

CORPORATE EXPATRIATIONS: LOOSENING THE BONDS OF CONTROL

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Abstract

Following criticism of former U.S. corporations for reincorporating offshore, legislation was proposed to remove any financial advantage gained. The move offshore has significant tax implications for the U.S. Treasury, so proposed legislation has tried to either retain some U.S. control over the companies or limit their U.S. government business. Results indicate that individual expatriates show little effect from two years of anti-expatriation proposals and are unlikely to reverse their reincorporation decision. With the Bush administration's pro-corporate agenda there is little hope for a forceful anti-expatriation stance. Meanwhile the decline in corporate tax revenue continues to be a problem for the U.S. Treasury as they lose control of tax revenue as the budget is squeezed by needs at home and abroad.

Keywords: Corporate governance; corporate control; expatriation; corporate inversions; expatriation legislation; tax avoidance

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1. Introduction

A growing problem for the United States (U.S.) Treasury is the number of U.S. corporations using offshore financial centres to reduce their domestic tax bill. As companies reincorporate outside the U.S., the U.S. Treasury have far less control over the tax they pay. Some corporations have set up subsidiaries in low tax jurisdictions shifting revenue and costs to minimise the company's tax bill. Others have transferred their place of incorporation to a zero or low tax jurisdiction without moving any of their physical operations. This action, termed expatriation allows companies to avoid altogether U.S. taxes on all non-domestic profit. It is estimated that reincorporating offshore can reduce the tax bill, by up to 10 percentage points, for U.S. corporations with worldwide business operations.

Although U.S. corporations have been reincorporating offshore for more than 20 years, expatriation has only come under the spotlight following the September 11, 2001 terrorist attacks when it was realised that the offshore jurisdictions for which corporate America has a predilection are the same jurisdictions that feature so frequently in the money laundering blacklists. Johnson and Holub (2003a) describe the less than sympathetic response to expatriation from the U.S. media, taxpayers, shareholders and politicians, as concerns are raised not only about the laundering of terrorists' funds but also the consequential decline in corporate tax revenue. Expatriate corporations, however, have been slow to respond to questions raised over their choice of legal abode even though this is now firmly on the

agenda for members of both of the major U.S. political parties, pension funds, labour unions as well as the corporation's own shareholders. Consequently a growing number of politicians are using the legislative process in an attempt to reduce the financial benefits of offshore reincorporation and keep these companies under U.S. control.

The aim of this paper is to determine whether the anti-expatriation movement's legislative crusade is having any impact on U.S. expatriate companies. The paper is structured as follows. A brief overview of the U.S. legislative process is provided in section two with a summary of the relevant anti-expatriation bills, including initiatives taken by the State of California, presented in section three. The research approach used to assess the legislative impact and the data used in the analysis are detailed in section four. In section five the results are presented, followed by the conclusions in section six.

2. The Legislative Process

As this paper focuses on the impact of expatriation legislation as it is proposed, discussed, rejected or accepted, an outline of the legislative process is helpful for those unfamiliar with the U.S. system.²² Congress is made up of the Senate and House of Representatives, both of which have equal legislative functions and powers with some limited exceptions.

²² Source: "How Our Laws Are Made". Revised and Updated by Charles W. Johnson, Parliamentarian, U.S. House of Representatives, June 20, 2003. Available at: <http://thomas.loc.gov/home/lawsmade.bysec/lawsnew.txt>.

Other legislative proposals may come as executive communications from the President, the President's Cabinet or the head of an independent agency. Anti-expatriation bills have originated in both the House of Representatives and the Senate. When bills are introduced they are referred to the appropriate committee(s). At this stage copies of the bill are made available in both Houses and in electronic format to the public. A bill's progress through the Committee stage and through both Houses can be followed on the Library of Congress web site²³.

The most important phase of the legislative process is the action by committees which have jurisdiction over specific subject matters. Membership on various committees is divided between the two major political parties with the major party determining the number of minor party members. Once the bill is assigned to a committee, input from relevant departments and agencies is sought. If the bill is of sufficient importance the committee may hold a public hearing, the date, place and subject matter of which must be made public. A transcript of the testimony taken at a public hearing is made publicly available. After consideration at sub-committee and committee level a vote is taken to determine whether the committee will report favourably, unfavourably or with recommendation. A committee may decide not to take any action on a bill, thereby preventing any further action. This inaction has virtually replaced the unfavourable recommendation. If the committee votes to support a bill, a report is written describing its purpose and scope and the reasons for its recommended approval. Committee reports are public documents used by the courts, executive departments and the public as a source of information regarding the purpose and meaning of the bill. When a public bill is favourably reported by all committees to which it has been referred it is then scheduled for discussion in its originating House. A majority of members of the House of Representatives or Senate may discharge a committee from consideration of a bill, in which case the bill may be considered immediately or placed on the calendar with the same status as if reported favourably by a standing committee. If passed by one House it must pass in identical form in the other House. Differences are ironed out in conference. If passed in identical form it becomes law only after it has been given Presidential approval, the President has failed to return it within 10 days (excluding Sundays) or being vetoed by the President it is passed by a two thirds majority in each House. All of the above must be completed within one Congressional term of two years. If members wish any unresolved matter to be reconsidered, a new bill must be submitted in the next Congress.

3. Expatriation Legislation

The expatriation issue continues to be openly discussed and the political pressure to deal with the issue has come from individual members of both of the major political parties. Table A.1 in the Appendix contains a detailed list of expatriation related bills originating in the U.S. House of Representatives and the Senate spanning a two year period: the second session of the 107th Congress, 2002; and the first session of the 108th Congress, 2003. They are listed in their order of introduction. The bills are designed to tackle the expatriation issue in one of three ways:

- treat expatriates as U.S. corporations for tax purposes thereby removing one of the major benefits from expatriation: lower taxes. This legislates control even though the company concerned is no longer a U.U. company;
- place a moratorium on expatriation, thereby providing time to examine the issue in more detail, but meanwhile making expatriation unattractive to potential 'movers'. This keeps control by not allowing U.S. companies to change their place of incorporation to another country; or
- stop expatriates from getting government contracts, the rationale here being, why should these companies benefit from the expenditure of government tax revenue when they are avoiding paying their 'proper' share of tax. This move effectively fines a company where control has been lost.

