United States Senate
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman
Tom Coburn, Ranking Minority Member

E X H I B I T S

Hearing On

Offshore Profit Shifting and the U.S. Tax Code

September 20, 2012

199 Russell Senate Office Building, Washington, D.C. 20510

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1. a. Memorandum from Permanent Subcommittee on Investigations.
   b. *Corporate Income Tax as a Percent of Total Revenue*, chart prepared by the Permanent Subcommittee on Investigations.
   c. *Undistributed Foreign Earnings, 2001-2010, S&P 500*, chart prepared by the Permanent Subcommittee on Investigations, Source: Credit Suisse.
   d. *2011 Microsoft Intellectual Property Payments (Puerto Rico)*, chart prepared by the Permanent Subcommittee on Investigations.
   e. *2011 Microsoft Intellectual Property Payments (Two Examples)*, chart prepared by the Permanent Subcommittee on Investigations.
   f. *Hewlett-Packard Offshore Alternating Loan Program*, chart prepared by the Permanent Subcommittee on Investigations.
   g. *Impact of Check the Box*, chart prepared by the Permanent Subcommittee on Investigations.
   h. *Summary of CFC Cash Pool Loans to HP Co. US - Fiscal Year 2009*, prepared by the Permanent Subcommittee on Investigations.

2. Charts prepared by Jack Ciesielski, R.G. Associates, Inc.:
   a. *S&P 500: Cumulative Indefinitely Reinvested Earnings, 2004-2008.*
   b. *S&P 500: Cumulative Indefinitely Reinvested Earnings, 2001 Vs. 2006.*

3. Documents related to Hewlett-Packard:
   a. Hewlett-Packard *E&P and Tax for Materials Entities (FY10).*
   b. Hewlett-Packard *Short Term Liquidity Update,* including slides entitled, *Offshore cash pools* and *Access to offshore cash*, dated October 7, 2008.
   c. *Hewlett-Packard Co. Repatriation History*, including slides entitled, *Repatriation History* and *Alternating Loans,* undated.
   d. *Hewlett-Packard Company Cash Profile,* dated May 23, 2011.
   e. Hewlett-Packard spreadsheet of inter-comany loans for FY 2009-2011.
   f. *Hewlett-Packard Company Historical APB 23 Summary.*
   g. Hewlett-Packard Average Alternating Loan Summary for FY 2010-2012.
   h. Excerpt from Hewlett-Packard 2011 *Walkthrough Template - SOX Process Review.*
   i. Hewlett-Packard/KPMG email, dated March 2010, re: *apb 23 question.*
   j. Hewlett-Packard *US Cash Forecast, FY 11.*
   k. Hewlett-Packard/Sandford C. Bernstein & Co. email, dated June 2006, re: *Questions on Cash.*

4. Documents related to Ernst & Young:
   a. Ernst & Young internal email, dated September 2007, re: *956 issues.*
   b. Ernst & Young/HP email, dated April 2010, re: *Your 956 Question*.
   c. Ernst & Young internal email, dated September 2011, re: *APB 23 and Congress.*

5. Documents related to Microsoft:
   a. Selected Microsoft Financial Data.
   b. Selected Microsoft Tax Information.
   c. Microsoft Distribution Agreement.

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MEMORANDUM

To: Members of the Permanent Subcommittee on Investigations

From: Senator Carl Levin, Subcommittee Chairman
Senator Tom Coburn, Ranking Member

Date: September 20, 2012

Re: **Offshore Profit Shifting and the U.S. Tax Code**

I. EXECUTIVE SUMMARY

On September 20, the Permanent Subcommittee on Investigations of the U.S. Senate Homeland Security and Government Affairs Committee will hold a hearing examining how multinational corporations (MNCs) headquartered in the United States transfer intellectual property and the profits that they generate, to offshore jurisdictions and avoid U.S. taxes.

The hearing will focus on some of the weaknesses and loopholes in certain tax and accounting rules, in particular transfer pricing, Subpart F, Section 956 of the U.S. Tax Code, and FASB accounting standard APB 23. It will also examine the practices of two large U.S.-based multinational high technology companies, using them as case studies to identify some of the structures and transactions that many U.S.-based MNCs use to shift billions of dollars worth of assets developed in the United States and profits offshore to avoid U.S. taxes; improve the appearance of their corporate balance sheets; and in some cases are *de facto* repatriating the untaxed profits back to the United States, contrary to the intent of U.S. tax policy.

A. SUBCOMMITTEE INVESTIGATION

For a number of years, the Subcommittee has reviewed how U.S. citizens and multinational corporations have misused and at times violated tax statutes and regulations and accounting rules to shift profits and valuable assets offshore to avoid U.S. taxes. The Subcommittee inquiries have resulted in a series of hearings and reports.[1] Most recently, the majority staff of the Subcommittee issued a report on how U.S. multinational corporations used the funds they repatriated under the Homeland Security Investment Act. [2] Each of the reports proposed a number of recommendations on how to stem the flow of profits and tax income to offshore tax havens.

[1] See e.g., U.S. Senate Permanent Subcommittee on Investigations, "Fishtail, Bacchus, Sundance, and Slapshot: Four Enron Transactions Funded and Facilitated by U.S. Financial Institutions," S.Prt. 107-82 (Jan. 2, 2003); "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals," S.Prt. 112-27 (Oct. 11, 2011); "Tax Haven Abuses: The Enablers, The Tools and Secrecy," S.Hrg 109-797 (Aug. 1, 2006); "Tax Haven Banks and U.S. Tax Compliance," S.Hrg. 110-614 (July 17 and 25, 2008); "Tax Haven Banks and U.S. Tax Compliance: Obtaining the Names of U.S. Clients with Swiss Accounts," S.Hrg. 111-30 (Mar. 4, 2009).

[2] U.S. Permanent Subcommittee on Investigations, "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals," S.Prt. 112-27 (Oct. 11, 2011).

Permanent Subcommittee on Investigations
EXHIBIT #1a

The September 20 hearing is a continuation of the Subcommittee's review of those matters. The Subcommittee undertook a review of transfer pricing, deferral, Subpart F of the Internal Revenue Code and related regulations, and accounting standards governing offshore profits and the reporting of tax liabilities. Building upon information collected in previous inquiries, the Subcommittee sent surveys and issued document subpoenas to a number of MNCs headquartered in the U.S. and their auditing firms. In addition to reviewing the survey responses and the subpoenaed material, Subcommittee staff interviewed a number of corporate representatives and tax professionals, as well consulted with government and academic experts on international tax issues. This memorandum provides an overview of certain tax provisions and an accounting standard related to offshore profits and the recording of tax liabilities. It also provides two case studies: (1) a study of how Microsoft Corporation uses structures and practices to shift and keep profits offshore; and (2) a study of Hewlett-Packard's "staggered foreign loan program" devised to *de facto* repatriate offshore profits to the United States, without paying U.S. taxes, to pay for their operations in the U.S.

B. FINDINGS AND RECOMMENDATIONS

Findings. The Subcommittee's investigation has found the following.

1. **Tax Incentives to Shift Profits Offshore.** Current weaknesses in the tax code's transfer pricing regulations, Subpart F, and Section 956, and in the Financial Accounting Standards Board's (FASB) accounting standard, APB 23 relating to deferred tax liabilities on permanently or indefinitely invested foreign earnings, encourage and facilitate the shifting of intellectual property and profits offshore by multinational corporations headquartered in the United States.

2. **Ambiguity in Accounting Standard APB 23.** Ambiguities in accounting standard APB 23 create the potential for companies to manage their earnings by avoiding reporting U.S. tax liabilities for foreign profits, thereby improving the appearance of their financial statements to shareholders and investors. The financial reporting benefits of APB 23 encourage MNCs to move and keep their businesses and earnings offshore.

3. **Aggressive Transfer Pricing.** Microsoft Corporation has used aggressive transfer pricing transactions to shift its intellectual property, a mobile asset, to subsidiaries in Puerto Rico, Ireland, and Singapore, which are low or no tax jurisdictions, in part to avoid or reduce its U.S. taxes on the profits generated by assets sold by its offshore entities.

4. **Offshoring Profits.** From 2009 to 2011, by transferring certain rights to its intellectual property to a Puerto Rican subsidiary, Microsoft was able to shift offshore nearly $21 billion, or almost half of its U.S. retail sales net revenue, saving up to $4.5 billion in taxes on goods sold in the United States, or just over $4 million in U.S. taxes each day.

5. **Check-the-Box and the CFC Look-Through Rule Undermine Subpart F.** In FY2011, Microsoft Corporation excluded an additional $2 billion in U.S. taxes on passive income at its offshore subsidiaries, relying on the "check-the-box" regulations and the controlled foreign corporation (CFC) "look-through" rule, which have undermined the intent of the tax code's Subpart F to prevent the shifting of passive CFC profits to tax havens to avoid U.S. tax.

6. **Short Term Offshore Loans.** Since at least 2008, Hewlett Packard Co. has used billions of dollars of intercompany offshore loans to effectively repatriate untaxed foreign profits back to the United States to run their U.S. operations, contrary to the intent of U.S. tax policy.

7. **Auditor Reliance.** HP's auditor, Ernst & Young, knew that the company had set up a structured loan program to obtain billions of dollars in continual, alternating loans each year from two offshore entities and used those offshore funds to run its U.S. operations, but continued to support HP's view that those offshore funds had not been repatriated to the United States and were not subject to taxation.

Recommendations. Reforms are needed to eliminate tax loopholes and tighten tax provisions that encourage U.S. multinationals to transfer and keep intellectual property and profits offshore.

1. **Reform Tax Provisions that Encourage Offshoring of Profits.** Reform tax code Sections 482 and 956 regarding transfer pricing and offshore loan practices, and the check-the-box and CFC look-through rules, that encourage U.S. multinationals to transfer and keep profits offshore and untaxed.

2. **Issue APB 23 Guidance.** FASB should re-evaluate whether the indefinite reversal exception to ABP 23 is being used by multinationals to manipulate their earnings reports, and issue additional guidance or restrictions to clarify how the standard should be applied.

3. **Use Anti-Abuse Rules.** The IRS should make greater use of its anti-abuse rules to stop offshore schemes and transactions that substantively violate the intent of the code, but are structured to appear to meet the most technical reading of, the tax code rules governing the taxation of offshore income.

II. Overview

A. U.S. Corporate Taxation

U.S. corporations are taxed at up to a 35% statutory rate on their worldwide income. The U.S. corporate tax rate, which is among the highest in the world, was cited by some companies as an incentive to look for methods to reduce their tax burdens. Some multinational corporations have indicated that they are reluctant to bring offshore funds back to the United States is due in part to the high statutory tax rate.

This statutory tax rate can be reduced, however, through a variety of mechanisms, including tax provisions that permit multinationals to defer U.S. tax on earnings of their controlled foreign corporations (CFC)[3] until those earnings are brought back to the United States or repatriated as a dividend. This concept is known as "deferral." Deferral of tax on foreign

[3] 26 U.S.C. § 957(a) (2004) states:

> "the term 'controlled foreign corporation' means any foreign corporation if more than 50 percent of—
> **(1)** the total combined voting power of all classes of stock of such corporation entitled to vote, or
> **(2)** the total value of the stock of such corporation, is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation."

income is restricted under Subpart F of the Internal Revenue Code. Subpart F is often referred to as an "anti-deferral" regime. It is only active income of a CFC that may be deferred until repatriated, but passive income earned by a CFC such as royalties, dividends and interest is currently subject to U.S. tax and reportable under Subpart F regardless of whether the earnings have been repatriated.

Deferral creates incentives for U.S. firms to leave funds offshore in countries with low tax rates. It provides MNCs with an incentive to put their earnings in low-tax countries and to avoid Subpart F income and increase their after-tax profits.

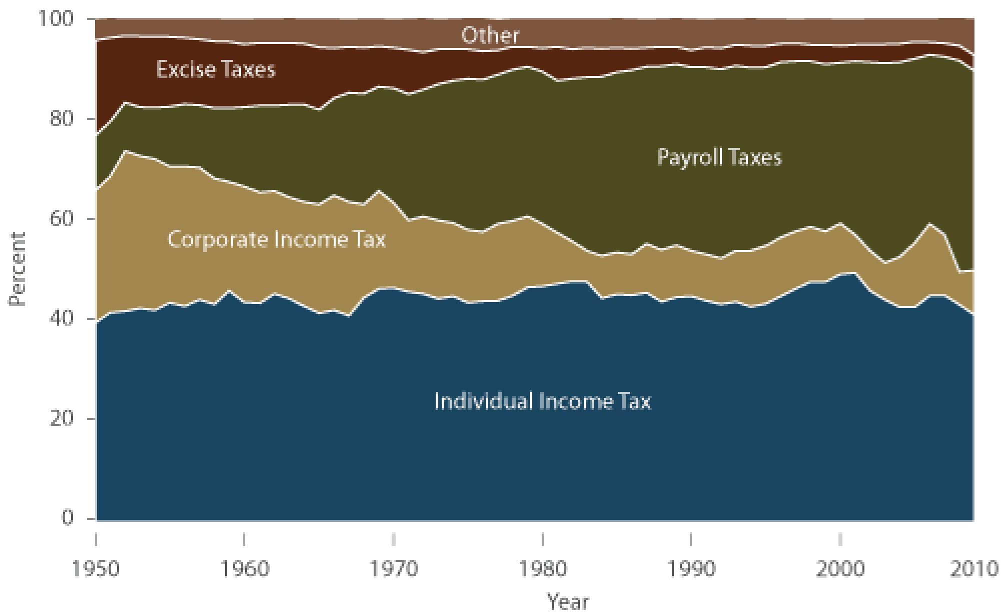
As the U.S. federal debt has continued to grow and now surpasses $16 trillion, the U.S. corporate tax base has continued to decline. According to a report prepared for Congress:

> "At its post-WWI peak in 1952, the corporate tax generated 32.1% of all federal tax revenue. In that same year the individual tax accounted for 42.2% of federal revenue, and the payroll tax accounted for 9.7% of revenue. Today, the corporate tax accounts for 8.9% of federal tax revenue, whereas the individual and payroll taxes generate 41.5% and 40.0%, respectively, of federal revenue."[4]

This decline in corporate tax revenue is due in part to the shifting of mobile income offshore.

