, NW, Suite 1200  
Washington, DC 20005  
[www.nrf.com](http://www.nrf.com)

The National Retail Federation (NRF) strongly supports proposals for comprehensive reform of the federal income tax by lowering tax rates and broadening the tax base. We believe this type of reform will greatly boost investment in the United States, economic growth, wages and consumer spending. We are concerned about Congress selecting individual income tax base broadeners and using them to finance spending programs. This would be the case if Congress enacted a mandatory tax on accumulated foreign earnings, so-called "repatriation," to pay for the highway trust fund. Not only would this result in a tax increase for our members with international operations, but also it would remove an important element of many tax reform proposals. The only way that the United States can reduce its corporate tax rate to a level that will bring investment back to this country is if base broadeners are used to reduce the tax rate, not pay for various spending programs.

By way of background, the NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

#### **Corporate Tax Rate Reduction Will Drive Economic Growth**

Because the U.S. corporate tax rate is the highest in the industrialized world, U.S. companies are choosing to make more investments outside of the United States and foreign companies are choosing to make more investments in countries with lower corporate tax rates rather than the United States, where they can achieve a better return on their investment (ROI). Since 1988, the average statutory foreign corporate income tax rate (including both national and subnational corporate income tax rates) has fallen from 45.4% to 29.6%. This is more than 24% lower than the current 39% rate in the United States, which is the combined federal and average state statutory corporate tax rates.

According to a study performed by Ernst & Young and Tax Policy Advisors for the RATE Coalition, in the long-term U.S. GDP will be 1.5% - 2.6% lower than it otherwise would be because the high U.S. corporate income tax rate is driving investment out of the United States.<sup>1</sup> This decline in GDP leads to a drop in real wages for U.S. workers and a decline in consumer spending. In the long term, wages are approximately 1% lower because of the higher U.S. corporate tax rates, and consumer spending is 2.1% - 3.1% lower. The study pointed out that even in 2013, consumer spending was 1.6% – 2.1%

---

<sup>1</sup> Carroll, Robert, John Diamond, and George Zodrow, 2013. *Macroeconomic Effects of Lower Corporate Income Tax Rates Recently Enacted Abroad*. Ernst & Young LLP, Washington, DC.

National Retail Federation  
June 24, 2015  
Page | 3

lower because of the impact of the high corporate tax rates on investment in the United States.

**Mandatory Repatriation Is a Tax Increase**

There is a common misconception that foreign earnings of U.S. multinationals are "trapped" overseas and that these companies will gladly repatriate those earnings and invest them in the United States if the corporate tax rate is low enough. This is not the case for most retailers. Retailers, like most multinationals, have overseas operations in order to expand their markets. Our industry's foreign earnings are invested in stores, distribution centers, inventory, and the working capital needed to sustain and grow these operations. Many retailers do not have excess cash to repatriate, regardless of how low the tax rate is that is applied to these earnings. If an immediate tax is placed on these earnings, it will dampen the ability of these companies to grow in foreign markets and ultimately hurt U.S. headquartered companies.

Retail is the highest effective taxpaying industry in the United States. Retailers have been willing to give up their tax expenditures in exchange for a substantially lower tax rate. It would be blatantly unfair to raise the effective tax rate on retailers even more by placing a tax on their overseas investments, which cannot be repatriated to the United States because they are invested in hard assets overseas.

**Conclusion**

The National Retail Federation strongly supports tax reform that will substantially lower the U.S. corporate tax rate, driving investment in the United States, economic growth, wages and consumer spending. We urge Congress not to pick off the pieces of tax reform and, thereby, create a barrier to achieving that much needed lower tax rate.





P.O. Box 2359 Boulder, CO 80306

PeopleForBikes.org / 303.449.4893

Statement for the Record By Jenn Dice, Vice President, Business Network, PeopleForBikes  
Hearing on Long-Term Financing of the Highway Trust Fund  
Before the House Committee on Ways and Means  
June 17, 2015

Chairman Ryan, Ranking Member Levin, and Members of the Committee, thank you for the opportunity to provide input on the need to find a long-term solution to financing the Highway Trust Fund.

PeopleForBikes Business Network represents the bicycle industry ranging from retailers to suppliers to manufacturers in communities across the country. Bicycling contributes significantly to the national, state and local economics. PeopleForBikes Business Network has 1,825 business members who depend on very modest federal investments in bike infrastructure to grow their businesses.