3.1 Anti-Expatriation Related Bills of the 107th Congress

March 6, 2002 saw the first of the anti-expatriation bills when Rep. McInnis introduced HR 3857 to amend the Internal Revenue (IR) Code of 1986 to treat U.S. expatriate corporations²⁴, formed after December 31, 2001, as domestic entities for tax purposes. HR 3884, also proposed on March 6, 2002 and HR 3922 introduced on March 11, 2002 pushed back the effective dates so that corporations completing expatriation after September 11, 2001 are taxed as domestic corporations in all tax years following their expatriation, and companies expatriating before September 11 pay tax as domestic corporations only from the start of the 2004 tax year. The importance of this issue to Federal politicians is demonstrated by the fact that HR 3884 attracted 152 co-sponsors. HR 3857, HR 3884 and HR 3922 were all referred to the House Committee of Ways and Means and as a result of this initial set of proposals, the Committee held a public hearing on corporate expatriation in June 2002 where opponents of expatriation were able to voice their strong objections to this method of avoiding U.S. corporate taxes.

²³ The Library of Congress web site is <http://thomas.loc.gov>.

²⁴ U.S. partnerships which incorporate offshore are captured in most of the expatriation legislation.

The first bill to be introduced into the Senate, S 2050, proposed taxing all expatriates as domestic corporations from the beginning of the 2003 tax year. This bill was referred to the Committee of Finance. HR 4756, proposed on May 16, 2002 is one of only two bills which sought to put a moratorium on expatriation. It did not get past the committee stage. With the direct approach proving unsuccessful HR 4831 was introduced on May 23, 2002. It sought to prohibit corporate expatriates from being eligible for federal government contracts. This was to apply to any expatriate corporation which had been set up within 10 years of the enactment of the bill, should it become law. It was referred to the House Committee on Government Reform but did not progress beyond the committee stage. A House Resolution (H Res 456) was proposed on June 24, 2002 to facilitate the progress of HR 3884. Although a motion was proposed to discharge the committee, neither H Res 456 nor HR 3884 proceeded beyond the committee stage. A new approach to penalising expatriates was taken by the Senate in July 2002 when it proposed an amendment (S AMDT 4364) to HR 5010, the Department of Defence Appropriations bill which would have prohibited the use of these funds for the payment of any new contract with any expatriate corporation. The House of Representatives did not accept these changes and they were not included in the final version of the bill which became Public Law 107-248. The Senate tried again in September 2002 with HR 5005, the bill to establish the Department of Homeland Security. Senate amendment S AMDT 4490 sought to prohibit the Secretary of Homeland Security from contracting with any corporate expatriates. The amended bill was later approved by the House of Representatives by 295 to 132 votes and became law on November 25, 2002 (Public Law 107-296). This was the first victory for the anti-expatriation lobby. The last expatriate related bill of the 2nd session of the 107th Congress, HR 5095, introduced on July 11, 2002 to amend the IR Code of 1986 also included amongst its considerable amendments Section 7874, which sought to treat expatriates as domestic corporations for tax purposes for reincorporations completed between March 2002 and March 2005. This was the second of the two bills which, if enacted, would have effectively put a moratorium on expatriations and keeping them under the control of the U.S. Treasury. This bill, like many before did not go beyond the House Committee of Ways and Means.

3.2 Anti-Expatriation Related Bills of the 108th Congress

The anti-expatriation movement tried again in the 1st session of the 108th Congress (2003). Sen. Wellstone proposed amendments to the Homeland Security Act of 2002 to tighten up the application of exemptions. This did not get beyond the Committee on Governmental Affairs.

The remainder of the expatriation bills in 2003, HR 737 (February 12, 2003), S 513 (March 4, 2003), HR 1661 (April 8, 2003), HR 2046 (May 9, 2003) and S1149 (May 23, 2003) all sought to change the IR Code of 1986 to tax expatriates as domestic corporations. These amendments were buried amongst a substantial amount of other proposed tax changes. Only S1149, which originated in Committee, as a result of the previous year's support for curbing expatriations, moved beyond the committee stage. It was placed on the Senate Legislative Calendar (No 113) under General Orders. No further action is recorded against this bill.

No more federal action was taken in 2003 but during the 108th Congress the House passed a 'Sense of Congress' motion stating that tax reform is needed to address the expatriation issue²⁵, indicating that the whole question of offshore relocation will remain on the legislative agenda.

3.3 California's Expatriation Initiatives

California's State Treasurer, Phil Angelides, is very vocal in his opposition to corporate expatriation as their actions have a significant impact on state taxes. On July 25, 2002, he announced a policy prohibiting the State Treasurer's Office from having any business dealings with listed U.S. expatriate corporations.²⁶ He also prohibited the State's \$45 billion Pooled Money Investment Account, with \$10 billion of taxpayers funds, from investing in U.S. expatriates. His stated intention is to apply these policies to the State Boards and Commissions he chairs. Angelides also requested CalPERS and CalSTRS, two of the largest pension funds in the U.S., to eliminate their holdings in, and cease to do other business with, expatriate U.S. companies urging them to vote against any planned expatriation by companies in which they hold investments.

On December 19, 2002 the California Earthquake Authority (CEA) voted to halt business dealings with U.S. expatriates. This immediately affected two expatriates: Everest Reinsurance and PXRE Corporation. Neither company would be included in the contract pool for reinsurance in 2004. The CEA paid Everest and PXRE approximately \$6 million and \$310,000 respectively, for reinsurance contracts worth \$84,982,535 and \$4,182,856 in 2003.²⁷

²⁵ The motion is part of the Tax Relief, Simplification and Fairness Act (HR 1308, section 103), passed by the House of Representatives on March 19, 2003. HR 1308 was finally passed by both Houses in September 2004. It became Public Law No: 108-311 on October 4, 2004.