[4] "Reasons for the Decline in the Corporate Tax Revenues" Congressional Research Service, Mark P. Keightley, December 8, 2011, p.1; "Tax Havens and Treasure Hunts," Today's Economist, Nancy Folbre, April 2011.

Figure 2. Sources of Federal Revenue, Fiscal 1950-2010



Source: Budget of the United States Government, Fiscal Year 2012, Historical Tables: Table 2.1; http://www.whitehouse.gov/omb/budget/Historicals

B. Income Shifting

Because of the benefits of deferral, loopholes associated with Subpart F, and accounting standard APB 23, MNCs have an increased incentive to move income offshore to low or no tax jurisdictions. "There is empirical evidence that U.S. multinational corporations shift income to low-tax foreign jurisdictions," according to a 2010 report by the Joint Committee on Taxation. [5] Current estimates indicate U.S. MNCs have more than $1.7 trillion in undistributed foreign earnings and keep at least 60% of their cash overseas.[6]

[5] 7/20/2010, Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing," (JCX-37-10), at 7.
[6] 5/16/2012, JP Morgan, "Global Tax Rate Makers," at 1; see also 4/26/11, Credit Suisse, "Parking Earnings Overseas."

The chart below lists some of the MNCs with foreign cash balances greater than $5 billion and exhibits the magnitude of profits moved offshore by some of the largest, most successful U.S. corporations. Nearly all of the MNCs listed in the chart keep most of their cash in foreign jurisdictions. Some, including Pfizer and Hewlett-Packard, keep close to 100% of their cash offshore.

Table 4: Companies with Foreign Cash Balances Greater Than $5 Billion

			Most Recently Reviewed 10Q or 10K Filing Information				
			Cash Disclosures				
Company Name	Ticker	Market Cap 5/14/12 Close	Date	Total Cash	Foreign Cash	Foreign Cash as a % of Total Cash	Foreign Cash Label
Apple Inc.	AAPL	521,970.3	3/31/2012	110,200.0	**74,000.0**	**67%**	(11)
Microsoft Corporation	MSFT	257,738.6	3/31/2012	59,500.0	**50,000.0**	**89%**	(10)
General Electric Company	GE	196,811.4	3/31/2012	83,700.0	> **41,850.0**	> **50%**	(4)
Cisco Systems, Inc.	CSCO	89,972.1	1/28/2012	46,742.0	**41,700.0**	**89%**	(10)
Google Inc.	GOOG	196,811.9	3/31/2012	49,300.0	**25,700.0**	**48%**	(8)
Oracle Corporation	ORCL	134,128.9	2/29/2012	29,742.0	**25,100.0**	**84%**	(13)
Johnson & Johnson	JNJ	175,575.6	1/1/2012	24,542.0	**24,500.0**	**100%**	(4)
Pfizer Inc.	PFE	169,119.5	4/1/2012	23,972.0	~ **19,177.6**	**70%-90%**	(10)
Amgen Inc.	AMGN	54,595.1	3/31/2012	19,400.0	**16,600.0**	**82%**	(13)
QUALCOMM Incorporated	QCOM	105,359.3	3/25/2012	26,600.0	**16,500.0**	**62%**	(11)
The Coca-Cola Company	KO	173,567.4	3/31/2012	15,779.0	> **13,900.0**	**88%**	(10)
Dell Inc.	DELL	27,206.0	2/3/2012	13,852.0	~ **11,774.2**	~ **85%**	(4)
Merck & Co. Inc.	MRK	116,263.8	3/31/2012	19,500.0	> **9,200.0**	**sma**	(11)
Medtronic, Inc.	MDT	39,636.1	1/27/2012	8,938.0	**8,289.0**	**93%**	(13)
Hewlett-Packard Company	HPQ	45,409.7	1/31/2012	8,113.0	~ **8,100.0**	~ **100%**	(4)
eBay Inc.	EBAY	51,971.9	3/31/2012	8,000.0	**7,000.0**	**88%**	(10)
Wal-Mart Stores Inc.	WMT	200,877.9	1/31/2012	6,600.0	**5,600.0**	**85%**	(4)
Devon Energy Corporation	DVN	25,788.6	12/31/2011	7,088.0	**vma**	**vma**	(12)

vma - vast majority of cash is abroad
(4) - Cash And Equivalents
(8) - Cash And Equivalents, Short Term Investments, Restricted Cash
(13) - Cash And Equivalents, Marketable Securities
(12) - Cash And Equivalents, Short Term Investments, Trading Asset Securities
(11) - Cash And Equivalents, Short Term Investments, Long-term Investments
(10) - Cash And Equivalents, Short Term Investments

Source: JP Morgan Estimates; Bloomberg; Company Reports

A number of studies show that multinational corporations are shifting mobile income out of the United States into low or no tax jurisdictions, including tax havens such as Bermuda and the Cayman Islands.[7] In one 2012 study, a leading expert in the Office of Tax Analysis of the

[7] See, e.g., 6/5/2010, Jane Gravelle, "Tax Havens: International Tax Avoidance and Evasion," *Congressional Research Service*, at 15 (citing multiple studies).

U.S. Department of Treasury found that foreign profit margins, not foreign sales, are the cause for significant increases in profits abroad. He wrote:

> "The foreign share of the worldwide income of U.S. multinational corporations (MNCs) has risen sharply in recent years. Data from a panel of 754 large MNCs indicate that the MNC foreign income share increased by 14 percentage points from 1996 to 2004. The differential between a company's U.S. and foreign effective tax rates exerts a significant effect on the share of its income abroad, largely through changes in foreign and domestic profit margins rather than a shift in sales. U.S.-foreign tax differentials are estimated to have raised the foreign share of MNC worldwide income by about 12 percentage points by 2004. Lower foreign effective tax rates had no significant effect on a company's domestic sales or on the growth of its worldwide pre-tax profits. Lower taxes on foreign income do not seem to promote 'competitiveness.'"[8]

Also corroborating these findings is the chart below, which shows that foreign profits of U.S. CFCs significantly outpace the total GDP of some tax havens."[9]

Table 4. U.S. Foreign Company Profits Relative to GDP, Small Countries on Tax Haven Lists

Country	Profits of U.S. Controlled Corporations as a Percentage of GDP
Bahamas	43.3
Barbados	13.2
Bermuda	645.7
British Virgin Islands	354.7
Cayman Islands	546.7
Guernsey	11.2
Jersey	35.3
Liberia	61.1
Malta	0.5
Marshall Islands	339.8
Mauritius	4.2
Netherland Antilles	8.9

Source: CRS calculations, see text

[8] 2/2012, Harry Grubert, "Foreign Taxes and the Growing Share of U.S. Multinational Company Income Abroad: Profits, Not Sales, are Being Globalized," Office of Tax Analysis Working Paper 103 at 1.
[9] 6/5/2010, Jane Gravelle, "Tax Havens: International Tax Avoidance and Evasion," *Congressional Research Service*, at 14.

C. Transfer Pricing.

A major way that MNCs shift profits from high-tax to low-tax jurisdictions is through the pricing of goods and services sold between affiliates. This concept is known as "transfer pricing." [10] Principles regarding transfer pricing are codified under Section 482 of the Internal Revenue Code and largely build upon the principle of arms length dealings. IRS regulations provide various economic methods that can be used to test the arm's length nature of transfers between related parties.

There are several ways in which assets or services are transferred between a U.S. parent and an offshore affiliate entity: an outright sale of the asset; a licensing agreement where the economic rights transferred to an affiliate in exchange for a licensing fee or royalty stream; sale of services or a cost sharing agreement; and an agreement between related entities to share the cost of developing an intangible asset, which typically includes a "buy-in" payment.[11] Of these approaches, "licensing and cost-sharing are among the most popular and controversial."[12] Generally, legal ownership is not transferred; instead economic ownership of certain specified rights to the property is transferred.

One way that income shifting occurs is when a MNC sells or licenses the foreign rights to intangible assets developed in the U.S. to its subsidiary in a low-tax country. For example, a U.S. parent may license the economic rights of its intellectual property to a subsidiary located in Bermuda, a subsidiary which, in many cases, was created for that purpose. Once the foreign subsidiary owns the rights, the profits derived from the technology become those of the subsidiary, not the parent.[13]

The license payment made by the subsidiary to its parent is taxable income, but the parent has an incentive to set the price as low as possible. If the price paid is low compared to future profits generated by the license rights, less income is taxable to the parent and the subsidiary's expenses are lower. Thus, the U.S. parent has successfully shifted taxable profits out of the United States to Bermuda, where no corporate taxes apply.

The Joint Committee on Taxation has stated that a "principal tax policy concern is that profits may be artificially inflated in low-tax countries and depressed in high-tax countries through aggressive transfer pricing that does not reflect an arms-length result from a related-party transaction."[14] "In the case of U.S. multinationals, one study suggested that about half the difference between profitability in low-tax and high-tax countries, which could arise from

[10] "'[T]ransfer pricing' is the system of laws and practices used by countries to ensure that goods and services transferred between related companies are appropriately priced, based on market conditions, such that profits are correctly reflected in each jurisdiction." 7/20/2010, Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing," (JCX-37-10), at 7.
[11] A buy-in payment is an initial contribution for the development already and undertaken and future payments for the continued development of the intangible assets. 5/16/2012, JP Morgan, "Global Tax Rate Makers," at 20.
[12] 5/16/2012, JP Morgan, "Global Tax Rate Makers," at 20.
[13] Under U.S. tax rules, the subsidiary must pay "arm's length" prices for the rights, which means the subsidiary would have to pay the same amount for the asset that an unrelated third party would pay for the rights.
[14] 7/20/2010, Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing," (JCX-37-10), at 5.

artificial income shifting, was due to transfers of intellectual property (or intangibles) and most of the rest through the allocation of debt."[15] A Treasury Department study conducted in 2007 found the potential for improper income shifting was "most acute with respect to cost sharing arrangements involving intangible property."[16]

Valuing intangible assets at the time they are transferred is complex, often because of the unique nature of the asset, which is frequently a new invention without comparable prices, making it hard to know what an unrelated third party would pay for a license. According to one recent study:

> "Many multinationals appear to be centralizing many of their valuable IP [intellectual property] assets in low-tax jurisdictions. The reality is that IP rights are easily transferred from jurisdiction to jurisdiction, and they are often inherently difficult to value."[17]

The inherent difficulty in valuing such assets enables MNCs using aggressive transfer pricing practices to artificially increase profits in low tax jurisdictions. *The Economist* has described these aggressive transfer pricing tax strategies as a "big stick in the corporate treasurer's tax-avoidance armoury."[18] Certain tax experts, who had previously served in senior government tax positions, have described the valuation problems as insurmountable.[19] The valuation problems are due in part because, in many cases, the assets transferred offshore are not traded on the open market, and therefore cannot be pegged to any comparable, third party transaction prices. Rather, the prices are typically based on estimates devised by the companies themselves.

Because of these challenges, the IRS has increased scrutiny of transfer pricing practices, instituting a number of initiatives to address the problem by increasing resources and expertise. Transfer pricing disputes with the IRS sometimes involve billions of dollars over the question of how to value transferred intangibles and in some instances have resulted in settlements with the government. For example, in one 2006 settlement agreement, GlaxoSmithKline agreed to pay the IRS approximately $3.4 billion to resolve a long-running transfer pricing dispute. Despite the success that it has had in settling some transfer pricing cases, however, the IRS has lost significant litigated cases in this area as well.[20]

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[15] 6/5/2010, Jane Gravelle, "Tax Havens: International Tax Avoidance and Evasion," *Congressional Research Service*, at 8 (citing 3/2003, Harry Grubert, "Intangible Income, Intercompany Transactions, Income Shifting and the Choice of Locations," *National Tax Journal*, vol. 56.2, at 221-42).
[16] 7/20/2010, Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing," (JCX-37-10), at 7 (citing U.S. Department of the Treasury, "Report to the Congress on Earnings Stripping, Transfer Pricing and U.S. Income Tax Treaties," November 2007).
[17] 5/16/2012, JP Morgan, "Global Tax Rate Makers," at 1.
[18] 2008, Alfredo J. Urquidi, "An Introduction to Transfer Pricing," New School Economic Review, vol. 3.1 at 28 (citing "Moving Pieces," *The Economist*, 2/22/2007).
[19] 3/20/2012, Patrick Temple-West, "IRS Forms 'SWAT Team' for Tax Dodge Crackdown," Reuters.
[20] See, e.g., *Xilinx, Inc. v. Commissioner*, 598 F.3d 1191, 1197 (2010); *Veritas Software Corp. v. Commissioner*, 133 T.C. 297 (2009).