Bicycling directly generates \$81 billion annually for the United States economy – a figure that includes more than \$10 billion in state and local tax revenues. More than 750,000 U.S. jobs are supported by the bicycling industry. Across Wisconsin, there are 367 bicycle retailers, employing 1,841 people, with \$95 million in annual sales. In Michigan, there are 530 bicycle retailers, employing 2,602 people, generating \$191 million in annual sales.

Bicycling means business – and this business depends on a transportation system that not only provides safe places to bike but also the efficient shipment of our product to market. For these reasons, the U.S. bicycle industry supports a well-funded federal transportation program not only because it improves bicycle infrastructure, but also because the shipping of our products from factory to warehouse to retail point of sale depends on a well-maintained and connected transportation system. Close to 18 million bikes are sold in the US every year.

Communities across the country are realizing the economic development potential that comes from an integrated transportation system, where bicycle infrastructure is just one part of their larger system to efficiently move goods to market and reduce congestion during the morning and evening commute. For example, Indianapolis cites the construction of the eight-mile Cultural Trail with attracting at least \$100 million in new investment in the city. Continued federal investment in bicycle infrastructure is essential to helping more communities capitalize of bicycling to meet their transportation challenges.





P.O. Box 2359 Boulder, CO 80306

PeopleForBikes.org / 303.449.4893

Commuting by bicycle has doubled since 2000, and a new study shows that one in four Americans rode a bicycle last year or 103 million people. Also, half the trips Americans take are four miles or less. We are seeing a growth in Americans who look to the bicycle for these short trips. For example, a trip to the grocery store that is a few miles from their house to pick up a few items. As more of these trips are taken by bike, road congestion, air pollution and parking infrastructure needs are all reduced. This saves our nation money.

Finding a long-term funding solution to the Highway Trust Fund is critical to states and communities across the country to meet the needs of their transportation system, including the construction of good bicycle infrastructure. Without the certainty of a long-term funding solution many states and communities will hold back on investing in projects due to the lack of certainty that they will receive a reimbursement from the federal government for transportation projects that have a multiyear construction timeline.

We look forward to working with the Committee to find a long-term funding solution to the Highway Trust Fund that recognizes our integrated transportation system.





215 Pennsylvania Avenue, SE • Washington, D.C. 20003 • 202/546-4896 • [www.citizen.org](http://www.citizen.org)

June 24, 2015

United States House of Representatives  
Subcommittee on Select Revenue Measures  
Committee on Ways & Means  
1102 Longworth House Office Building  
Washington, DC 20515  
*Via email to: [waysandmeans.submissions@mail.house.gov](mailto:waysandmeans.submissions@mail.house.gov)*

Re: funding for infrastructure investments

Dear Chairman Reichert and Honorable Subcommittee Members,

On behalf of Public Citizen's more than 400,000 members and supporters, we appreciate the opportunity to submit this statement for the record outlining our recommendations for securing long-term funding for transportation and infrastructure funding.

Public Citizen strongly urges the committee to consider funding options that both maximize the benefit for taxpayers and that are sustainable over the long term. For these reasons, we recommend that you avoid short-term fixes such a repatriation tax holiday for multinational corporations' profits stashed overseas and concentrate instead long-term funding sources that would also create an incentive to reduce harmful emissions from vehicles such as increasing the gas tax or implementing a tax on carbon.

It's clear that America has an infrastructure crisis: bridges are crumbling, roads are in desperate need of repair and mass transit options are too few and far between. The American Society of Civil Engineers 2014 "Report Card for America's Infrastructure" estimates that \$3.6 trillion in investments are needed to modernize and repair U.S. infrastructure.

The short-term funding for the Highway Trust Fund will run out again this summer, and it is encouraging that this committee is searching for long-term funding solutions instead of continuing to move from patch to patch as has been done in recent past. However, as you weigh your options, it is important to not choose solutions that would be a losing proposition for American taxpayers.

One such losing proposition is a repatriation “holiday” for taxes owed on profits listed as being earned by foreign subsidiaries of American corporations. Because of the current system of deferral, where taxes may be indefinitely put off until profits are repatriated or “brought back” to the U.S. in the form of dividends or other shareholder payments, multinational corporations are able to play games with their accounting books and transfer profits between entities, usually to companies located in low or no tax jurisdictions (or “tax havens.”)

This type of corporate tax haven abuse costs the federal government \$90 billion in lost revenue every year. In total, more than \$2 trillion in profits are booked offshore. It’s true that without changes to our tax code, those monies will continue to be stashed in offshore accounts. But, it is not a good solution to allow corporations to voluntarily repatriate those profits at much lower tax rates than would have otherwise been due, using a tactic that is known as a “repatriation holiday.” This experiment was tried and failed in 2004, and as a country we must learn our lesson and not repeat the same mistake.