²⁶ "California Treasurer Rebukes U.S. Companies for Fake Relocations to Offshore Tax Havens," News Release of the California State Treasurer, July 25, 2002.

²⁷ "At Angelides' Urging, CA Earthquake Authority Acts Against Expatriate U.S. Companies," News Release of the California State Treasurer, December 19, 2002.

On March 26, 2003 Angelides took California's opposition to expatriation a step further when he sponsored two bills aimed at curtailing the activities of U.S. expatriates. SB 640 would prohibit the State of California from contracting with any publicly held U.S. expatriate. SB 1067 would close tax loopholes that allow expatriates to avoid paying Californian taxes. These loopholes are currently costing California approximately \$10 million annually.²⁸ SB 640 passed through both state houses in September 2003 gaining support from two thirds of the members. SB 1067 was one vote short of the two thirds majority needed. SB 640 was signed into law by Governor Gray Davis in October 2003.²⁹

California is not the only state to penalize expatriate corporations but it does receive more publicity. North Carolina has passed a new law that prohibits any State agency from signing new contracts with expatriate companies. In Massachusetts, Minnesota, Montana, Pennsylvania and Texas legislation is pending that either eliminates State tax benefits or prohibits corporate expatriates from receiving State contracts.³⁰ Illinois is also considering introducing legislation that would prohibit the state from doing business with corporate expatriates.³¹

4. Research Approach

To date, expatriate research has concentrated on the impact, on the company's share price, of the decision to expatriate rather than on legislators' attempts to curtail the practice. This paper focuses on the impact of two years of legislative proposals following the September 11 terrorist attacks of 2001. Loss of these U.S. companies and therefore loss of control for tax purposes is a significant blow to the U.S. Treasury. However there is little evidence that regulatory changes or the threat of legislative changes has any real impact on the companies concerned.

Four papers provide a useful background to understanding the current findings relating to the reaction of shares prices to legislative change. Schipper and Thompson (1983) examine the impact of four U.S. merger-related regulations between 1966 and 1970 taking into consideration successive announcements relating to the same piece of legislation. For example, there are seven important announcements about SEC Segment Disclosures

during a four-year period. They find a significant negative impact for the 1968 and 1970 Williams Amendments, weaker evidence of a negative impact for the 1969 Tax Reform Act, and no significant impact relating to the SEC Segment Disclosures and the Accounting Principles Board Opinions 16 and 17.

The remaining three papers do not find evidence of any share price reaction. After examining market reactions to 20 pieces of U.S. legislation affecting 12 industries during the period 1887-1978, Binder (1985) concludes that share price data has little ability to detect the effects of regulatory change. His evidence shows that formal regulatory announcements are generally anticipated by the market. This may be due to the lengthy discussion of the relevant issues that precedes the enactment of legislation. Weiss and White (1987) measure investors' reactions to seven major Delaware court decisions. Despite being careful to choose cases whose results are unlikely to be anticipated, they still find no evidence that the impact of the legislative decision is reflected in share prices. They conclude that investors attribute little significance to court decisions which may be too case-specific for them to be able to predict any future outcomes. Contrary to expectations, Harris and Ramsay (1996) find no significant share price reaction to an Australian High Court decision on native title, even though this decision is expected to have far-reaching effects for the pastoral and mining sectors. These papers indicate that it may be difficult to observe any impact of the anti-expatriation legislation on the share prices of expatriates. If share prices are unaffected there may be insufficient impact on companies to convince them to change their mind concerning reincorporating offshore. Consequently, rather than only observe the market response to the final legislative outcomes, legislation is followed from its initial presentation through to its conclusion, identifying dates on which details become public.

4.1 Research Method

This study examines the impact of anti-expatriation legislation during its first two years: 2002 and 2003. Opposition to expatriation has continued beyond 2003 but the anti-expatriation lobby had considerable support during these two years.

Daily share prices adjusted for dividends and capitalization changes are sourced from DataStream³² for the expatriate corporations listed in Table 1. Most are operational for the two year period of the analysis. However, some companies become expatriates during this period and their data starts from the date on which the expatriation proposal becomes public knowledge. Data is also excluded following an announcement by a company that it is no longer pursuing expatriation. The following companies have a reduced data set:

²⁸ "Treasurer Angelides Sponsors Legislation To Crack Down On Expatriate Firms That Flee U.S. Soil," News Release of the California State Treasurer, March 26, 2003.

²⁹ "Treasurer Angelides Lauds Governor's Signing of Toughest in the Nation Legislation to Halt State Contracting with Expatriate Firms that Flee U.S. Soil," News Release of the California State Treasurer, October 2, 2003.

³⁰ "Treasurer Angelides Sponsors Legislation To Crack Down On Expatriate Firms That Flee U.S. Soil," News Release of the California State Treasurer, March 26, 2003.

³¹ Erickson, K., "Comptroller: Discourage Tax Shelters," *The Pantagraph*, November 3, 2003.

³² Datastream is an extensive database of company, financial and economic data.

- Stanley Works is included from February 8, 2002, when the intention to expatriate is made public, to July 30, 2002 when the company formally announces it will not move to Bermuda.

- Noble Drilling and Weatherford data start from the date of Board approval: January 31, 2002, April 5, 2002, respectively.

- Fruit of the Loom is deleted from May 1, 2002 as the company is taken over and becomes privately held.

- APW data ends when the company ceases to have any trading volume: August 1, 2002.

- Seagate is included from December 11, 2002 to December 31, 2003. After expatriation in November 2000 it became a privately held company but in December 2002 it issued an IPO and once again began trading as a public company. Seagate is included from the issue of the IPO.