D. Subpart F

In a recent research report, JP Morgan expressed the opinion that the transfer pricing of intellectual property "explains some of the phenomenon as to why the balances of foreign cash and foreign earnings at multinational companies continue to grow at such impressive rates." [21]

The Subcommittee's investigation has found that multinationals have used transfer pricing to move intangible assets to CFCs in tax havens or low tax jurisdictions while they attribute expenses to their U.S. operations, thereby lowering their taxable income at home. Once the CFCs have the economic rights to the intangibles, they frequently sublicense those rights and charge license fee or royalties to their lower tier related entities. By engaging in such sublicensing arrangements, the CFCs located in low or no tax jurisdictions obtain passive income from their lower-tiered related entities, moving the MNC's mobile income to those tax havens.

Subpart F is aimed at reducing deferral, so that passive or mobile income received in tax havens or low tax jurisdictions is taxed immediately.[22] It was enacted to deter U.S. taxpayers from using tax haven CFCs to accumulate earnings that could have been accumulated in the United States.[23] "[S]ubpart F generally targets passive income and income that is split off from the activities that produced the value in the goods or services generating the income," according to the Treasury Department's Office of Tax Policy.[24] Although deferral of U.S. tax is permissible for active, foreign business operations, it is not permitted for passive, inherently mobile income such as royalty, interest, or dividend income under Subpart F.[25] Certain regulations and temporary statutory changes have undercut the application of Subpart F, however, which is discussed below.

Subpart F of the Internal Revenue Code was enacted by Congress in 1962. Prior to its enactment, in circumstances somewhat similar to the situation in the United States today, "the country faced a large deficit and the Administration was worried that U.S. economic growth was slowing relative to other industrialized countries. Administration policymakers became concerned that U.S. multinationals were shifting their operations offshore in response to the tax

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[21] 5/16/2012, JP Morgan, "Global Tax Rate Makers," at 2 (based on research of SEC filings of over 1,000 reporting issuers).

[22] "Subpart F applies to certain income of 'controlled foreign corporations' ('CFCs'). A CFC is a foreign corporation more than 50% of which, by vote or value, is owned by U.S. persons owning a 10% or greater interest in the corporation by vote ('U.S. shareholders'). 'U.S. persons' includes U.S. citizens, residents, corporations, partnerships, trusts and estates. If a CFC has subpart F income, each U.S. shareholder must currently include its pro rata share of that income in its gross income as a deemed dividend." 12/2000, Office of Tax Policy, "The Deferral of Income Earned through U.S. Controlled Foreign Corporations," Department of Treasury, at xii.

[23] See *Koehring Company v. United States of America*, 583 F.2d 313 (7th Cir. 1978). 12/2000, Office of Tax Policy, "The Deferral of Income Earned through U.S. Controlled Foreign Corporations," Department of Treasury, at xii.

[24] 12/2000, Office of Tax Policy, "The Deferral of Income Earned through U.S. Controlled Foreign Corporations," Department of Treasury, at xii.

[25] 26 U.S.C. §954(c) (2010).

incentive provided by deferral."[26] The Kennedy Administration proposed to tax current foreign earnings of subsidiaries of MNCs and offered tax incentives to encourage investments at home.[27]

In the debates leading up to the passage of Subpart F, President Kennedy stated in an April 1961 tax message:

> "The undesirability of continuing deferral is underscored where deferral has served as a shelter for tax escape through the unjustifiable use of tax havens such as Switzerland. Recently more and more enterprises organized abroad by American firms have arranged their corporate structures aided by artificial arrangements between parent and subsidiary regarding intercompany pricing, the transfer of patent licensing rights, the shifting of management fees, and similar practices which maximize the accumulation of profits in the tax haven as to exploit the multiplicity of foreign tax systems and international agreements in order to reduce sharply or eliminate completely their tax liabilities both at home and abroad."[28]

Although the Kennedy Administration initially proposed to end deferral of foreign source income altogether, a compromise was struck instead, which became known as Subpart F.[29] Subpart F was designed in substantial part to address the tax avoidance techniques being utilized today by U.S. multinationals.

E. Check-the-Box Regulations and the CFC Look-Through Rule

Check-the-box tax regulations issued by the Treasury Department in 1997, and the CFC Look-Through Rule enacted by Congress as a temporary measure in 2004, have reduced the effectiveness of the anti-deferral rules of Subpart F and have further facilitated the increase in offshore profit shifting, which has gained significant momentum over the last 15 years. On January 1, 1997, without any statutory direction, Treasury put its new check-the-box regulations into effect.[30] Treasury stated at the time that the regulations were designed to simplify tax rules for determining whether an entity is a corporation, a partnership, a sole proprietorship, branch or disregarded entity (DRE) for federal tax purposes.[31] The regulations eliminated a multi-factor test in determining the proper classification of an entity in favor of a simple, elective "check-the-

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[26] 5/4/2006, Paul Oosterhuis, "The Evolution of International Tax Policy- What Would Larry Say?" The Laurence Neal Woodworth Memorial Lecture in Federal Tax Law and Policy, at. 2.
[27] 5/4/2006, Paul Oosterhuis, "The Evolution of International Tax Policy- What Would Larry Say?" The Laurence Neal Woodworth Memorial Lecture in Federal Tax Law and Policy, at. 2 (citing 1/11/1962, John F. Kennedy, "Annual Message to Congress on the State of the Union," 1963, 1 Pub. Papers, at 13-14).
[28] 1961, John F. Kennedy, "President's Recommendations on Tax Revision: Hearings Before the House Ways and Means Committee," in Richard A. Gordon, *Tax Havens and Their Use by United States Taxpayers – An Overview*, (2002), at 44.
[29] 5/4/2006, Paul Oosterhuis, "The Evolution of International Tax Policy- What Would Larry Say?" The Laurence Neal Woodworth Memorial Lecture in Federal Tax Law and Policy, at 3.
[30] No federal statute required or called for the issuance of the check-the-box regulations at the time they were issued. Many years later, when questions were raised about whether the Treasury Department had exceeded its authority in issuing the check-the-box regulations, the federal courts held that the Treasury Department had the necessary authority to issue a new interpretation of the longstanding statutory definitions of corporation and partnership in the tax code. See, e.g., Littriello v. United States, No. 304CV-143-H (W.D. KY, May 18, 2005), affirmed 484 F.3d 372 (Sixth Circuit 2007), cert. den., 128 S. Ct. 1290 (U.S. 2008).
[31] 26 C.F.R. §301.7701-1 through 301.7701-3 (1997).

box" regime. Treasury explained that the rules were intended to solve two problems that had developed for the IRS. Domestically, the rise of limited liability companies (LLCs) had placed stress on the multi-factor test, which determined different state and federal tax treatment for them. Internationally, entity classification was dependent on foreign law, making IRS classification difficult and complex. Check-the-box was intended to eliminate the complexity and uncertainty inherent in the test, allowing entities to simply select their tax treatment.[32]

The regulations, however, had significant unintended consequences and opened the door to a host of tax avoidance schemes. Under Subpart F, passive income paid from one separate legal entity to another separate legal entity – even if they were both within the same corporate structure – was immediately taxable. However, with the implementation of the check-the-box regulations a U.S. MNC could set up a CFC subsidiary in a tax haven and direct it to receive passive income such as interest, dividend, or royalty payments from a lower tiered related CFC without incurring Subpart F income. The check-the-box rule permitted this development, because it enabled the MNC to choose to have the lower-tiered CFC disregarded or ignored for federal tax purposes. In other words, the lower tier CFC, although it is legally still a separate entity, would be viewed as part of the CFC shell and not as a separate entity for tax purpose. Therefore, for tax purposes, any passive income paid by the lower tier separate entity to the higher tier CFC subsidiary would not be considered as a payment between two legally separate entities and, thus, would not constitute Subpart F income. The result was that the check-the-box regulations enabled multinationals for tax purposes to ignore the facts reported in its books – which is that it received passive income.

Recognizing this inadvertent problem, the IRS and Treasury issued Notice 98-11on February 9, 1998, reflecting concerns that the check-the-box regulations were facilitating the use of what the agencies refer to as "hybrid branches" to circumvent Subpart F. "The notice defined a hybrid branch as an entity with a single owner that is treated as a separate entity under the relevant tax laws of a foreign country and as a branch (i.e., DRE) of a CFC that is its sole owner for U.S. tax purposes."[33] The Notice stated: "Treasury and the Service have concluded that the use of certain hybrid branch arrangements [described in Examples 1 and 2 of the Notice] is contrary to the policies and rules of subpart F. This notice announces that Treasury and the Service will issue regulations to address such arrangements."[34] On March 26, 1998, Treasury and IRS then proposed regulations to close the loophole opened by the check-the-box rule.

"The issuance of Notice 98-11 and the temporary and proposed regulations provoked controversy among taxpayers and members of Congress."[35] On July 6, 1998, the IRS reversed course, withdrew Notice 98-11, and replaced the proposed regulations with Notice 98-35. The check-the-box loophole was left open.

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[32] See, e.g., 10/31/2011, "Check-the-Box and Hybrids: A Second Look at Elective U.S. Tax Classification for Foreign Entities," Kennan Mullis, Tax Notes, http://www.taxanalysts.com/www/features.nsf/Articles/58D8A3375C8ECCD18525793E0055EB9B?OpenDocument.
[33] 7/20/2010, Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing," (JCX-37-10), at 48.
[34] 1/16/1998, IRS Notice 98-11, at 2.
[35] 7/20/2010, Joint Committee on Taxation, "Present Law and Background Related to Possible Income Shifting and Transfer Pricing," (JCX-37-10), at 49.

Because the check-the-box rule was a product of Treasury regulation with no statutory basis, proponents urged Congress to enact supporting legislation. In 2006, Congress eliminated related party passive income generally from subpart F when it enacted Section 954(c)(6) on a temporary basis. This Section was enacted without significant debate as part of a larger tax bill.[36] It provided "look-through" treatment for certain payments between related CFCs, and granted an exclusion from Subpart F income for certain dividends, interest, rents and royalties received or accrued by one CFC from another related CFC. One article noted:

> "*Section 954(c)(6)* came into the law somewhat quietly, through an oddly named piece of legislation (the Tax Increase Prevention and Reconciliation Act of 2005, or TIPRA, which was enacted in May 2006). *Section 954(c)(6)* had earlier passed the Senate and the House as part of the American Jobs Creation Act of 2004, but was then dropped without explanation in conference. When it reemerged one-and-a-half years later in TIPRA it did not attract huge preenactment attention, and when finally enacted, its retroactive effective date surprised some taxpayers."[37]

The 2006 statutory look-through provision expired after December 31, 2009, but was retroactively reinstated for 2010, and extended through 2011, by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, enacted on December 17, 2010.

F. Section 956 – Short Term Loan Loophole

Beyond the transactions and corporate structures that some multinationals employ to exploit loopholes in the offshore tax statutes and regulations in order to shift assets and profits offshore and avoid U.S. taxes, some multinationals, in consultation with their auditors, have also devised methods to return offshore profits to the United States without paying U.S. tax. MNCs have accomplished this objective by exploiting gaps and ambiguities in the statutes and regulations that govern the taxation of offshore profits that are returned to the United States.

Generally, the foreign profits of a CFC of a U.S. corporation are not subject to U.S. tax until the CFC transfers those profits to a related entity in the United States, generally through the distribution of a dividend. In addition, if a CFC uses its foreign profits to make certain investments in the United States, the investment is considered to be a "deemed dividend," and the U.S. parent of the CFC is subject to U.S. income tax for its share of that deemed dividend.[38] Section 956 of the Internal Revenue Code identifies the types of investments in "United States property" that are considered to be deemed dividends and subject to U.S. tax.[39]

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[36] Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, § 103(b)(1) (2006).

[37] 4/23/2007, "The New Look-Through Rule: W(h)ither Subpart F?" David Sicular, Tax Notes, at 359.

[38] "Every person who is a United States shareholder under section 951(b) owning stock in a controlled foreign corporation on the last day of the foreign corporation's taxable year shall include in gross income a pro rata share of the corporation's increase in earnings invested in United States property for such year as determined under section 956(a)(2)." Rev. Rul. 89-73, 1989-1 C.B. 258 (1989).