A 2011 Senate report analyzing the tax repatriation holiday in 2004 found that much of the profits that multinational corporations were supposedly holding offshore were actually sitting in U.S. bank accounts and other assets, undercutting the concept of “bringing the money back.” And, the repatriated taxes came from a small number of corporations that used the money to pay dividends instead of reinvesting in the economy and at the same time ended up cutting their workforces.

Proposals like the one offered by U.S. Sens. Barbara Boxer (D-Calif.) and Rand Paul (R-Ky.) would allow companies to choose to repatriate offshore taxes at the bargain-basement rate of only 6.5 percent, slightly more than 1 percent higher than the rate used in the 2004 tax holiday. The Joint Committee on Taxation scored the Boxer-Paul bill as costing \$118 billion over 10 years. In addition to losing money in the long run, as a funding option, a repatriation holiday would only be a one-time source of money that would do nothing to fix the long-term funding shortfall for infrastructure investments. Additionally, allowing another repatriation holiday would reward corporations that have for years avoided paying taxes by using accounting gimmicks to shift profits to the books of related foreign corporations.

Mandatory “deemed repatriation” proposals, such as the 14 percent rate put forward by President Barack Obama in his FY 2016 budget proposal, are still not a good deal for taxpayers. This is because corporations are given a break on the tax rate, forcing the U.S. to give up the other 21 percent of taxes that could have been assessed if loopholes like deferral were ended and companies were forced to pay the full 35 percent statutory rate on offshore profits (after receiving a credit for foreign taxes paid.) Research by the Institute for Policy Studies and the Center for Effective Government in their April 2015 “Burning our Bridges” report examines the myriad of infrastructure investments that could be made if loopholes were closed and offshore profits were taxed at the full statutory rate.

Though the President’s budget proposal was encouraging in that it proposed to require a minimum tax on offshore profits of 19 percent moving forward, meaning it could be used for a long-term funding source, given the difference between that rate and the normal statutory rate, it would continue the incentive for companies to play accounting games and shift profits to overseas subsidiaries.

A better alternative would be to instead fund transportation and other infrastructure investments with long-term funding pots that are not only sustainable, but that are tied to the use of highways and would incentivize positive behavioral shifts to reduce emissions that contribute to climate change. Examples include increasing the gas tax and instituting a carbon tax.

The gas tax has not been raised for more than two decades and because of inflation, the value of the 18.4 cent tax continues to fall. The gas tax provides a disincentive for fuel use, and it makes sense to raise the tax since it has not been changed since 1993. It should also be tied to inflation in order to ensure its value holds steady.

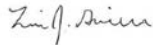
Another great option for long-term funding for infrastructure investments (among other things) would be to implement a tax on carbon dioxide pollution, with a refund given to U.S. consumers on a per capita basis as a way to balance out the regressive nature of the tax. Since transportation produces around a third of our nation's CO2 pollution, which causes climate change, it makes sense to tie a portion of the proceeds from a carbon tax to fund improvements to highways and mass transit.

Either way, both the gas tax and a carbon tax would be directly tied to the use of our highways and provide long-term solutions to funding infrastructure investments, as opposed to a one-time option like a corporate tax repatriation holiday.

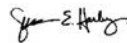
The American people should not have to settle for a repatriation holiday's discounted tax revenue at the expense of further incentivizing activities by multinational corporations that disadvantage responsible small business owners and ordinary taxpayers. Instead, the incentive we should be creating is to reduce carbon pollution and limit the harmful impacts of climate change.

Thank you again for the opportunity to submit our thoughts on this important topic.

Sincerely,



Lisa Gilbert  
Director  
Public Citizen's Congress Watch division



Susan Harley  
Deputy Director  
Public Citizen's Congress Watch division



Tyson Slocum  
Director  
Public Citizen's Energy program



FOR IMMEDIATE RELEASE:  
JUNE 24, 2015

MEDIA CONTACT:  
Jim Manley  
jmanley@qga.com  
202-255-3736



WASHINGTON, D.C. – RATE Coalition Co-Chairs Elaine Kamarck, former White House adviser to President Bill Clinton and Vice President Al Gore, and James P. Pinkerton, former White House domestic policy adviser to Presidents Ronald Reagan and George H.W. Bush, made the following statement in advance of today's Subcommittee on Select Revenue Measures hearing on the taxation of the repatriation of foreign earnings as a funding mechanism for a multi-year highway bill.:

We represent the RATE Coalition and we have a simple message about any effort to pay for highway funding using repatriation, either deemed or voluntary, outside of fundamental corporate tax reform that permanently lowers rates: "Don't do it, because it won't work."