Nine companies which appear on a number of expatriate lists are not included in this study. They are removed for the following reasons: Global Crossing is now bankrupt and trading data is not available; Leucadia National never proceeded with expatriation even though it gained shareholder approval; Playstar actually moved its physical operations to Antigua and can therefore legitimately be considered a foreign corporation, not a U.S. expatriate; PwC Consulting never became a listed company; R & B Falcon's trading data is not available; Seven Seas is a Canadian company which reincorporated in the Cayman Islands; Triton Energy is no longer listed; Veritas DGC did not go ahead with the planned merger which would have resulted in its offshore incorporation; and Trenwick Group Ltd was in severe financial difficulty during 2002, it was downgraded by a number of rating agencies, stopped paying dividends and went into provisional liquidation in 2003 and any impact of the expatriation legislation would be swamped by this continuing confounding event. This leaves a total of 23 expatriate corporations.

4.1.1 Legislative Events Dates Within the Legislative Process

Extensive use is made of the Library of Congress website for legislative details of all the Federally sponsored anti-expatriation bills. This is not an insignificant task given that the references to expatriate corporations are often buried amongst the details of larger bills that address a wide range of tax

and non-tax issues. Legislative event dates used in this study are the days on which the legislation is first proposed and sent to committee, relevant amendments are proposed or passed, bills become law or other important steps are taken. The dates chosen are the days on which it is highly likely that additional information about the bill's progress is made public. Details of the legislation in Table A.1 includes all the relevant event dates. California's initiatives are included because of Mr Angelides' stance on the expatriation issue. The dates used are those sourced from the California State Treasurer's web site and detailed in section 3.3. The publicity given to California's actions has brought the actions of other U.S. states into the public arena, but their individual actions are difficult to trace and record with any accuracy.

The event dates are coded for each company using dummy variables. All companies are coded individually according to the likely impact of the legislative proposals. For legislation expected to have a negative impact on share price, the variable NEG is coded as 1 on the date of the event as well as the day following the event. Using a two day event window enables the impact of the legislation, details of which may only be available after the share market has closed on the event date, to be absorbed into the company's share price. On all other days NEG is coded as 0.

For most of the event dates the expected impact on each expatriate's share price is negative if its date of expatriation means it is captured by the legislation. However, for three dates (September 10, October 16 and October 23, 2002), a positive response is expected. These relate to the rejection of the Senate's amendment to the Department of Defence Appropriations bill which would have stopped the Defence Department doing business with expatriate companies. It is expected that the news of the rejection would have been received positively by expatriate companies. On one other occasion, May 23, 2002, when HR 4831 seeks to prohibit the Federal government from contracting with expatriates, the limit of 10 years would have been received as good news by McDermott, Carnival and Schlumberger all of which had been reincorporated for more than 10 years. In each of these cases the variable POS is set to 1 on the event day and the day following.

Table 1. Expatriate Companies

| Expatriate Company* | Line of Business | Country of Reincorporation | Expatriation Date | Data Period |
|--|------------------------|----------------------------|-------------------|-------------------------|
| Accenture Ltd (previously a partnership) | Consulting | Bermuda | Jul 19, 01 | Jan 1, 02 – Dec 31, 03 |
| APW Ltd (a spin-off from Applied Power Inc) | Technology | Bermuda | Aug 1, 00 | Jan 1, 02 – Jul 31, 02 |
| Carnival Corp. | Shipping | Panama | 1974 | Jan 1, 02 – Dec 31, 03 |
| Cooper Industries Ltd | Manufacturing | Bermuda | May 5, 02 | Jan 1, 02 – Dec 31, 03 |
| Everest Reinsurance Group Ltd | Insurance | Bermuda | Feb 23, 00 | Jan 1, 02 – Dec 31, 03 |
| Foster Wheeler Ltd | Manufacturing | Bermuda | May 25, 01 | Jan 1, 02 – Dec 31, 03 |
| Fruit of the Loom Ltd | Clothing | Cayman Islands | Mar 4, 99 | Jan 1, 02 – Apr 30, 02 |
| GlobalSantaFe (result of a merger between Global Marine Inc and Bermuda incorporated Santa Fe International Corp.) | Oil & Gas | Bermuda | Nov 20, 01 | Jan 1, 02 – Dec 31, 03 |
| Helen of Troy Ltd | Personal care products | Bermuda | Feb 16, 94 | Jan 1, 02 – Dec 31, 03 |
| Ingersoll-Rand Company Ltd | Manufacturing | Bermuda | Dec 3, 01 | Jan 1, 02 – Dec 31, 03 |
| McDermott International | Oil & Gas | Panama | Nov 29, 82 | Jan 1, 02 – Dec 31, 03 |
| Nabors Industries Ltd | Oil & Gas | Bermuda | Jun 24, 02 | Jan 1, 02 – Dec 31, 03 |
| Noble Corp. | Oil & Gas | Cayman Islands | Apr 30, 02 | Jan 31, 02 – Dec 31, 03 |
| PXRE Group Ltd | Insurance | Bermuda | Oct 6, 99 | Jan 1, 02 – Dec 31, 03 |
| Schlumberger Ltd | Oil & Gas | Netherlands Antilles | 1956 | Jan 1, 02 – Dec 31, 03 |
| Seagate Technology (spin-off) | Technology | Cayman Islands | Apr 20, 01 | Dec 13, 02 – Dec 31, 03 |
| Stanley Works | Manufacturing | – | Did not proceed | Feb 8, 02 – Jul 30, 02 |
| Transocean-Cayman | Oil & Gas | Cayman Islands | May 14, 99 | Jan 1, 02 – Dec 31, 03 |
| Tyco International Ltd (result of a takeover of Tyco International Corp. by Bermuda incorporated ADT) | Manufacturing | Bermuda | Jul 2, 97 | Jan 1, 02 – Dec 31, 03 |
| Weatherford International Ltd | Oil & Gas | Bermuda | Jun 26, 02 | Apr 5, 02 – Dec 31, 03 |
| White Mountain Insurance Group Ltd | Insurance | Bermuda | Oct 25, 99 | Jan 1, 02 – Dec 31, 03 |
| Willbros Group Inc. | Oil & Gas | Panama | n.a. | Jan 1, 02 – Dec 31, 03 |
| XOMA Ltd | Pharmaceuticals | Bermuda | Jan 5, 99 | Jan 1, 02 – Dec 31, 03 |

Note: * Expatriation is achieved through corporate inversion unless otherwise indicated.