[39] 26 U.S.C. § 956(c) (2007) states:

"(1) In general.--For purposes of subsection (a), the term "United States property" means any property acquired after December 31, 1962, which is--

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

Under Section 956, a loan made by a CFC to a related U.S. entity is considered to be an investment in property and is a deemed dividend that is subject to U.S. tax.[40] The section also contains a number of exclusions and limitations.[41] Short term loans made by a CFC to a related U.S. entity are excluded from the rule if they are repaid within 30 days and all of the loans made by the CFC throughout the year are outstanding for less than 60 days in total for that year.[42]

Other features and interpretations of the rule further exacerbated the loophole created by the short term loan exclusion. In guidance that it issued to the rule, the IRS stated that only loans that were outstanding at the close of a CFC's quarter would be subject to analysis of whether they were deemed dividends under Rule 956. If a CFC made a loan to a related U.S. entity that initiated and concluded before the end of the CFC's quarter, it would not be subject to the 30 day limit nor would it be subject to the aggregate 60 day limit for the fiscal year. In addition, the IRS declared that the limitations on the length of loans applied separately to each CFC of a company.[43] So when viewed in the aggregate, all of the loans issued by all of the CFCs of a U.S. parent could be outstanding for more than 60 days in total.

These exclusions, which were created by Treasury and had no statutory direction, weakened Section 956 and made it possible for a U.S. company to structure a set of offshore CFCs with different fiscal years and quarter ends and orchestrate a series of loans from those CFCs covering an entire year without ever exceeding the 30 or 60 day limits or extending over a CFC's quarter end. The resulting loans could provide a continual flow of offshore profits to the U.S. parent that would not be subject to U.S. tax, effectively circumventing a fundamental tenet of U.S. tax policy and the specific intent of Rule 956 -- that the offshore profits of a U.S. corporation should be taxed when repatriated back to the United States.[44]

(D) any right to the use in the United States of--

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States."

[40] See 26 U.S.C. § 956(c)(1)(C) (2007); Treas. Reg. § 1.956-2T(d)(2). The size of the deemed dividend is the average amount of the CFC's loan that is outstanding at the end of each quarter over the CFC's tax year.

[41] See 26 U.S.C. § 956(c)(2) (2007).

[42] See IRS Notice 88-108; and General Legal Advisory Memorandum (GLAM) 2007-016. By limiting the length of an individual loan and limiting the total number of days in a year that all loans from a CFC could be outstanding, the IRS hoped to prevent a company from structuring a series of short term loans in a way that would effectively be a long term loan and a source of untaxed offshore profits. Due to the credit shortage that resulted from the financial crisis in 2008, the IRS issued Notices that for the three tax years beginning after December 31, 2008 and before December 31, 2010, the 30/60 day limits on short term loans was increased to 60/180 day limits. See IRS Notice 2008-91; IRS Notice 2009-10; and IRS Notice 2010-12.

[43] "Because each controlled foreign corporation may meet the less than 180 day requirement with respect to obligations of related United States persons outstanding during different days of the taxable year, obligations of the same related United States person may qualify for the exclusion pursuant to Notice 2008-91 if they are held by more than one controlled foreign corporation and that, in the aggregate, remain outstanding for 180 or more days during the taxable year." General Legal Advisory Memorandum (GLAM), "Application of Notice 2008-91 to Section 956(a)(1), AM-2009-13, (Oct. 19, 2009). As noted above, for the three tax years beginning after December 31, 2008 and before December 31, 2010, the 30/60 day limits on short term loans was increased to 60/180 day limits. The General Legal Advisory Memorandum cited here was issued while the longer 60/180 day limits were in effect.

[44] See H.R. Rep. No. 1447 (1962). According to the House Report of the Revenue Act of 1962, which adopted section 956, an objective of section 956 was "to prevent the repatriation of income to the United

The IRS has stated it will apply anti-abuse rules to assess offshore CFC loans to ensure they do not circumvent the law and has identified some of the standards it will apply, including:

> Whether the loans provided by different CFCs were independent of each other.
>
> Whether repayment of each loan by a U.S. borrower was a separate, independent transaction, and that the U.S. borrower was not dependent upon a loan from one CFC to repay the loan of another CFC.
>
> Whether a principal purpose of creating, organizing and funding a CFC was to indirectly provide a loan to a U.S. related entity through another CFC.
>
> Whether the loans were made and repaid in separate, independent transactions.[45]

The IRS has also indicated that it will make decisions based on the particular facts and circumstances of each loan. Legal precedent shows that the IRS and courts have been willing to invalidate offshore loan programs that attempt to circumvent Section 956's restrictions by using serial short term loans to bring a continual flow of untaxed offshore funds into the United States.[46]

G. APB 23: Deferred Tax Liabilities on Permanently or Indefinitely Invested Foreign Earnings

Another incentive to shift or keep profits offshore is provided by an accounting standard known as APB 23, recently renamed ASC 740-30-25.[47] APB 23 permits U.S. multinationals to defer recognition of tax liability on foreign earnings for financial reporting purposes so that earnings are not reduced by the tax liability if they affirmatively assert that their foreign earnings are permanently or indefinitely reinvested. In 2011, more than 1,000 U.S. multinationals made such an assertion in their SEC filings, reporting in total that more than $1.5 trillion is or is intended to be reinvested offshore.[48]

APB 23 presumes that all undistributed earnings of a subsidiary (including all earnings of a foreign subsidiary) will be transferred to the parent entity, will be included in its consolidated

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States in a manner which does not subject it to U.S. taxation. This objective also accounts for some of the features of this provision, which deny tax deferral where funds are brought back and invested in the United States in a manner which does not otherwise subject them to U.S. taxation." H.R. Rep. No. 1447 (1962), at 58. "[S]ection 956 is intended to prevent the tax-free repatriation of earnings even in circumstances that would not otherwise constitute a dividend distribution." Rev. Rul. 89-73, 1989-1 C.B. 258.

[45] 26 C.F.R. § 1.956-1T (1988). Rev. Rul. 89-73, 1989-1 C.B. 258 (1989). General Legal Advisory Memorandum (GLAM), "Application of Notice 2008-91 to Section 956(a)(1)," AM-2009-13, (Oct. 19, 2009).

[46] See, e.g., Jacobs Engineering Group, Inc. v. United States, 79 AFTR 2d 97-1673 (DC Cal. 1997), affirmed without public opinion, 168 F.3d 499 (9th Cir. 1999)(court ruled against taxpayer, finding that twelve short-term loans from CFC really functioned as a long term loan lasting over two years); Rev. Rul. 89-73 (1989-1 C.B. 258) (indicating two rollover loans between a CFC and U.S. parent, when separated by an unduly brief period such as two months, would be viewed as a single, long term loan).

[47] APB 23 was issued in 1972 by Accounting Principles Board with Opinion No. 23, Accounting for Income Taxes – Special Areas. FASB recently codified APB 23 under Accounting Standards Codification (ASC) -- *Accounting for Income Taxes, Special Areas* (ASC 740-30-25).

[48] 9/2012, Pricewaterhouse Coopers Tax Accounting Services, "Deferred Taxes on Foreign Earnings: A Road Map," at 4 [citations omitted].

income, and will be recognized immediately as a tax expense for financial accounting purposes. Under the rule, this presumption of transfer to the parent (or repatriation in the case of a foreign subsidiary) may be overcome, and no income taxes shall be accrued "if sufficient evidence shows that the subsidiary has invested or will invest the undistributed earnings indefinitely …."[49] This standard requires that the reinvestment of the undistributed foreign earnings will, in essence, be permanent in duration.[50] This exception is sometimes referred to as "indefinite reversal." To be entitled to it, a parent entity "shall have evidence of specific plans for reinvestment of undistributed earnings of a subsidiary which demonstrate that remittance of the earnings will be postponed indefinitely."[51] "In practice, evidence to overcome the presumption includes working capital forecasts and plans for long-term liquidity, capital improvements, and mergers and acquisitions (Ernst & Young 2007)."[52]

Issuers are required to disclose the amount of reinvested foreign earnings in their annual Form 10-K, filed with the Securities and Exchange Commission (SEC), in the notes to their financial statements.[53] Issuers use a variety of phrases in their SEC filings to meet the APB 23 disclosure requirement. For example, some U.S. multinationals assert that their foreign earnings are "deemed to be permanently reinvested" while others assert that their earnings are considered to be "indefinitely reinvested."[54]

APB 23 is an intent-based accounting standard. An APB 23 assertion is basically a claim by a corporation about both its currently reinvested foreign earnings and a forecast about its intention to reinvest future foreign earnings. Because subjective judgment is involved in making the assertion, corporations can use APB 23 as a tool for earnings management. Essentially, corporations can avoid recording future tax liabilities for foreign earnings in their financial statements simply by characterizing those earnings as permanently or indefinitely reinvested abroad. In addition, because corporate management can easily change corporate investment plans, auditors may encounter difficulties in evaluating management claims regarding a plan to reinvest foreign earnings. It is also difficult to disprove an intent to reinvest those earnings.

Outside of codifying the rule, FASB, which is responsible for setting the APB 23 standard, has not produced additional written guidance for the accounting profession or corporate community on what evidence an issuer must show or maintain in order to make an assertion, nor has it provided written guidance on the duration of the reinvested earnings. FASB staff advised the Subcommittee that FASB also has not provided informal guidance on either of these topics.[55]

[49] ASC 740-30-25-3 and 740-30-25-17.
[50] 2009, Thomas D. Schultz and Timothy Fogarty, "The Fleeting Nature of Permanent Reinvestment: Accounting for the Undistributed Earnings of Foreign Subsidiaries," Advances in Accounting, incorporating Advances in International Accounting, at 112.
[51] ASC 740-30-25-3 and 740-30-25-17.
[52] 6/2009, Thomas D. Schultz and Timothy Fogarty, "The Fleeting Nature of Permanent Reinvestment: Accounting for the Undistributed Earnings of Foreign Subsidiaries," Advances in Accounting, vol 25.1, at 115.
[53] See Form 10-K items 8 and 15; S-X Article 4-08(h)(3).
[54] 6/2009, Thomas D. Schultz and Timothy Fogarty, "The Fleeting Nature of Permanent Reinvestment: Accounting for the Undistributed Earnings of Foreign Subsidiaries," Advances in Accounting, vol 25.1, Appendix A.
[55] Subcommittee briefing by FASB (6/19/2012).

H. APB 23 Used As A Tool to Manage Earnings

By increasing the amount of foreign profits asserted as indefinitely or permanently reinvested offshore, U.S. multinationals are able to increase their financial earnings by avoiding the reporting of increased tax liability on their financial statements, improving their earnings picture. A 2004 academic study documents that permanently reinvested earnings reflect "investment and tax incentives but, most notably, finds that amounts reported as PRE [permanently reinvested earnings] are also used to manage earnings."[56]

A later study, conducted in 2012, observed: "Anecdotally, MNCs strongly favor the Indefinite Reversal Exception because it avails them of the ability to consistently report higher earnings and lower effective tax rates, all else equal."[57] The study also noted: "A tax director of a Fortune 500 firm described the Indefinite Reversal Exception [APB 23] like crack, once you start using it, it's hard to stop."[58]

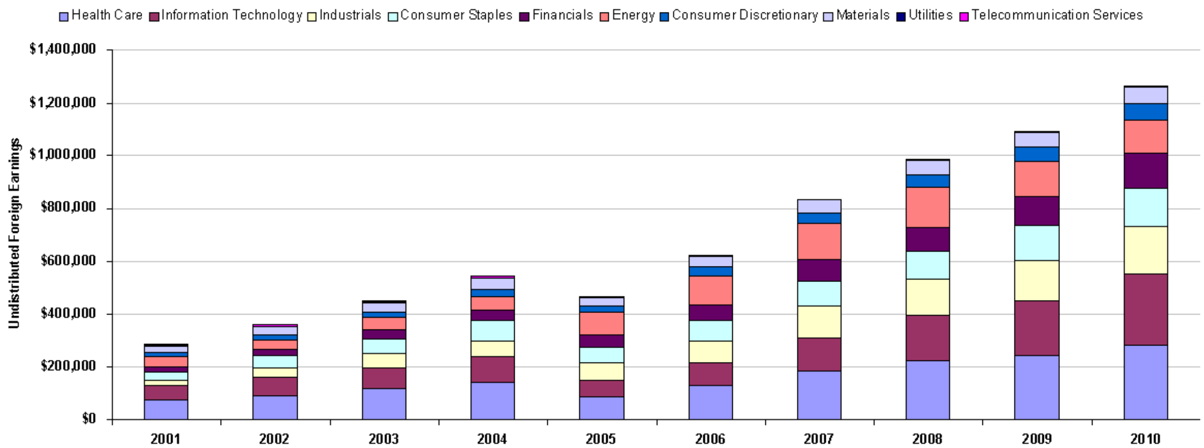
Michelle Hanlon, an MIT professor who has been conducting research for several years regarding APB 23, co-authored a 2010 academic study that analyzed survey responses from nearly 600 tax executives regarding the importance of the tax expense deferral allowed under APB 23 in their corporate decisions.[59] The study found significant evidence of the importance of the APB 23 assertion, indicating that avoiding financial accounting income tax expense on financial statements was "as important as avoiding cash income taxes when corporations decide where to locate operations and whether to repatriate foreign earning."[60] The study further reported that "60 percent of the respondents indicate that they would consider bringing more cash back to the U.S. even if it meant incurring the U.S. cash taxes upon repatriation, if their company had to record financial accounting tax expense on those earnings regardless of whether they repatriate.[61]"

I. Magnitude of Offshore Earnings

Over the last several years, the amount of permanently reinvested foreign earnings reported by U.S. multinationals on their financial statements has increased dramatically. The chart below reflects "the past ten years of permanently reinvested (i.e., unremitted, undistributed, etc.) foreign earnings for each company in the S&P 500," and demonstrates undistributed foreign earnings have increased by more than 400%.[62]

[56] 1/2012, Jennifer Blouin, Linda Krull, and Leslie Robinson, "Where in the World Are 'Permanently Reinvested' Foreign Earnings?" at 6 (citing Krull, "Permanently Reinvested Foreign Earnings, Taxes, and Earnings Management," The Accounting Review, 79(3), at 745-767 (2004)).
[57] Id. at 12.
[58] Id.
[59] 3/2011, John Graham, Michele Hanlon, and Terry Shevlin "Real Effects of Accounting Rules: Evidence from Multinational Firms' Investment Location and Profit Repatriation Decisions," Journal of Accounting Research, vol. 49.1.
[60] Id. at 137.
[61] Id.
[62] 4/26/2011, Credit Suisse, "Parking Earnings Overseas," at 3.