While it might seem like a silver bullet that solves two problems at once -- funding our highways, and allowing U.S.-based multinational companies a chance to bring home the money they've parked overseas -- the reality is that repatriation does not necessarily infuse the U.S. Treasury with more tax revenues.

Real, comprehensive corporate tax reform that lowers the corporate tax rate to a globally competitive 25% or less would boost U.S. GDP by hundreds of billions of dollars annually, and create a robust U.S. business environment conducive to investment and wage growth.

**Here are three sobering facts about repatriation:**

First, voluntary repatriation does not raise revenue. In fact, the opposite is true; voluntary repatriation outside of corporate reform is simply a tax holiday for certain American companies. It ends up costing the government tens of billions

of dollars, and does nothing to fix the systemic problems businesses face because of our broken tax code. For repatriation to actually raise revenue, it would have to be forced or “deemed,” which would be a tax increase. In this case, all companies would face higher taxes even if they did not, *or could not*, repatriate those overseas earnings.

Second, without changes to the underlying tax code, a voluntary tax holiday is nothing more than a pointless vacation. Going forward, there would be no incentive for companies to bring overseas income back to the United States unless (and until) they have another tax holiday. It sets a terrible precedent, and would simply force companies to continue to keep monies overseas – and it’s the opposite of what can be accomplished through tax reform.

Third, we have gone down this road before. And it didn’t work. In 2004, the Congress passed, and the President signed, a repatriation holiday bill, which the Senate Permanent Subcommittee on Investigations (“PSI”) ultimately found to be a “failed tax policy.” It cost the Treasury \$3.3 billion over ten years, and it created no new American jobs.

And as history is too often an indicator of the future, PSI found that repeating such a tax holiday now would cost the Treasury \$95 billion over ten years this time around.

The answer to growing the U.S. economy and growing U.S. wages is not repatriation, either deemed or voluntary. **It is fundamental tax reform that lowers America’s worldwide corporate rate**, and that’s what Congress should be focused on right now.

*RATE is a coalition of 34 companies and organizations advocating for sensible corporate tax reform. Making the tax code fairer and simpler will help spur job growth and stimulate the U.S. economy, and make us more competitive globally. RATE members currently include: AT&T, Altria Client Services Inc., Association of American Railroads, Babcock & Wilcox, Boeing, Brown Forman, Capital One, Cox Enterprises, CVS Caremark, Edison Electric Institute, FedEx, Ford, GAP Inc., General Dynamics, Home Depot, Intel, Kraft Foods, Kimberly-Clark, Liberty Media, Lockheed Martin, Macy’s, National Retail Federation, Nike, Northrup Grumman, Raytheon, Reynolds American, Southern Company, Time Warner Cable, T-Mobile, UPS, Verizon, Viacom, Walt Disney and Walmart. RATE members and affiliated companies represent over 30 million employees in all 50 states and support innumerable numbers of suppliers and small businesses.*

More information about the coalition is available at [www.RATEcoalition.com](http://www.RATEcoalition.com).





## **Statement of the U.S. Chamber of Commerce**

---

**ON: Using Deemed Repatriation to Pay For Surface  
Transportation Programs, and Other Highway Trust Fund  
Revenue Options**

**TO: The U.S. House Ways and Means Subcommittee on  
Select Revenues**

**DATE: July 8, 2015**

---

1615 H Street NW | Washington, DC | 20062

The Chamber's mission is to advance human progress through an economic,  
political and social system based on individual freedom,  
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce (Chamber) believes that transportation infrastructure is a core government responsibility and the backbone of America's economy. *Moving Ahead for Progress in the 21st Century* (MAP-21), the federal law that sets highway, public transportation, and highway safety policy, programs, and funding levels, was extended by Congress for two months, through July 31, 2015. At the end of that period, the revenues that are deposited into the federal Highway Trust Fund (HTF) will once again run short of maintaining current funding levels, meaning that substantial cuts in federal aid to state and local governments are in the offing unless Congress acts to reauthorize MAP-21 and provide additional revenues or offsets to liquidate outlays from the HTF.

The goal of the Chamber, and the Chamber-led Americans for Transportation Mobility (ATM) Coalition, is completion of a long-term, fully funded reauthorization before July 31. According to recent Congressional Budget Office (CBO) testimony to the House Ways and Means and Senate Finance Committees, an additional "\$3 billion before the end of fiscal year 2015 and between \$11 billion and \$22 billion every year thereafter through 2025"<sup>1</sup> would be required to support the CBO baseline projections for highway and transit spending.