4.1.2 Confounding Events

A typical procedure in event studies is to remove companies from the sample if other major events take place at the same time as the event under examination. Such a procedure is not workable here since the 'event' spans a two-year period and removing companies because of any confounding events would leave no companies in the sample. Consequently, an alternative approach is considered.

Significant events, such as the announcement of earnings, dividends, mergers and significant operational events are sourced from each company's web site, except for Fruit of the Loom where it is necessary to use the Factiva On-line News Service. When a confounding event occurs within two days of an expatriation event, five trading days are removed from the sample: the days of the confounding event and two days either side. This means that only a small percentage of expatriation event days are lost from the sample rather than lose whole companies.

4.1.3 Measuring Returns

For the purpose of this analysis daily continuous returns for each company are measured as market-adjusted returns, the result of subtracting market

returns from the unadjusted returns. This avoids the problems associated with predicting each company's risk for a pre-event period which includes the closure of U.S. markets for a week following the September 11, 2001 terrorists attacks and the following months of market uncertainty. It should also be noted that these are large multinational companies whose level of risk should be close to that of the market given their diversified business interests. Daily market returns are measured using two indices sourced from DataStream: the S&P 500 Index and the Morgan Stanley Capital International World Index. As many expatriate companies cite their global operations as a reason for reincorporating outside of the U.S. it is considered appropriate to include a world index. However, as one major argument of the anti-expatriation lobby is that these companies remain essentially American it is also necessary to use a national indicator of economic performance: hence the S&P 500.

4.1.4 Assessing Impact

In order to evaluate the impact of anti-expatriation legislation on the stock prices of US expatriate

companies, two complementary techniques are employed:

1. A Kruskal-Wallis (KW) test (a one way analysis of variance which determines whether independent samples are from different populations) is employed to determine whether the returns on negative event days (NEG=1) are different to returns on other days (NEG=0). Similarly, it is used to determine whether the returns on positive event days (POS=1) are different to returns on non-positive event days (POS=0). A finding that the returns to expatriate firms on event days are significantly different to the returns on non-event days suggests the legislative process does have an impact on the returns to expatriates.

2. The second approach is based on determining the likelihood of achieving event day returns by chance. Here, Monte Carlo simulation is used to compare event day returns to a large number of randomly constructed sets of returns, where the number of returns included in each set is the same as the number of event day returns being evaluated. A useful discussion of the repeated sampling technique can be found in Noreen (1986).

For example, Accenture has 45 negative event days and trades for a total of 498 days (497 returns). In this case 45 returns are randomly selected from the 497 returns, one million times³³. For each set of 45 returns a total return is calculated and the mean and standard deviation of these one million totals is calculated. The sum of Accenture's 45 negative event day returns is compared (using a Z score) to this benchmark of random sets and any difference from what could be achieved by chance is identified. This procedure can be used for any number of event days and is as valid for GlobalSantaFe's four positive event days as it is for Accenture's 45. This repeated sampling technique is also used by Cloyd, Mills and Weaver (2003) in their evaluation of the impact of expatriation announcements on U.S. expatriates.

5. Results

All the analysis is done adjusting company returns for returns on both the S&P 500 Index and the Morgan Stanley Capital International World Index, but as they give virtually identical results, only results using the S&P 500 index are reported. The expectation is that the negative (positive) event day returns would be negative (positive). However, given that each expatriate is affected differently by the legislation the size of the impact is unknown. Mean daily returns for

event, non-event and total trading days are given in Table 2. Inspection of the returns indicates that negative events do not always correspond to negative returns, nor do positive events correspond to positive returns.

Fourteen of the 23 companies (Table 3, Panel A), which includes all the post-September 11 expatriates, have negative event day returns which are lower than returns on the remaining days, but for only three companies (Accenture, Carnival, Schlumberger) is that difference significant. Accenture and Carnival are interesting cases as they are not the 'normal' expatriate. Accenture keeps denying that it is in fact an expatriate company given that it was only ever a partnership in the U.S., and Carnival reincorporated in Panama in 1974. For both Accenture and Carnival, the KW test implies that their negative event day returns are significantly different from their non-negative event day returns and Monte Carlo simulation indicates these returns could not have been earned by chance. Schlumberger's returns are only marginally worse than could have been earned by chance. The remaining nine companies (Table 2, Panels B & C) have negative event day returns which are on average greater than other days, but none of the differences are statistically significant.

With regard to positive event days, 13 out of 19 companies have returns in the direction expected, but apart from Tyco, which has significantly greater returns on positive event days, the remainder are not significantly different from returns on other days. Given Tyco's situation, with questions raised over the financial management of the company, the reliance on these results is questionable.

If we are isolating the impact of two years of legislative proposals, the impact is slight, inconsistent and of varying magnitude. However a number of cases are worth highlighting. The three insurance companies, Everest, PXRE and White Mountain (Table 2, Panel C) have results contrary to expectations. In each case, the positive returns on negative event days contribute significantly to their overall two-year return. Their returns on positive event days are close to zero. Their average cumulative market-adjusted return, for negative event days, when compared to the cumulative return of non-insurance expatriates provides an interesting contrast. While the insurers experience an average increase of 14.1 percent, the remaining 20 non-insurers show an average decrease 7.9 percent. Although the negative event days represent only about 8 percent of the number of trading days for all three insurers, the returns on those days contribute significantly more than 8 percent to their two-year return. In the case of PXRE, the negative event day returns represent 77 percent of its total two-year return of 34.8 percent. In the case of Everest, they represent 65 percent of its total return of 16.1 percent. The impact on White Mountain is smaller, with negative event day returns contributing about one quarter of its total return of 21.6 percent. The Standard & Poor's 500 insurance

³³ Why choose one million? A considerable amount of testing went into deciding the right number of sets for the benchmark. The number needs to be large enough so that the mean and standard deviation of the sets' total returns remains constant no matter how many times you repeat the test. With 500,000 there is still variation around the second decimal place. One million gives stability to three decimal places, assuring confidence in the results.

index indicates a loss of 4.1 percent over the same two year period. Considerably less than the returns to the three insurance expatriates.