Exhibit 2: **Undistributed Foreign Earnings, 2001–2010, S&P 500**[1]
US$ in millions



[1]Companies in the S&P 500 as of March 01, 2011, note prior periods not adjusted for acquisitions, spin-offs, etc.
Source: Company data, Credit Suisse estimates

The Credit Suisse data used in the chart also indicated that "[t]he 34 companies with more than $10 billion in undistributed earnings ha[d] a total of $805 billion in earnings parked overseas," representing nearly 64% of the total for the S&P 500.[63] In addition, "[a] recent study by Blouin et al. (2012) examines the composition of earnings that U.S. MNCs have designated as permanently reinvested abroad. The study finds 94 percent is located in affiliates with lower tax rates than the U.S. and that a substantial portion of these permanently reinvested earnings (PRE) appears to be held in cash (42 percent)."[64] Previous evidence collected by the Subcommittee suggests that much of these foreign earnings may be held and invested in the United States. Of 27 multinationals surveyedby the Subcommittee in connection with a 2011 investigation, "on average, 46% of their tax-deferred offshore funds were held in U.S. bank accounts and invested in U.S. assets, such as U.S. Treasuries or shares of unrelated U.S. corporations."[65] The fact that nearly half of these "offshore" funds were found to be sitting in a U.S. bank account or invested in U.S. assets raises questions time about their description as permanently or indefinitely reinvested overseas.

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[63] Id. at 6.
[64] 2/20/2012, Alexander Edwards, Todd Kravet, and Ryan Wilson, **"**Permanently Reinvested Earnings and the Profitability of Foreign Cash Acquisitions," at 1.
[65] U.S. Permanent Subcommittee on Investigations, Majority Staff report, "Repatriating Offshore Funds: 2004 Tax Windfall for Select Multinationals," S.Prt. 112-27 (Oct. 11, 2011) at 61.

III. Microsoft Case Study

The Microsoft case study offers insight into the elaborate structures and practices utilized by one U.S. multinational corporation to shift and keep profits offshore through the use of transfer pricing, controlled foreign corporations (CFCs), and reliance on the check-the-box regulations and the CFC look-through rule.[66]

A. Background

Founded in 1975, Microsoft is a leading technology firm that generates revenue by developing, licensing, and supporting a wide range of products and services related to computing. In Fiscal Year 2011, Microsoft employed over 90,000 people worldwide (54,000 in the United States), and reported revenues of over $69 billion.

Microsoft was incorporated in the state of Washington on June 25, 1981, reincorporated in the state of Delaware on September 19, 1986, and reincorporated in the state of Washington on November 1, 1993. Bill Gates, the well-known co-founder of the firm, serves as Chairman of Microsoft's Board of Directors, with Steven Ballmer serving as its Chief Executive Officer.

Of Microsoft's approximately 94,000 employees in FY 2011, 36,000 were in product research and development, 25,000 in sales and marketing, 18,000 in product support and consulting services, 6,000 in manufacturing and distribution, and 9,000 in general and administration. Microsoft does over 85% of its research and development in the United States.

Microsoft's business is operated in five segments: Windows & Windows Live Division, Server and Tools, Online Services Division, Microsoft Business Division, and Entertainment and Devices Division. The products and services developed and offered by these divisions include the Windows operating system, the Bing internet search engine, the Microsoft Office suite, and the Xbox 360 gaming console and supporting software, among others.

B. Microsoft's Global Structure

Beginning in the 1990s, Microsoft began establishing a complex web of interrelated foreign entities to facilitate international sales and reduce U.S. and foreign tax. Microsoft established three regional operating centers in low tax jurisdictions, first in Ireland, then Singapore and Puerto Rico. Microsoft Ireland is responsible for retail sales to Europe, the Middle East and Africa, Singapore is responsible for retail sales in Asia, and Puerto Rico is responsible for retail sales in North and South America, including the United States. Microsoft makes efforts to maximize profits held in these three operating centers in order to reduce its tax liabilities.[67]

Cost Sharing. Most of Microsoft's revenues are attributable to its high-value intellectual property, including patents and copyrights related to Microsoft Windows and Microsoft Office. Microsoft has three main groups of intellectual property: retail software, which includes the sale of Microsoft products directly to consumers, to box stores such as Best Buy, and the sale of

[66] The information in this case study is taken from surveys, interviews, and document reviews conducted by the Subcommittee. Microsoft cooperated with the Subcommittee's investigation.
[67] Subcommittee briefings by Microsoft (3/28/2012 and 8/31/2012).

enterprise licenses to government entities and businesses; web products such as Microsoft Bing; and original equipment manufacturing, which licenses Microsoft products to computer manufacturers who pre-install Microsoft on the devices they sell. Microsoft products are primarily developed in the United States. In 2011, over $7.8 billion out of a total research budget of $9.1 billion was spent on research and development in the U.S. Microsoft received $200 million in U.S. tax credits for conducting this research in the United States. Despite the research largely occurring in the United States and generating U.S. tax credits, profit rights to the intellectual property are largely located in foreign tax havens.[68]

In order to transfer intellectual property rights from the U.S. group to foreign subsidiaries, Microsoft and the regional operating centers engage in a worldwide cost sharing agreement. As part of this cost sharing agreement, Microsoft pools its worldwide research and development expenses, which totaled $9.1 billion in FY2011. The participating entities each pay a portion of the research and development cost based on the entity's portion of global revenues.[69] For instance, Microsoft's Irish operating centers account for roughly 30% of the company's global revenue, so the Irish entities contribute 30% of the cost of research and development to the global cost share pool. Microsoft's Puerto Rico operating center contributes 25% of the research and development costs, Microsoft Singapore contributes another 10%, and Microsoft U.S. contributes the final 35%.[70] In exchange for their contributions, Microsoft Ireland, Microsoft Singapore, and Microsoft Puerto Rico each obtain the right to sell retail products in their respective regions of the world. The contribution from Microsoft U.S. grants it the right license Microsoft products to manufacturers.

Production and Distribution. Once Microsoft's intellectual property rights are transferred offshore, the legal entities obtaining the rights do not directly sell Microsoft products. In fact, the rights holders often do not even manufacture the products. In Ireland and Singapore, the economic rights are immediately relicensed to a different Microsoft subsidiary, at a substantial mark up, which then manufactures the products. Once the product is manufactured, it is then sold to a combination of affiliated and third party entities, who then sell Microsoft's products to customers. The method of production and distribution in each region is discussed below.

C. Puerto Rico

Microsoft's Puerto Rican regional operating center is run by a legal entity called Microsoft Operations Puerto Rico (MOPR). MOPR is a wholly owned Microsoft CFC which maintains a production facility in Puerto Rico and is responsible for the manufacturing and replication of retail software. Microsoft products are primarily developed in the United States.

[68] In the case of Microsoft, it is important to note that only the intellectual property's economic rights, the right to profit from the intellectual property, is transferred offshore. Legal ownership of the intellectual property, including the right to legally enforce patent protections, remains in the United States.

[69] When entities first join a cost share arrangement they must make a "buy-in" payment spread out over several years, to compensate the rights holder for the value of the intellectual property that has already been developed. The approximate buy-ins for each entity were: Microsoft Asia Island Limited (MAIL) $4 billion; Microsoft Operations Puerto Rico (MOPR) $17 billion; and Microsoft Ireland Research (MIR) $7 billion.

[70] The portion of Microsoft's business responsible for licensing Microsoft products to manufacturers that pre-installation Microsoft software is operated primarily out of the United States. This business is known as Original Equipment Manufacturing.

The rights to sell Microsoft retail products in the United States and the rest of North and South America are then transferred to MOPR by means of a cost sharing agreement. MOPR then makes digital and physical copies of the Microsoft products and sells them back to several Microsoft subsidiaries located in the United States, and those subsidiaries then sell the products to American consumers. Through this process, Microsoft is able to greatly reduce its U.S. tax bill. Microsoft shifts about 47% of the gross revenues from U.S. sales to its operations in Puerto Rico, which is not subject to U.S. tax laws and instead levies a tax of just 1-2% on Microsoft.

History of Puerto Rico Entity. The current Microsoft Puerto Rico facility replaced a facility established in 1991 by Microsoft under section 936 of the Internal Revenue Code. Section 936 was created to encourage U.S. manufacturing in Puerto Rico. The 936 entity was a branch of Microsoft US, rather than a CFC, and owned no intellectual property rights. This branch operated until 2005 when Section 936 was phased out by Congress.

In response to the elimination of Section 936, Microsoft established a new Puerto Rico CFC, MOPR, in 2005. A brand new facility was built for MOPR, and the entire staff from the old Puerto Rican facility, as well as some equipment, was transferred to MOPR. The new CFC entered into a cost share agreement with the U.S. group to produce and sell retail products in the North and South America beginning in 2006. A buy-in payment was paid by MOPR to the U.S. group in order to compensate for the existing value of Microsoft's intellectual property. This buy-in was calculated based on an actual value theory, and paid over 9-10 years based on actual revenues. MOPR also pays 25% of Microsoft's global R&D annual expenses, a reflection of the percentage of global sales attributable to the Americas region.

Microsoft chose to establish MOPR with funds from a wholly-owned Irish affiliate, Round Island One. This decision ultimately gave ownership of MOPR to Microsoft's Irish group. To effectuate this plan, the U.S. group established two entities. Microsoft created MOPR as well as a Bermuda entity called MACS Holdings (MACS) to serve as the sole owner of MOPR. After the entities were established, ownership of MACS was transferred from the U.S. group to the Irish incorporated entity, Round Island One, in a non-taxable transaction under section 368 of the Internal Revenue Code. MOPR was seeded with $1.6 billion in equity funding, supplied by its Irish parent, which paid for the construction of the Puerto Rican manufacturing facility and MOPR's obligation under its research and development cost share agreement. MOPR ran deficits during its first two years of operations, after which time it generated enough income to pay its obligations.

Current Puerto Rican Operations. At MOPR, copies of Microsoft software are manufactured and duplicated for consumer sale. Its manufacturing activities include making copies sold to large enterprise customers such as the U.S. government as well as individual consumers. MOPR sells the individual copies to entities in the United States as part of a distribution agreement. Under the distribution agreement, the U.S. entities purchase the products in Puerto Rico, transport them to the United States mainland, and then sell them to customers. The U.S. entities retain 53% of the gross profits and sends the remaining 47% to MOPR in Puerto Rico where it is taxed at a pre-negotiated rate of around 2%.

This structure is not designed to satisfy any specific manufacturing or business need; rather, it is designed to minimize tax on sales of products sold in the United States. In 2011, MOPR paid Microsoft U.S. $1.9 billion as part of MOPR's cost sharing obligations. MOPR then reported $4 billion in profits in 2011, which was taxed at 1.02%. The 177 employees of the Puerto Rico entity, therefore, earned MOPR about $22.5 million per person. At the same time, MOPR employees made an average salary of $44,000 a year, commensurate with the skills they contributed rather than with the accumulated profits being stockpiled in what served as a low tax jurisdiction for Microsoft. By routing its manufacturing through a tiny factory in Puerto Rico, Microsoft saved over $4.5 billion in taxes on goods sold in the United States during the three years surveyed by the Subcommittee. By this measure, Microsoft uses MOPR to avoid over $4 million in U.S. taxes each day.