It is important to note that baseline investment levels are not sufficient to improve the conditions and performance of the nation's transportation system; ideally, investment levels would be higher.<sup>2</sup> According to the American Society of Civil Engineers study titled "Failure to Act," at current spending levels nationwide, American households will lose about \$1060 per year and the economy as a whole will be suppressed by nearly \$1 trillion by 2020.

As noted by the Pew Charitable Trusts, "[Federal, state and, local] funding streams are not only sizable; they are also deeply intertwined. In general, the federal government does not directly invest in transportation infrastructure, but sends almost all of its funding to states and localities in the form of grants. States use federal and state dollars to pay for surface transportation and to provide funding to localities—which invest directly, using federal, state, and local funds."<sup>3</sup>

The purpose of this statement is to articulate, in detail, the Chamber's position on deemed repatriation as a transportation pay for, and to outline out the Chamber's general position on revenues to support federal funding levels for roads, bridges, public transportation, and safety.

### **Deemed Repatriation, Voluntary Repatriation and Highway Funding**

#### **Background**

As discussions on possible highway funding options continue, repatriation of U.S. companies' foreign earnings is frequently mentioned. The Chamber is skeptical of this approach.

<sup>1</sup> <http://waysandmeans.house.gov/wp-content/uploads/2015/06/Shirley-Testimony.pdf>

<sup>2</sup> See (insert info on USDOT C&P report, AASHTO Bottom Line report)

<sup>3</sup> Pew Charitable Trusts, "Intergovernmental Challenges in Surface Transportation Funding," (September 2014).



Repatriation occurs when a company's foreign profits, usually earned by a controlled foreign corporation (CFC), are returned to the United States usually through a dividend from the subsidiary to the U.S. parent company. U.S. tax is then levied on the proceeds net of any tax credits. When repatriation occurs at the option of the company, it is said to be "voluntary". That is, the company chooses to repatriate. Alternatively, if U.S. taxes are levied on foreign profits regardless of whether or not the funds are brought back to the U.S. parent company, then the company was deprived of its choice and the repatriation is said to be forced or "deemed".

The distinction between voluntary and deemed repatriation is important to both the companies and for how the Joint Committee on Taxation (JCT) scores such a policy for revenue and budget purposes. Voluntary repatriations are seen by JCT as a net tax cut over the budget window because profits that would have been repatriated at a later date are brought back immediately at a lower tax rate. JCT most recently scored a voluntary repatriation proposal as generating a 10-year revenue loss of \$118 billion.<sup>4</sup>

Conversely, proposals involving forced or deemed repatriations, *i.e.*, where the United States would tax overseas earnings whether repatriated or not, generally have been scored as raising revenue. For example, in Chairman Camp's proposed tax reform bill deemed repatriation was estimated to raise \$170 billion over the 10-year budget window.<sup>5</sup> Likewise, the President's FY2016 Budget included a forced repatriation proposal estimated to raise \$217 billion over 10 years.<sup>6</sup> As indicated by the positive score, forced repatriation is a tax increase. Because the tax increase applies to previously earned profits, it is also effectively a retroactive tax hike.

In sum, as a matter of budget accounting one cannot use voluntary repatriation, a JCT-scored tax cut, to "pay-for" other spending programs or other tax cuts. According to the budget rules, only mandatory or deemed repatriation raises revenue and can be used to "pay-for" new spending or tax cuts.

### **Chamber Position**

In the past, the U.S. Chamber generally has supported voluntary repatriation. The Chamber position is that whether the repatriated funds are used for increased investment, creating jobs, increasing dividends or even stock repurchases, these funds are more of a benefit

<sup>4</sup> See Letter from Thomas Barthold, dated April 30, 2015, scoring Senators Paul and Boxer's "Invest In Transportation Act," which would allow companies to voluntarily bring home offshore profits at a 6.5 percent tax rate, as \$117.9 billion revenue loss over the 10 year scoring window.

<sup>5</sup> See Joint Committee on Taxation, "Technical Explanation, Estimated Revenue Effects, Distributional Analysis, And Macroeconomic Analysis Of The Tax Reform Act Of 2014, A Discussion Draft Of The Chairman Of The House Committee On Ways And Means To Reform The Internal Revenue Code" (JCS-1-14), available at <https://www.jct.gov/publications.html?func=startdown&id=4674>. Former Chairman Camp's proposal levied a tax of 8.75% on cash overseas and 3.5% on non-cash foreign assets, payable over eight years.