Two explanations for this unexpected positive response to what would be expected to be negative events are proposed. One, the likelihood of retrospective legislation is small, so that any company already offshore has a competitive advantage over its competitors who may not be able to gain equivalent tax savings from offshore reincorporation. Two, if the

anti-expatriation lobby get their legislation through, companies without a lot of physical assets could always move their operations offshore so that they can legitimately claim they are not a U.S. company. Either way an insurance company which had already reincorporated offshore would expect to keep its tax advantage. With such a positive response to what would be considered a negative event there is little hope that the threat of any legislation will convince these companies to return to the U.S.

Table 2. Mean Daily Market-Adjusted Returns (%)

| Expatriate Company | Neg. Event Days | Negative Event Days Mean Return | Non-Negative Event Days Mean Return | Pos. Event Days | Positive Event Days Mean Return | Non-Positive Event Days Mean Return | Total Trading Days | Trading Days Mean Return |
|-----------------------------|-----------------|---------------------------------|-------------------------------------|-----------------|---------------------------------|-------------------------------------|--------------------|--------------------------|
| Panel A | | | | | | | | |
| Accenture | 45 | -0.7772 (KW**, MC**) | 0.0895 | 6 | 0.3583 | 0.0070 | 498 | 0.0112 |
| Carnival | 41 | -0.6040 (KW*, MC*) | 0.1496 | 8 | 0.8447 (MC***) | 0.0752 | 498 | 0.0876 |
| Coopers ^P | 51 | 0.0458 | 0.1251 | 4 | -0.0594 | 0.1183 | 493 | 0.1169 |
| GlobalSantaFe ^P | 45 | -0.2893 | 0.0147 | 4 | 0.8491 | -0.0201 | 493 | -0.0130 |
| Helen of Troy | 41 | -0.2740 | 0.1202 | 6 | -1.0681 | 0.1017 | 493 | 0.0874 |
| Ingersoll-Rand ^P | 47 | -0.1472 | 0.1125 | 4 | 0.2837 | 0.0864 | 498 | 0.0880 |
| Nabors ^P | 53 | -0.2832 | 0.0959 | 4 | 1.2255 | 0.0461 | 498 | 0.0556 |
| Noble Corp. ^P | 51 | -0.1890 | 0.0472 | 6 | 0.7066 | 0.0133 | 478 | 0.0220 |
| Schlumberger | 43 | -0.2044 (MC***) | 0.0220 | 6 | 0.3406 | -0.0017 | 498 | 0.0025 |
| Seagate | 18 | 0.1032 | 0.1532 | 0 | - | - | 260 | 0.1497 |
| Stanley Works ^P | 22 | -0.4184 | 0.1255 | 0 | - | - | 118 | 0.0241 |
| Transocean | 42 | -0.1342 | -0.0449 | 6 | 0.7238 | -0.0619 | 498 | -0.0524 |
| Tyco | 45 | -0.8544 | -0.0822 | 6 | 4.2483 (KW**, MC**) | -0.2044 | 503 | -0.1513 |
| Weatherford ^P | 47 | -0.3005 | -0.0243 | 6 | 0.6985 | -0.0643 | 439 | -0.0539 |
| Panel B | | | | | | | | |
| APW | 12 | -1.2845 | -2.3617 | 0 | - | - | 130 | -2.2623 |
| Foster Wheeler | 38 | 0.0763 | -0.4162 | 6 | 0.9746 | -0.3949 | 493 | -0.3782 |
| Fruit of the Loom | 6 | -2.5272 | -3.1805 | 0 | - | - | 81 | -3.1321 |
| McDermott | 43 | 0.1866 | -0.0203 | 8 | -0.0624 | -0.0017 | 503 | -0.0026 |
| Willbros | 42 | 0.3192 | -0.1077 | 6 | -9.6333 (MC+) | 0.0449 | 498 | -0.717 |
| XOMA | 45 | 0.8020 | -0.1609 | 6 | 1.5406 | -0.0940 | 501 | -0.0744 |
| Panel C | | | | | | | | |
| Everest | 37 | 0.2824 | 0.0125 | 6 | -0.2344 | 0.0363 | 488 | 0.0330 |
| PXRE | 43 | 0.6221 (MC++) | 0.0178 | 6 | -0.2150 | 0.0739 | 494 | 0.0704 |
| White Mountain | 42 | 0.1206 | 0.0363 | 6 | 0.1651 | 0.0419 | 498 | 0.0434 |

Notes: KW: Kruskal-Wallis. MC: Monte Carlo simulation. ^P: Post-September 11, 2001 expatriations.
*, **, *** implies significance in expected direction at 1%, 5% and 10% probability levels, respectively.
+ implies significance in the opposite direction at 1% probability level.

In the case of Stanley Works, one of the companies that decided not to pursue its reincorporation proposal, a decline of 9.2 percent is experienced over the negative event days. This may have been a contributing factor in its decision not to pursue this course of action. Johnson and Holub (2003b) provide details of the considerable pressure it

was under from State politicians, the press, shareholders, unions and its own employees to reverse its expatriation decision. For the time being Stanley Works remains a U.S. company.

With much of the legislation focused on post-September 11, 2001 expatriations it is interesting to note that by the end of the two year legislative process

the decline in the average cumulative return for post-September 11 expatriates (Coopers, GlobalSantaFe, Ingersoll-Rand, Nabors, Noble Corp, Stanley Works and Weatherford International), is three times greater than the decline in the average cumulative returns of the pre-September 11 group, indicating a greater impact on the post-September 11 group on which much of the negative publicity and legislation is focused. The post September 11 expatriates do as a group react negatively to legislation specifically targeted at them around April/May 2002, and June/July 2002. Subsequent legislation targets all expatriates, and both pre- and post-September 11 groups react negatively to much of this legislation.