D. Ireland and Singapore

Microsoft also utilizes entities in Ireland, Bermuda, and Singapore in its efforts to shift profits out of the United States and avoid U.S. and international taxes. While over 85% of Microsoft's research and development takes place in the United States, the profits from that intellectual effort are transferred out of the United States and shifted into tax havens.

Ireland. Microsoft coordinates all of its consumer product sales for Europe, the Middle East, and Africa (EMEA), out of a group of entities in Ireland. One key entity called Microsoft Ireland Research (MIR) is a cost share participant with Microsoft Corporation, sharing 30% of the costs of Microsoft's world-wide research and development expenses in exchange for the right to sell finished products in EMEA. MIR, which is located in Ireland, is a wholly-owned disregarded CFC of Round Island One, a wholly owned Microsoft CFC which operates in Ireland but is headquartered in Bermuda. The bulk of the research and development that MIR helps finance is performed in the United States at Microsoft Corporation, with MIR responsible for conducting less than 1% of the company's total R&D.

In 2011, as part of MIR's obligations under the global cost share agreement, it paid the U.S. parent $2.8 billion in exchange for the rights to sell Microsoft products in EMEA. However, MIR does not actually manufacture or sell any products to customers. Rather it licenses its intellectual property rights for $9 billion to another wholly-owned, disregarded subsidiary called Microsoft Ireland Operations Limited (MIOL). MIOL has a similar function to Microsoft's Puerto Rico facility; it manufactures copies of Microsoft products and sells them to 120 distributers in foreign countries. MIOL is a wholly owned disregarded CFC of MIR. MIOL has about 650 employees in Ireland.

Microsoft utilizes these structures to transfer economic rights to the intellectual property developed by American engineers to a small MIR office in Dublin which has about 390 employees. MIR's chief function is to then license those rights to a wholly owned subsidiary, MIOL. For this role, MIR reported $4.3 billion of profits in 2011, with an effective tax rate of 7.2%. This income equates to about $11 million of profit per employee. MIOL, in turn, manufactured copies of the Microsoft products and sold them to 120 distribution entities in EMEA countries, after which final sales to consumers was made. In 2011, for its role, MIOL reported profits of $2.2 billion, or about $3.3 million per employee, and an effective tax rate of 7.3%. No U.S. Subpart F tax is paid on any of the $9 billion license payment from MIOL to MIR. No U.S. taxes are paid because, under the check-the-box regulations, MIOL was designated as a disregarded entity of MIR, meaning that license payments made by MIOL to MIR are ignored -- for tax purposes they are not considered to be payments between separate entities.

Singapore. Microsoft coordinates its Asian sales of consumer products through a group of entities located in Singapore. The Asian group enters into a global cost share agreement via an entity called Microsoft Asia Island Limited. Despite its name, Microsoft Asia Island Limited (MAIL) is located in Bermuda and shares 10% of the costs of Microsoft's global research and development pool. MAIL has no employees and conducts no research and development activities.

In 2011, as part of MAIL's obligations under the global cost share agreement, it paid $1.2 billion to the U.S parent in exchange for the right to sell Microsoft products throughout Asia. MAIL is a shell company that does not manufacture or sell any products. Rather, MAIL licenses its rights directly to a Singapore entity, Microsoft Operations Pte. Ltd (MOPL), for $3 billion. MOPL then duplicates the Microsoft products and sells them to distribution entities around Asia. MAIL and MOPL are both wholly owned disregarded CFCs owned by Microsoft Singapore Holdings Pte. Ltd..

Prior to MAIL's founding in 2003, the Singapore group, via MOPL, licensed Microsoft's products directly from Microsoft U.S., without participating in a cost share agreement.[71] When MAIL entered into the cost share agreement with Microsoft U.S. in 2004, MOPL terminated its license agreement with Microsoft U.S. and entered into a license agreement with MAIL. MAIL received funding to enter into the cost sharing through a contribution from its parent, Microsoft Singapore Holdings Pte. Ltd., which itself is a wholly owned CFC of Microsoft U.S.

MAIL's sole function is to participate in Microsoft's global cost share pool, then sublicense the acquired intellectual property to MOPL. MAIL has no employees, yet reported $1.8 billion in earnings in 2011, and had an effective tax rate of 0.3%. In 2011, MOPL generated $4.8 billion in revenues from the sale of Microsoft products, reporting a profit of $592 million with an effective tax rate of 10.6%. MOPL has 687 employees, and earns about $862,000 per employee.

E. Subpart F Avoidance

Microsoft also utilizes its complex web of subsidiaries to avoid the U.S. taxation of passive income under Subpart F. Under the Internal Revenue Code, passive income, such as royalty income, earned by foreign affiliates of U.S. companies is subject to immediate taxation in the United States and is ineligible for deferral. However, when royalty income is paid by or between two entities that are disregarded for U.S. tax purposes under the check-the-box and CFC look-through rules, the taxation envisioned under Subpart F is not triggered. Through its network of disregarded offshore entities, Microsoft was able to reduce its 2011 U.S. tax bill by $2.43 billion. This total is primarily due to the avoidance of taxation on royalty payments between MIOL and MIR, two wholly owned disregarded subsidiaries of Round Island One.

[71] Due to restrictions in local laws, Microsoft Korea Inc. and Microsoft China Company each license the rights to Microsoft products directly from the U.S. parent. In 2011, Microsoft Korea paid license fees of $228 million and Microsoft China paid license fees of $178 million.

IV. Hewlett-Packard Case Study

The Hewlett-Packard case study provides an example of how one U.S. multinational devised loan schemes to return offshore profits to the United States without paying U.S. tax, by leveraging perceived gaps and loopholes in Section 956 of the Internal Revenue code.[72]

A. Background

Hewlett-Packard is a leading global provider of information technology infrastructure, software, services, and solutions to individual consumers, small-and medium-sized businesses and large enterprises, including customers in the government, health and education sectors.[73] It incorporated in Delaware as of May 1998, and is headquartered in Palo Alto, California.[74]

Hewlett-Packard operations are organized into seven business segments: the Personal Systems Group, Services, the Imaging and Printing Group, Enterprise Servers, Storage and Networking, HP Software, HP Financial Services, and Corporate Investments.[75]

As of October 31, 2011 Hewlett-Packard employed about 350,000 employees worldwide.[76] However, as a result of a restructuring plan announced May 2012 and designed to take effect by the end of fiscal year 2014, Hewlett-Packard expects approximately 27,000 employees to exit the company by the end of fiscal year 2014.[77]

Approximately 65 percent of Hewlett-Packard's net revenue is derived from sales outside of the United States.[78] As of October 31, 2011, Hewlett-Packard had regional headquarters in Houston, Miami, Geneva, Singapore, Tokyo, and Mississauga.[79] In addition, as of October 31, 2011, Hewlett-Packard had 17 major product development, manufacturing, and HP labs outside of the United States.[80]

In fiscal year 2011, Hewlett-Packard had net revenues of $127.2 billion, up 1% year-over-year. It had a cash flow from operations of $12.6 billion, up 6% year-over-year.[81] Its cash and cash equivalents as of October 31, 2011, totaled $8.0 billion, a decrease of $2.9 billion from an October 31, 2010 balance of $10.9 billion.[82] Meg Whitman serves as the current Hewlett-Packard President and Chief Executive Officer.

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[72] The information in this case study is taken from surveys, interviews, and document reviews conducted by the Subcommittee. Hewlett-Packard cooperated with the Subcommittee's investigation.
[73] Hewlett-Packard, Annual Report on Form 10k for the Fiscal Year Ended Oct. 31, 2011 at 2-3 (2012).
[74] Id. at 3.
[75] Id. at 12.
[76] Id. at 23.
[77] Hewlett-Packard, Quarterly Report on Form 10-Q for the Quarter Ending April 30, 2012 at 73 (2012).
[78] Hewlett-Packard, Annual Report on Form 10k for the Fiscal Year Ended Oct. 31, 2011 at 23 (2012).
[79] Id. at 41.
[80] Id.
[81] Id. at 2.
[82] Id. at 47.

B. HP's Loan Scheme – De Facto Repatriation

Beginning in approximately 2003, HP initiated a loan program, funded with its overseas cash, to provide funding for its U.S. operations.[83] This loan program, from at least 2008, appears to have been used as a way to *de facto* repatriate billions of dollars each year to the United States to fund most of HP's U.S. operations, and provide those operations with economic use of the company's foreign earnings without a formal dividend distribution that would be taxable.

Since 2008, HP's U.S. parent has used loan funding primarily from two offshore entities under its control: the Belgian Coordination Center (BCC) located in Belgium, and the Compaq Cayman Holding Corp. (CCHC) located in the Cayman Islands.[84] BCC basically works as an internal bank for HP. It receives deposits from HP's other offshore entities and makes and receives loans to and from those entities.[85] CCHC is an entity that HP acquired when it merged with Compaq Computers. CCHC does not have any active operations, but has what HP characterized as a "stagnant pool" of cash available primarily for lending to HP's U.S. operations. Over the years, loans by these two entities have provided billions of dollars to fund general operations for HP in the United States, including payroll and HP share repurchases.[86]

Internal HP documents obtained by the Subcommittee indicate that the lending by these two entities was essential for funding HP's U.S. operations, because HP did not otherwise have adequate cash in the United States to run its operations. For example, in 2009, HP held $12.5 billion in foreign cash and only $0.8 billion in U.S. cash and projected that in the following year that it would hold $17.4 billion in foreign cash and only $0.4 in U.S. cash.[87] This pattern of keeping most of HP's cash offshore and obtaining loans from its offshore entities to fund its U.S. operations was also carried out in earlier years.[88]

In 2008, HP began what it called its "staggered" or "alternating" loan program. That program replaced the previous HP loan program. The new loan program basically was designed to allow HP's internal treasury department -- through the use of BCC and CCHC -- to continuously obtain offshore loans without interruption to HP's U.S. operations without those loans being deemed a dividend and triggering taxation under Internal Revenue Code Section 956. Under Section 956, a loan made by a controlled foreign corporation (CFC) to a related U.S. person is normally considered an investment in U.S. property and the loan amount is included in the income of the U.S. shareholder as a deemed dividend subject to U.S. tax, unless an exception applies. HP's Tax Director, Lester Ezrati, told the Subcommittee that Section 956 did not apply to the "staggered loan" program, however, because HP technically met the temporary or short term lending requirements of Section 956, in that, the lenders did not loan over their quarter ends and the loans were repaid within the time restriction periods set out in Section 956. Mr. Ezrati explained further that HP followed the U.S. Treasury guidelines and ensured that the two entities did not commingle funds and thus were independent for the purposes of the Section.

[83] Subcommittee interview of Lester Ezrati (9/8/2012).
[84] Subcommittee interview of Beth Carr (9/14/2012).
[85] Subcommittee interview of Lester Ezrati (9/8/2012).
[86] Id.
[87] Hewlett Packard Company, "Historical APB 23 Summary," HP-0083962.
[88] See 6/8/2006 internal HP email, "Questions on Cash," HP-0146380.

Although Mr. Ezrati asserted that BCC and CCHC made independent loans to HP and that the loans fell within the "technical" requirements so as not to trigger Section 956, internal HP documents indicate that the "staggered loan" program was coordinated by HP's treasury department, and systematically and continuously funded HP's U.S. operations with billions of dollars yearly since at least 2008, and likely before then.[89] The length and the nature of the program was described in HP's internal audit workpapers for 2011 as follows:

> "The new '**Staggered**' loan program became effective on January 2, 2008, replacing the 'quarterly' and 'bridge' loan program. HP Finance (Now Bristol Technology) will no longer be a 'bridge lender,' but a non-US cash pool. The Belgian Coordination Centre (BCC) and Compaq Cayman Holdings Company (CCHC) are the remaining non-U.S. cash pools lending short-term to HP Company and can alternatively lend HP Company up to $3.2B every 45 days (currently limited to CCHC capacity and Treasury`s needs).
>
> The following schedule defines the 'windows' for loans to HP Company:

From CCHC	From BCC
Jan 2 - Feb 17	Feb 17 - Apr 2
Apr 2 - May 17	May 17 - Jul 2
Jul 2 - Aug 17	Aug 17 - Oct 2
Oct 2 - Nov 17	Nov 17 - Jan 2

> … The current guidelines established by Tax and followed by Treasury are intended to avoid the application of section 956. Treasury has been instructed to maintain HP`s three primary non-U.S. cash pools separately. To effectively monitor IC loans for potential Sec. 956 exposure, co-mingling of these non-U.S. cash pools is not allowed under any circumstances, directly or indirectly, including through combinations of deposit from and/or lending to other related entities. …
>
> At the beginning of the year, the Treasury department reviews HP`s cash forecast to determine the timing and the amount of cash that will be needed in the U.S. to finance its working capital requirements throughout the year.…"[90]

Documents reviewed by the Subcommittee show that not only did HP forecast the use of loans primarily issued by BCC and CCHC to fund its U.S. operations, but used the loans to fund stock repurchases, payroll expenses, and possibly U.S. acquisitions.[91] In FY2010, for example, HP's U.S. operations borrowed between $6 and $9 billion, primarily from BCC and CCHC, without interruption throughout the first three quarters.[92] There does not appear to be a gap of a single day during that period where the loaned funds of either BCC or CCHC were not present in

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[89] Hewlett Packard Company, "SOX Process Review," HP-00065136; Subcommittee interview of Lester Ezrati (9/8/2012); Loan Summary Spreadsheet provided by HP legal counsel.