<sup>6</sup> See Joint Committee on Taxation, "Estimated Budget Effects Of The Revenue Provisions Contained In The President's Fiscal Year 2016 Budget Proposal," (JCX-50-15), available at <https://www.jct.gov/publications.html?func=startdown&id=4739>. The President's proposal levied a tax of 14% on accumulated U.S. corporate profits earned abroad, regardless of whether in cash or non-cash holdings, payable ratably over five years.

to the companies involved if the companies can allocate their resources with less interference from the tax code and the funds are more of a benefit to the U.S. economy when they are home.<sup>7</sup>

However, deemed repatriations generally have raised concerns for the Chamber. While we understand that deemed repatriation may be part of comprehensive tax reform and are willing to evaluate deemed repatriation proposals within that context, we are more skeptical of deemed repatriation proposals to use these increased taxes to support new spending. Thus, the Chamber will on this basis evaluate variations on repatriation proposals as the variations and their details develop.

#### **Specific Concerns with Deemed Repatriation and Highway Funding**

Recent discussions suggesting forced or deemed repatriation as a highway funding mechanism have raised several areas of concern for the Chamber. For example, using the revenue from a deemed repatriation for any purpose other than tax reform, including transportation and infrastructure spending, would reduce the pool of funds available to pay for lower tax rates, accelerated cost recovery, or shifting to a more internationally competitive tax system as part of revenue-neutral comprehensive reform.

Further, a one-time forced repatriation does not provide an ongoing revenue stream to fund an ongoing expenditure such as the highways. Additionally, the Chamber believes that infrastructure is a public good which benefits a broad segment of the economy. As such, the Chamber finds it inappropriate to fund such a public good with a tax on a select group of companies and a select subset of their profits. The long-standing framework for the federal highway program is that this public good is broadly enjoyed and should be financed by its beneficiaries through a user fee. A proposal to fund the system with deemed repatriation further erodes this framework by using general tax revenues.

#### **If Not Repatriation, then What?**

There are three ways to address the problem of the revenue-expenditure differential, and this solution set for HTF revenues has not changed for several years. The Chamber has testified to these approaches numerous times, and CBO testimony is consistent with the Chamber's assessment that there are three general options in front of Congress:

1. *Cut outlays to the amount that current revenue sources can support.*

This approach would result in 20-25% cuts in highway programs and 43-49% cuts in transit programs between 2016 and 2020.<sup>8</sup> A similar approach would be to decrease federal investment levels even further and eliminate Internal Revenue Service collection

<sup>7</sup> In 2011, the Chamber commissioned Douglas Holtz-Eakin to undertake a study of the benefits of such repatriations. See Douglas Holtz-Eakin, "The Need for Pro-Growth Corporate Tax Reform: Repatriation and Other Steps to Enhance Short- and Long-Term Economic Growth" (Aug. 2011).

<sup>8</sup> Eno Center for Transportation Analysis of CBO Baseline. <https://www.enotrans.org/wp-content/uploads/2015/06/How-Much-in-Bailouts-Would-Still-Be-Needed-If-New-HTF-Obs-Were-Capped-at-Tax-Receipt-Levels.pdf> (June 15, 2015).

of excise taxes on fuels and other sources of HTF revenue.<sup>9</sup> The Chamber is strongly opposed to both of these approaches,<sup>10</sup> and is pleased that Congress has rejected, repeatedly, efforts to make drastic cuts in federal investment on public transportation, roads and bridges.

2. *Continue using general fund resources to supplement current user fees and support highway, transit, and safety investments.*

This option includes any solutions that do not involve increasing user fee revenues or dedicate new ongoing transportation-related revenue streams: tax compliance measures; spending cuts; use of one-time offsets such as pension smoothing; and, general tax increases—including proposals that tie tax repatriation to paying for transportation. The Chamber determines support for using general fund resources on a case-by-case basis; however, continuing general fund transfers and other temporary fixes that employ general funds are not permanent solutions for HTF solvency. This approach weakens the long-time framework of transportation programs: the user-pay approach at the federal level that enables contract authority and long-term authorization bills.

3. *Identify new or increase existing dedicated, transportation-related revenues.*

This is the Chamber's preferred option and has been for several years. The Chamber's criteria for these revenue sources are described in detail in the next section of this statement.