6. Conclusions

It is evident from the results that trying to assess the impact of legislation is difficult. One difficulty here is the length of time over which the anti-expatriation lobby has tried to curtail expatriation. Another is the large number of separate bills that have been sponsored by members in both Houses of Congress and the success during 2002 and 2003 of only one of them at the Federal level. That is, the limitation placed on the Department of Homeland Security in its dealing with expatriate corporations.

The cumulative return of the expatriates as a whole does indicate that the anti-expatriation legislation has had a negative effect, though this is difficult to pick up in individual companies where the size of the effect is small and difficult to isolate. In this respect the results are similar to Binder (1985) who finds changes in regulation are not reflected in changes in the share price and Weiss and White (1987) and Harris and Ramsay (1996) who find it difficult to determine the impact of court decisions using share price data.

One reason given by Weiss and White (1987) for the lack of any significant response to unanticipated, apparently significant legal decisions is that investors' perceive that knowing the current legal situation is not sufficient to allow them to predict with any degree of confidence what the future legal situation will be. This may be equally applicable to the process of formulating legislation. The legislative process is long and open to challenges. The committee structure is stacked in favour of the major political party who prefer 'corporate sympathetic' tax reform to keep U.S. companies incorporated in the U.S. Given there may be a change in political power, the final outcome may be impossible to predict and therefore it may be difficult to observe any reaction in the share prices of the companies concerned. In the case of anti-expatriation legislation, after a two year period of discussion and legislative debate, the issue has not been resolved and there is no definitive answer.

Given that relatively little legislation has actually been enacted, the market's perception may be that the probability of any legislation getting through is becoming lower, and accordingly, its impact is more

difficult to identify and isolate. It should also be recognised that the effect of legislation on companies varies. It depends, for example, upon the date of incorporation and the amount of government contracts they have. For some companies, any legislative effect may be small. If legislation is not retrospective, companies that have already reincorporated may have a competitive advantage. They may see it as good news that other companies will be prevented from undertaking expatriation in the future. This could explain the positive reactions we find on negative event days from the insurance companies.

The anti-expatriation movement has succeeded in one respect: no further expatriations have taken place since Stanley Works announced, on July 30, 2002, it had abandoned its plans to reincorporate in Bermuda. This suggests that while the anti-expatriation movement has had limited success in getting legislation through Congress and may not have had a significant impact on companies that have already expatriated, the ongoing debate has been a significant deterrent to companies contemplating expatriation. For the U.S. Treasury this is good news as companies, which may have considered offshore reincorporation, remain for the time being under U.S. control.

However, attempts to get some of these expatriates to relocate back to the U.S. have failed. In 2003 shareholders' resolutions on reincorporating back to the U.S. for Tyco, Coopers and Ingersol Rand received 17.9 percent, 9.1 percent and 30.5 percent of the votes cast respectively. By 2004 support for reincorporation to the U.S. had fallen to 4.8 percent and 7.7 percent for Tyco and Ingersol Rand respectively. No shareholder resolution on reincorporation was proposed for Coopers in 2004. A resolution, in 2004, asking Nabors to return from Bermuda received the support of only 7.5 percent of the votes cast.³⁴ As September 11, 2001 begins to fade in the public memory, interest is waning in the incorporation / tax debate. With President G.W. Bush elected for a second term with a pro-corporate agenda and control of both Houses of Congress, little action is expected in the expatriation debate in the near future, which may mean we see a new wave of expatriation as companies once again move offshore to reduce the amount of tax they U.S. Treasury collects. With increasing pressure on the U.S. budget from home and abroad and the need to raise more tax dollars, the U.S. Treasury may need to pursue this debate further. They can not afford to lose control of the tax dollars U.S. corporations pay.

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Appendix

Table A.1. Summary Of Bills Relating To The Treatment Of Expatriate Companies

| Bill* | Title as introduced | Short Title | Passage of Bill | Related Bills | Comments |
|----------------------------|---|--|---|---------------|---|
| 107 th Congress | | | | | |
| HR 3857 | To amend the Internal Revenue (IR) Code of 1986 to treat nominally foreign corporations created through inversion transactions as domestic corporations. | | Mar 6, 02 – Introduced and referred to House Committee of Ways & Means | | Impacts on inversions which take place from Jan 1, 2002. Public hearing on expatriation issue held Jun 6, 2002. Notification issued on Jun 5, 2002. |
| HR 3884 | To amend the IR Code of 1986 to prevent corporations from avoiding US income tax by reincorporating in a foreign country | Corporate Patriot Enforcement Act of 2002 | Mar 6, 02 – Introduced and referred to House Committee of Ways & Means | H Res 456 | Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. |
| HR 3922 | To amend the IR Code of 1986 to prevent corporations from avoiding US income tax by reincorporating in a foreign country | Save America's Jobs Act of 2002 | Mar 11, 02 – Introduced and referred to House Committee of Ways & Means | | Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. |
| S 2050 | To amend the IR Code of 1986 to treat nominally foreign corps created through inversion transactions as domestic corps. | | Mar 21, 02 – Introduced and referred to the Committee on Finance | | Applies from Jan 1, 2003 to any inverted domestic corporations regardless of the date of expatriation. |
| S 2119 | To amend the IR Code of 1986 to provide for the tax treatment of inverted corporate entities and of transactions with such entities, and for other purposes | Reversing the Expatriation of Profits Offshore Act | Apr 11, 02 – Introduced and referred to the Committee on Finance Jun 28, 02 – Favourable Committee on Finance Report. Placed on Senate Legislative Calendar under General Orders – Calendar No 465 | | Applies to expatriations completed after Mar 20, 2002. |
| HR 4756 | To amend the IR Code of 1986 to impose a moratorium on the ability of US corps to avoid the US income tax by reincorporating in a foreign country | Uncle Sam Wants You A of 2002 | May 16, 02 – Introduced and referred to House Committee of Ways & Means | | Applies To expatriations completed after Sept 11, 2001. |