[90] Hewlett Packard Company, "SOX Process Review," HP-00065136, 00065152.

[91] U.S. cash forecasts spreadsheet provided by HP legal counsel; Subcommittee interview of John McMullen (9/18/2012).

[92] U.S. Loan Summary Spreadsheet provided by HP legal counsel.

the United States. Moreover, a similar pattern of continuous lending appeared to be occurring for most of the period between 2008 through 2011.

HP documents also show that from the beginning of the staggered loan program that it intended to use such large amounts to be loaned continuously from BCC and CCHC to the United States.[93] An HP power point presentation dated October 2008, for example, noted that $5 billion was available for U.S. borrowing needs from the cash pool.[94] It further noted that "at any point in time, most of the money in one foreign cash pool is loaned to the U.S."[95] A 2009 powerpoint presentation entitled, "Hewlett Packard Repatriation History," notes that "HP has increased its alternating loan pools from offshore cash pools [e.g., BCC and CCHC] by approximately $6 billion over the last three years."[96] During another portion of the presentation, it states: "[T]he majority of our offshore cash rolls up to the BCC (Belgian Coordination Center) cash pool, which can loan over to HPCO [U.S. operations] for 45 days within the fiscal quarter (but not over quarter end)." A similar arrangement was set up with CCHC, which the powerpoint presentation noted "is a stagnant cash pool with $6.65B which can be loaned to HP for 45 days that cover the fiscal quarter end." The presentation further described BCC's ability to move cash from BCC to CCHC, reflecting the coordination between the entities and said that "essentially all of the repatriation strategies are ultimately funded by the BCC."[97]

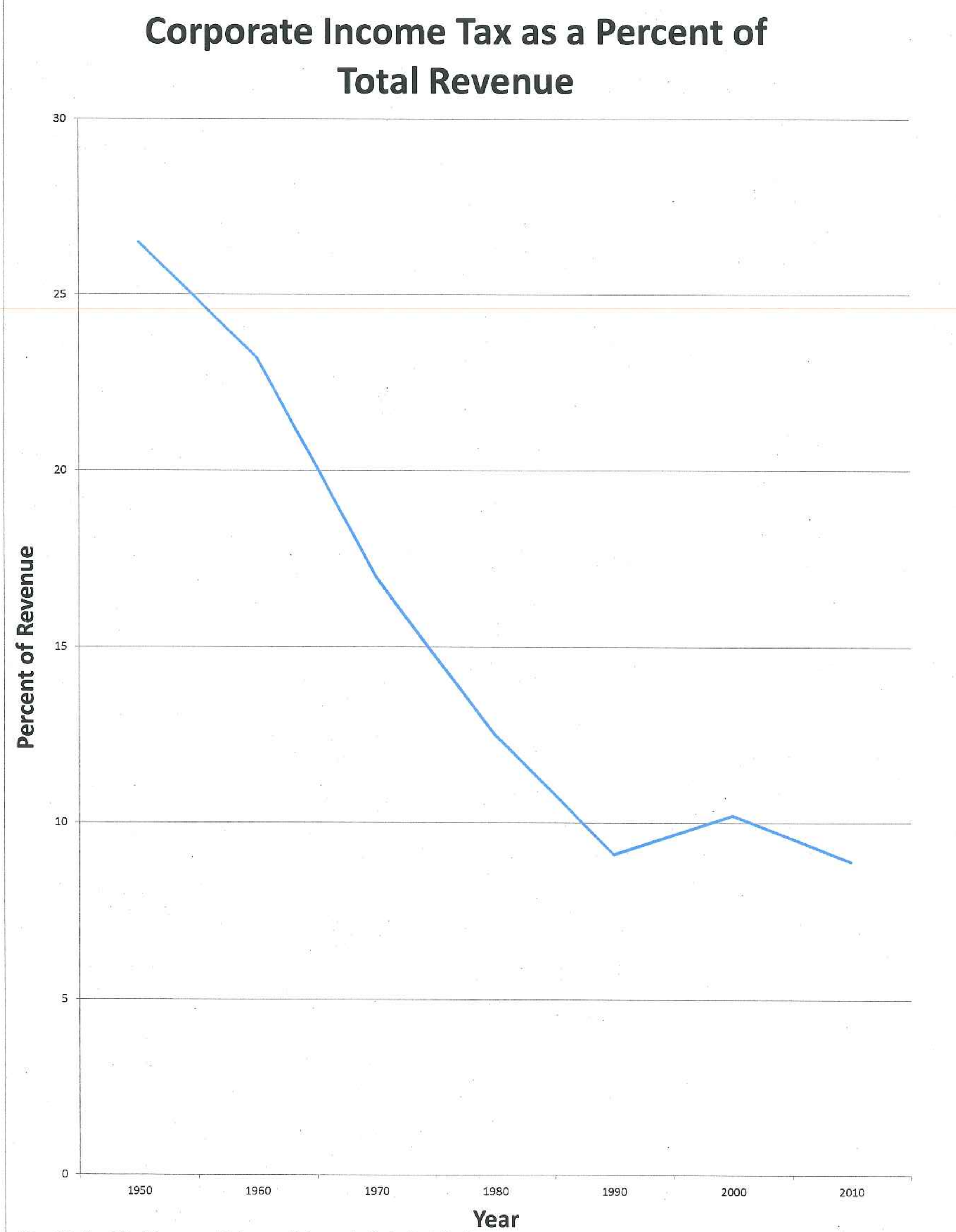
The 2008 powerpoint presentation also reported that "HP's cash generation mainly flows from two foreign pools [BCC and CCHC]." [98] It further noted that "the pools alternately loan to HP US for 45 day periods. This is the most important source of U.S. liquidity for repurchases and acquisitions."

C. Ernst & Young Auditors Approved the Loan Program

HP's auditor, Ernst & Young (E&Y) was aware of the existence of the staggered loan program since it was initiated in 2008, reviewing it as part of their audit of HP's financial statements. Similar to the position taken by HP's tax director, E&Y took a technical view that the loans met the timing restrictions and the lending entities met the independence requirements of Section 956. E&Y reached this conclusion, despite the fact over the course of years HP continually loaned billions of dollars regularly to HP's U.S operations, which did not have adequate cash on shore. Moreover, it is clear from HP documents that it structured this program in an attempt to circumvent the spirit of Section 956.

# # #

[93] Hewlett Packard Company, "Repatriation History," HP-0083968.
[94] 10/7/2008, Hewlett Packard Company, "Short Term Liquidity Update," HP-0146483, 0146492.
[95] Id.
[96] Hewlett Packard Company, "Repatriation History," HP-0083968, 0083960.
[97] Id. at HP-0083972.
[98] 10/7/2008, Hewlett Packard Company, "Short Term Liquidity Update," HP-0146483, 0146491.



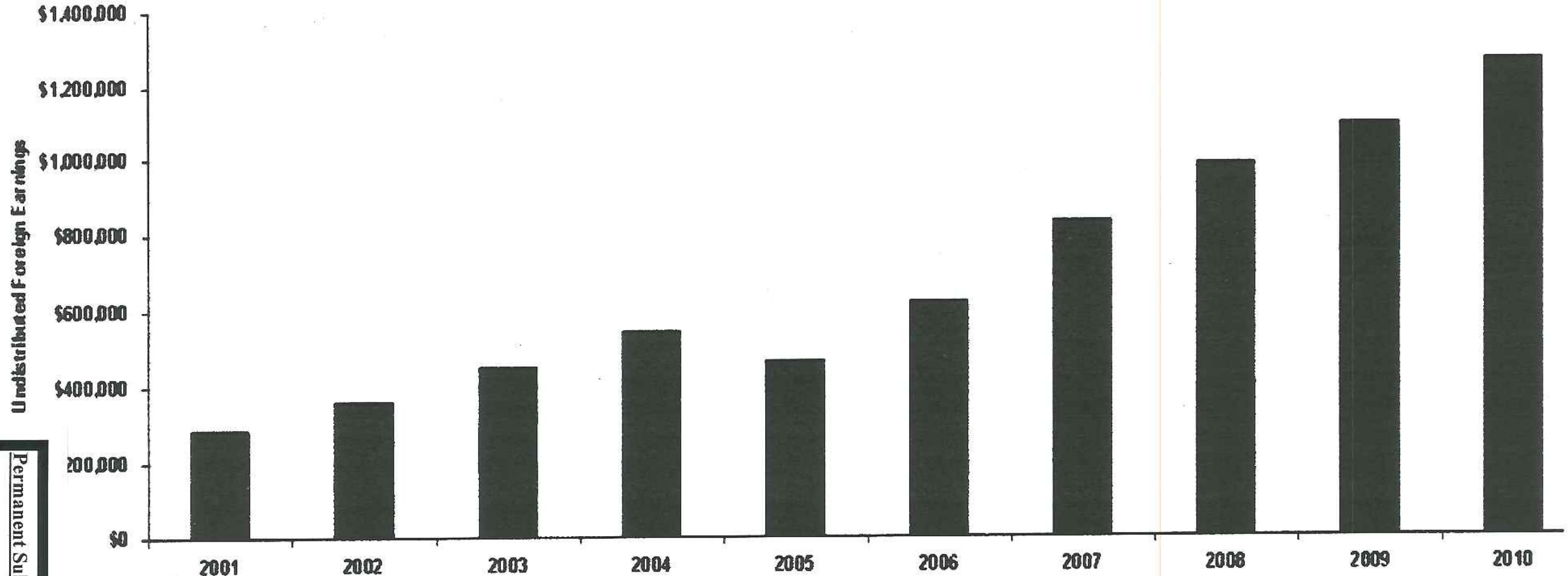
Source: White House Office of Management and Budget; www.whitehouse.gov/omb/budget/Historicals, Table 2.2
Prepared by the U.S. Permanent Subcommittee on Investigations, Sept .2012.

Permanent Subcommittee on Investigations

EXHIBIT #1b

Exhibit 2: **Undistributed Foreign Earnings, 2001–2010, S&P 500**[1]

US$ in millions



Companies in the S&P 500 as of March 01, 2011, note prior periods not adjusted for acquisitions, spin-offs, etc.

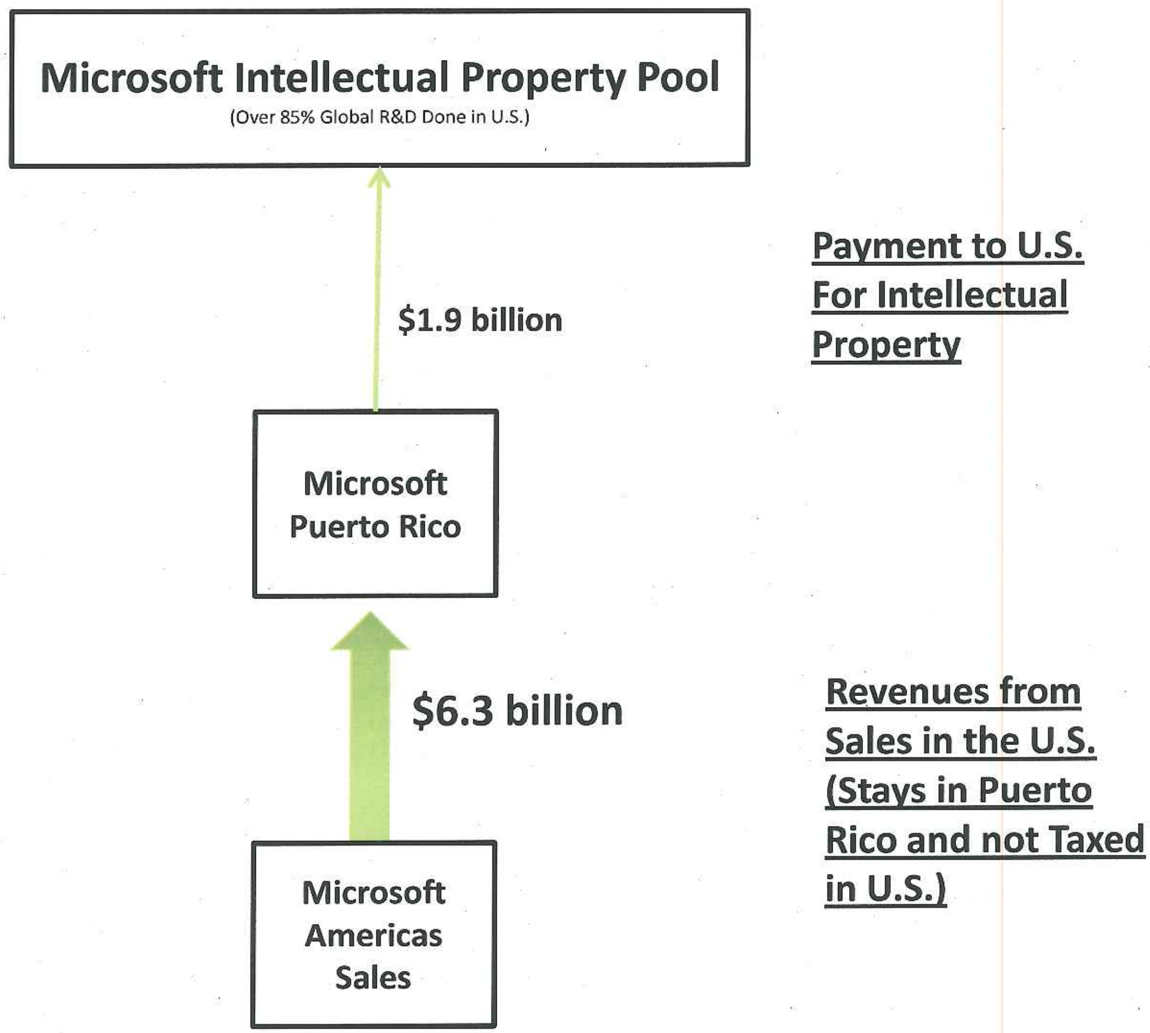
Source: Company data, Credit Suisse estimates