#### **Five Criteria to Assess Revenue Sources**

The Chamber evaluates revenue sources along five criteria. A "five-star revenue source" will have a yes answer to each of the following questions:

1. *Is the revenue source transportation-related?*

Multi-year transportation bills are important for certainty in long-term capital planning and project construction. The availability of contract authority, which historically was tied to user-fee (transportation-related) revenue<sup>11</sup> enabled passage of long-term highway and transit bills. As described by the Congressional Research Service, "The Federal-Aid

<sup>9</sup> The Federal Highway Trust Fund receives revenues from excise taxes on major and special motor fuels, and non-fuels taxes on heavy highway vehicles. See Joint Committee on Taxation, "Present Law and Background Information on Federal Excise Taxes," (Jan. 2011).

<sup>10</sup> The Chamber's opposition to devolution of federal programs, either through cuts to current revenue sources or intentional devolution as is proposed in the *Transportation Empowerment Act* introduced by Representative DeSantis and Senator Lee has been explained in numerous statements, including recent testimony to the Senate Committee on Commerce, Science, and Transportation on May 5, 2015. See

[http://www.commerce.senate.gov/public/?a=Files.Serve&File\\_id=703fe16b-54d4-4ef4-bd0f-820d94d7d6c4](http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=703fe16b-54d4-4ef4-bd0f-820d94d7d6c4).

<sup>11</sup> Section 401 of *The Congressional Budget Act of 1974* prohibited Congress from bringing up legislation that created "new backdoor spending—including contract authority—unless grandfathered into the Social Security or Medicare Trust Funds or unless the money is drawn 'from any other trust fund, 90 percent or more of the receipts of which' are derived from 'taxes related to the purposes for which outlays are made.'" See "Highway Trust Fund 101," page 12, by the Eno Center for Transportation, (June 2015).

Highway Program, unlike most other federal programs, does not rely on appropriated budget authority. Instead, the Federal Highway Administration exercises contract authority over monies in the HTF and may obligate (promise to pay) funds for projects funded with contract authority prior to an appropriation. This approach shelters highway construction projects from annual decisions about appropriations (emphasis added).<sup>12</sup>

2. *Are the revenues ongoing, rather than one-time?*

One-time money is a Band-Aid, rather than a solution. This is the approach to short-term HTF solvency used by Congress since 2009 and does not address the HTF's structural problems in the long term.

3. *Are the revenues sources structured to be sustainable and growing?*

The United States needs to not only meet today's demands on the national transportation network, but also the increasing demands projected to strain the network in the coming years.<sup>13</sup>

4. *Are the revenue sources—alone or in combination—adequate for full funding or, at a minimum, able to maintain funding levels?*

Nearly \$100 billion over the next six years is required just to maintain current services funding levels.<sup>14</sup> Current services will not reduce the backlog of maintenance and construction needed to improve the condition and performance of transportation systems, anticipate demographic changes, and accommodate and spur economic growth. In reauthorizing MAP-21 and paying for the programs, Congress should aim for "full funding," meaning what is required of the federal government to assist state and local entities in bringing a seriously outdated network of highways, bridges and transit systems up to par—and keep it that way—so future generations can rely upon the network.

5. *Can the federal government collect the revenues?*

There are some options, like sales taxes and value capture, which are viable at a state or local level but that the federal government cannot use. There are other revenue sources, such as tolls, that are collected by state or local entities, not by the federal government, and will not assist with Highway Trust Fund solvency.<sup>15</sup>

<sup>12</sup> Congressional Research Service, "Federal-aid Highway Program: In Brief," <https://www.fas.org/spp/crs/misc/R42793.pdf>, (December 16, 2013).

<sup>13</sup> Numerous sources provide both qualitative and quantitative evidence for this fact, including the American Society of Civil Engineers, "Authorization for the Nation's Surface Transportation Funding Program: A Blueprint for Success," the U.S. Department of Transportation, "Conditions and Performance Report," and the Pew Charitable Trusts, "Intergovernmental Challenges in Surface Transportation Funding."

<sup>14</sup> See Congressional Budget Office March 2015 Baseline estimates, <https://www.cbo.gov/sites/default/files/cbofiles/attachments/43884-2015-03-HighwayTrustFund.pdf>.

<sup>15</sup> The National Surface Transportation Infrastructure Financing Commission conducted a thorough review of transportation revenue options during its existence. Its final report issued in February 2009 detailed the differences among federal, state, and local revenue sources. See <http://financecommission.dot.gov/>.