| Bill* | Title as introduced | Short Title | Passage of Bill | Related Bills | Comments |
|-----------|--|---|--|---------------|--|
| HR 4831 | To prohibit certain corporations from being eligible for the award of Federal Contracts | Patriotic Purchasing Act of 2002 | May 23, 02 – Introduced and referred to the House Committee on Government Reform | | Applies to any expatriate corporation which completed its expatriation within the 10 years before the enactment of this Act |
| H Res 456 | Providing for consideration of the bill (HR 3884) to amend the IR Code of 1986 to prevent corporations from avoiding the US income tax by reincorporating in a foreign country | | Jun 24, 02 – Introduced and referred to the House Committee on Rules Jul 17, 02 - Motion to Discharge Committee filed (petition no. 107-8). | HR 3884 | Relates to the passage of HR 3884 |
| HR 5005 | To establish the Department of Homeland Security, and for other purposes | Homeland Security Act of 2002 | Jun 14, 02 – Introduced and started a long process of House Committee hearings Jul 30, 02 - Received in the Senate, numerous amendments made Sep 4, 02 - S AMDT 4490 introduced Sep 5, 02 - S AMDT 4490 passed by Senate Nov 19, 02 - Bill with amendments passed by Senate Nov 22, 02 - House agree to Senate amendments Nov 25, 02 - Becomes Public Law 107-296 | | See section 835. S AMDT 4490 – Prohibits the Secretary of Homeland Security from contracting with any expatriate corporation. |
| HR 5010 | Making appropriations for the Department of defence for the fiscal year ending September 30, 2003, and for other purposes | Department of Defence Appropriations Act, 2003 | Jun 25, 02 – Introduced and placed on Union Calendar, No 322 Jun 27, 02 - Passed by HR after a number of amendments Jun 28, 02 - Received in Senate, referred to the Committee on Appropriation Jul 16, 02 - Favourable Report from Committee Jul 18, 02 - Placed on Senate Legislative Calendar under General Order, No 505 Jul 31, 02 - Laid before Senate. S AMDT 4364 passed by Senate Aug 1, 02 - Amendments passed by Senate Sep 10, 02 - HR disagrees with Senate amendments and agree to a conference Oct 16, 02 - Senate and HR agree to conference report, S AMDT 4364 not in final version of Act Oct 23, 02 - Becomes Public Law No 107-248 | S AMDT 4364 | S AMDT 4364 – Amendment proposed by Senator Wellstone to prohibit the use of funds made available in this Act for payment on any new contract to any corporate expatriate. |
| HR 5095 | To amend the IR Code of 1986 to improve and simplify compliance with the internal revenue laws, and for other purposes | American Competitiveness and Corporate Accountability | Jul 11, 02 – Introduced and referred to House Committee on Ways and Means | | See Section 7874 Treats expatriates as domestic corporations for tax purposes. Applies to expatriations between Mar 21, 2002 and Mar 21, 2005 and applies to |

| Bill* | Title as introduced | Short Title | Passage of Bill | Related Bills | Comments |
|----------------------------|--|---|---|---------------------|---|
| | | y Act of 2002 | | | taxable income in the 10 years after expatriation completed. |
| 108 th Congress | | | | | |
| S 134 | To amend the Homeland Security Act of 2002 (Public Law 107-296) to provide that waivers of certain prohibitions on contracts with corporate expatriates shall apply only if the waiver is required in the interests of national security | Wellstone Memorial Renegade Corporation Act of 2003 | Jan 9, 03 – Introduced to the Senate | | Seeks to limit exemptions in 107 - HR 5005 |
| S 384 | To amend the IR Code of 1986 to prevent corporate expatriation to avoid US income taxes | Corporate Patriot Enforcement Act of 2003 | Feb 12, 03 – Introduced and referred to Committee on Finance | Identical to HR 737 | Similar to 107–HR 3884 & 107-HR 3922 Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. |
| HR 737 | To amend the IR Code of 1986 to prevent corporate expatriation to avoid US income taxes | Corporate Patriot Enforcement Act of 2003 | Feb 12, 03 – Introduced and referred to House Committee on Ways and Means | Identical to S 384 | Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. |
| S 513 | To amend the IR Code of 1986 and the Securities Exchange Act of 1934 to provide for the treatment of corporate expatriation transactions, and for other purposes | Corporate Tax Fairness and Shareholder Rights Act of 2003 | Mar 4, 03 – Introduced and referred to the Committee on Finance | | Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. Covers disclosure to shareholders of the impact of expatriation. This applies from the time the Act becomes law. |
| HR 1661 | To provide balanced taxpayer protections in tax administrations, including elimination of abusive tax strategies, simplification of the earned income tax credit, and taxpayer protection. | Taxpayer and Fairness Protection Act of 2003 | Apr 8, 03 – Introduced and referred to House Committee on Ways and Means | | See section 151 Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. HR 2 covers Senate amendments |
| HR 2046 | To amend the IR Code of 1986 to rebuild America through job creation | Jobs and Growth Reconciliation Tax Act of 2003 | May 9, 03 – Introduced and referred to House Committee on Ways and Means | | See Subtitle C –section 341 Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. |
| S 1149 | To amend the IR Code of 1986 to provide energy tax incentives, and for other purposes | Energy Tax Incentives Act of 2003 | May 23, 03 - Introduced to the Senate (originated in Committee) and placed on Senate Legislative Calendar under General Orders. Calendar No 113 | | See Title VIII – Revenue Provisions Treats expatriates as domestic corporations for tax purposes. Applies to all corporate expatriation transactions completed after Sept 11, 2001. Affects tax situation of all pre-September 11 expatriations from Jan 1, 2004. |

* HR refers to bills introduced in the House of Representatives, S bills have been introduced in the Senate.