### **The Chamber's Preferred Revenue Option**

The Chamber is strongly supportive of modestly increasing gasoline and diesel taxes and indexing them to inflation, and finding new federally-collectable, stable, growing, ongoing, transportation-related, substantial revenue streams. Based on these criteria, the Chamber supports raising and indexing gasoline and diesel taxes knowing that eventually these sources need to be replaced. At present, the gas tax is a simple, elegant revenue source that is and cost-effective to administer and maintains the tie between transportation infrastructure investment and transportation system use. Its problems are years of neglect (last raised in 1993), its cents per gallon structure, and its political unpopularity.

Adding a penny a month for a year and indexing the total user fee to inflation could support current services funding levels for the foreseeable future. The collection system itself is highly efficient: the owner of the fuel at the time it breaks bulk from the terminal rack pays the excise tax to the Internal Revenue Service. According to the American Petroleum Institute, there are about 1300 terminals in the country, translating to a low number of payers and low cost of administration. The gas tax, if adjusted in amount and indexed, receives five stars as a revenue source.

In the long run, other revenue sources will be required. The vehicle fleet is becoming more fuel-efficient. Driving patterns are changing. Construction costs typically grow faster than the Consumer Price Index. And multi-modal transportation investment calls for more diversified sources of revenue.

### **Cutting Costs, Leverage the Private Sector: Necessary, but Not Solutions**

In addition to addressing revenues, Congress must also look to issues of the appropriate federal role, cost reduction, and leveraging in order to ensure every federal dollar is used as effectively as possible.

In terms of policy and federal role, the current scope of eligible expenditures could be narrowed somewhat, but MAP-21 included substantial policy and program reforms comprised of program consolidation and elimination of most non-transportation expenditures. Some savings could be identified on the margin by shifting administrative expenses out of the HTF. The Chamber is strongly opposed to removing public transportation from the HTF.<sup>16</sup>

*Moving Ahead for Progress in the 21<sup>st</sup> Century* addressed many of the policy priorities that the Chamber identified for federal surface transportation program reform. The Chamber asked for transportation policies that cut through red tape at all levels of government so that projects move forward quickly. MAP-21 delivered with significant streamlining of environmental processes—much of which are still being implemented. Businesses wanted to see

---

<sup>16</sup> A detailed case for federal investment in public transportation supported by the Highway Trust Fund can be found in the Chamber's testimony to the Senate Banking Committee. See [http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing\\_ID=25741d0a-cc1f-4767-ac28-70a3b75340b6&Witness\\_ID=ff224966-a9ef-4a92-b70d-5148655796ee](http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=25741d0a-cc1f-4767-ac28-70a3b75340b6&Witness_ID=ff224966-a9ef-4a92-b70d-5148655796ee).

federal funds leveraged for locally selected projects that addressed the transportation needs of companies large and small. Performance measurement should allow us to determine how well state and local decisions are prioritizing and delivering on the national interest. There is still ample room for further development of freight policies to address multi-modal needs and bottlenecks, and promoting use of technology and other innovation policies to encourage cost-effective use of approaches to traffic management, infrastructure maintenance, and capacity creation.

The Chamber is also supports financing tools that that the federal government offers to encourage investment in transportation, including promoting public-private partnerships through use of low-cost loan and loan guarantee programs such as the *Transportation Infrastructure Financing and Innovation Act* and availability of private activity bonds. Public-private partnerships have many benefits. According to *Governing Magazine*, P3s can create significant public value through the “responsible fusion of public-private resources.” Projects delivered using P3s have a record of coming in ahead of schedule and under budget. The private sector taking on risk shelters the public sector from losses. New technologies and other innovations are brought to bear.<sup>17</sup> However, P3s are not about creating money where there is none: P3s require revenue sources from user fees and taxes in order for the private sector to be willing to invest. Public-private partnerships are not for every project, but there is a growing track record of success in the United States and we should continue to encourage P3s.

### **Conclusion**

After years of short-term solutions, it is time to solve finally the underlying problem of sustainable, predictable revenues for the HTF. Policy changes and P3s will not solve the HTF solvency problem. Devolution is not an acceptable solution: the federal government should remain a partner to states and local governments. Ideally, Congress would look to fill the growing hole between available resources and needs. At a minimum, the Chamber calls on Congress to identify transportation-related, sustainable, substantial, ongoing and federally collectible revenue sources to fill the gaping hole between revenues and current spending levels.

---

<sup>17</sup> See *Governing Magazine*, “The Growing Evidence that P3s Are Delivering Value,” by Stephen Goldsmith and Andrew Dye, March 18, 2015. <http://www.governing.com/blogs/bfc/gov-evidence-public-private-partnerships-delivering-public-value.html>.