Permanent Subcommittee on Investigations

EXHIBIT #1c

2011 Microsoft Intellectual Property Payments

(Puerto Rico)



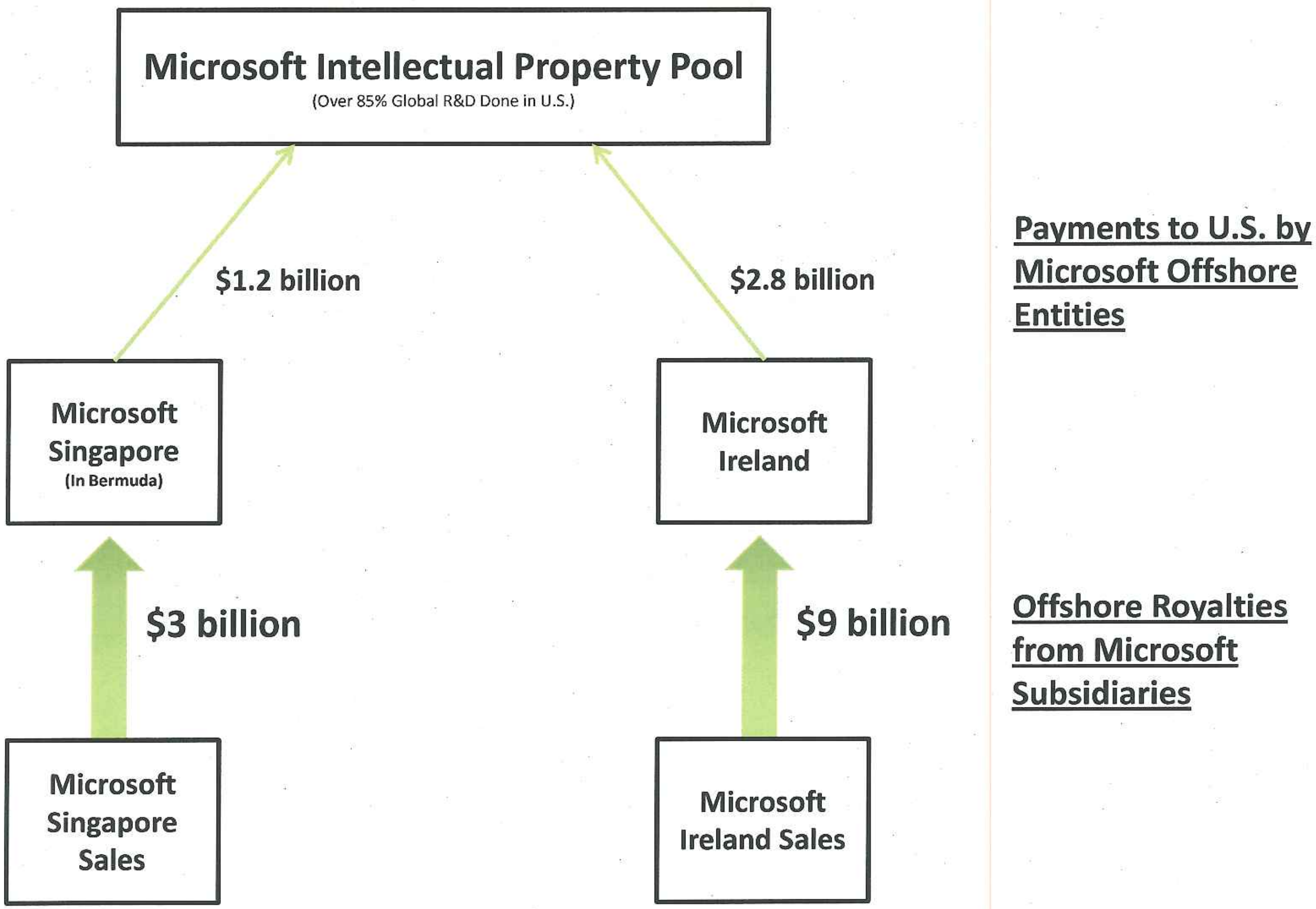
Prepared by the U.S. Permanent Subcommittee on Investigations, September 2012

Permanent Subcommittee on Investigations

EXHIBIT #1d

2011 Microsoft Intellectual Property Payments

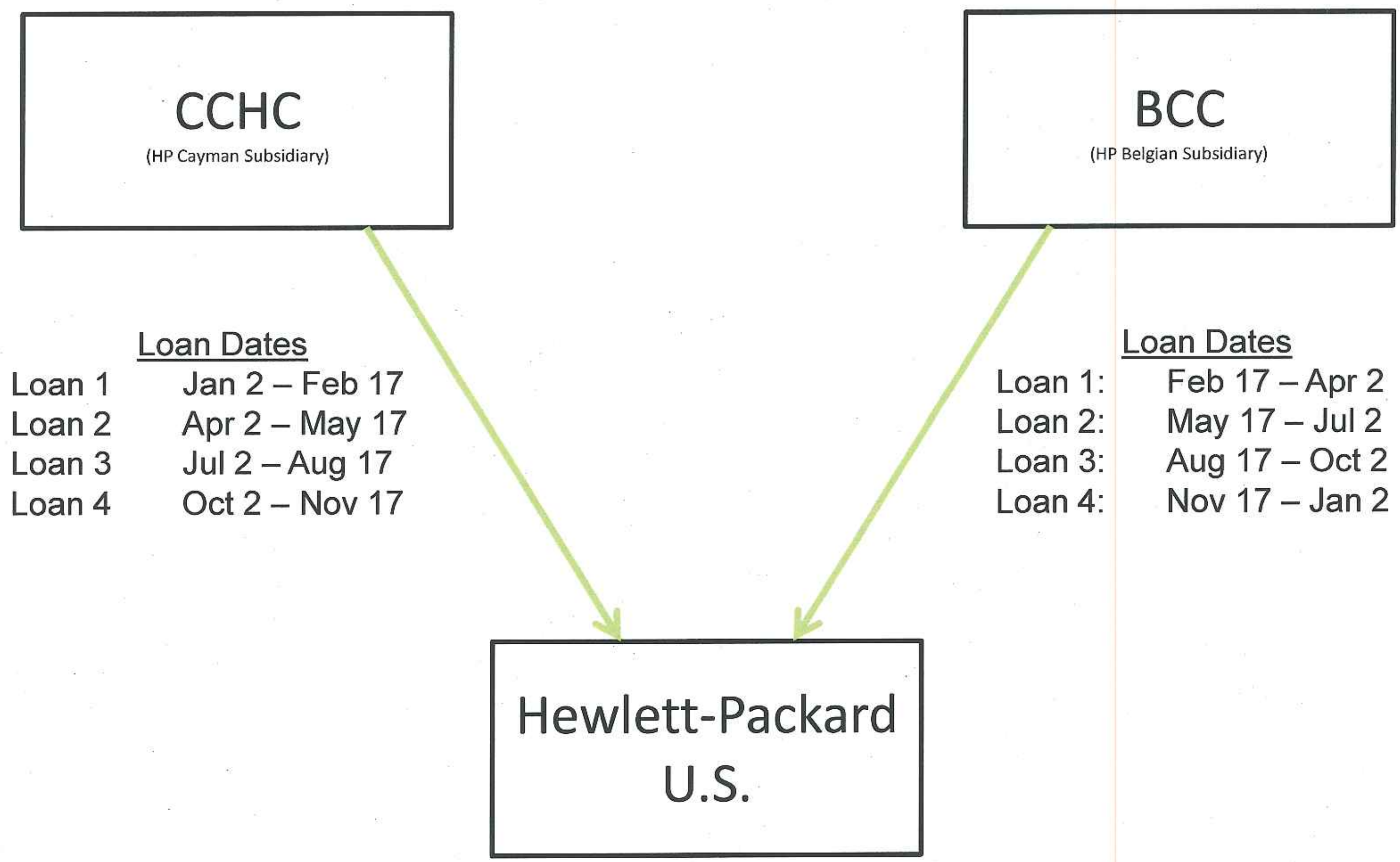
(Two Examples)



Prepared by the U.S. Permanent Subcommittee on Investigations, September 2012

Permanent Subcommittee on Investigations
EXHIBIT #1f

Hewlett-Packard
Offshore Alternating Loan Program

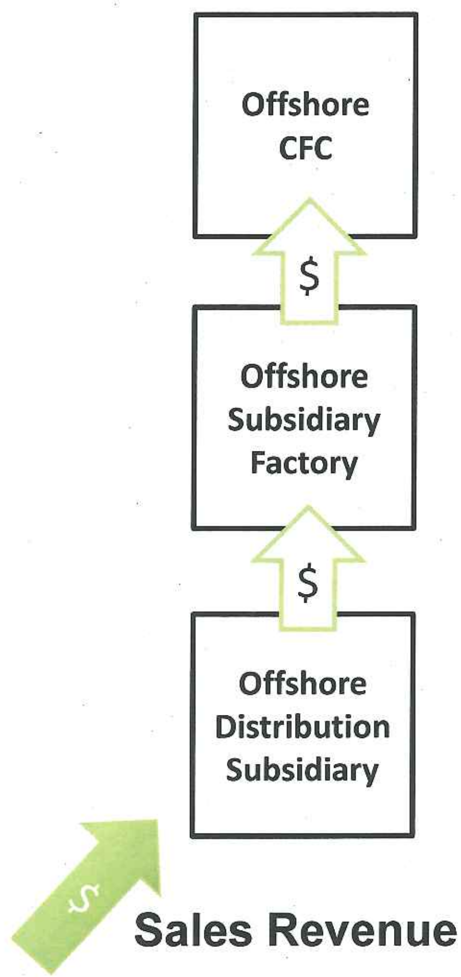


Prepared by the U.S. Permanent Subcommittee on Investigations, September 2012

Impact of Check the Box

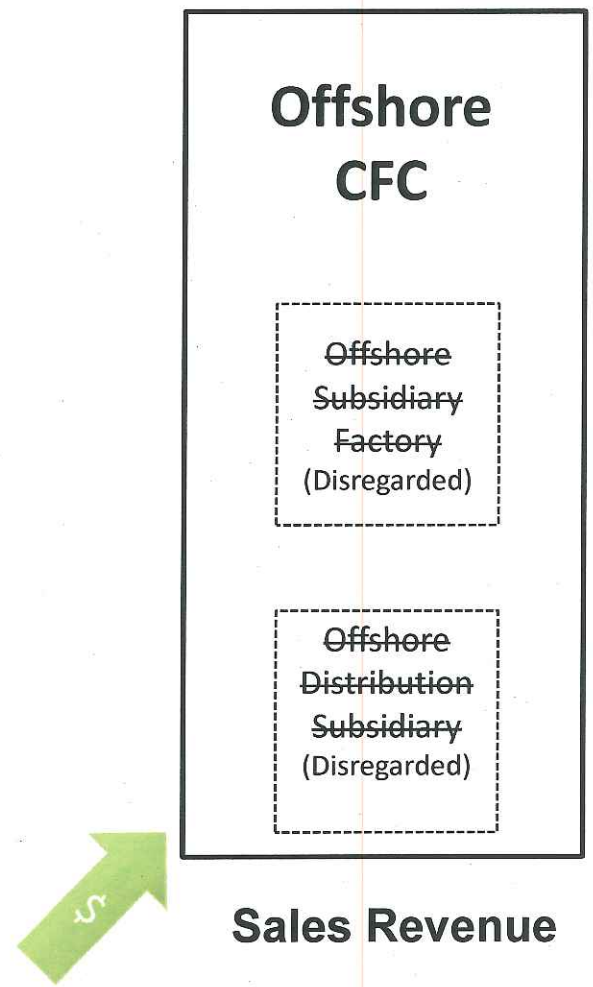
US Legal Structure

Flow of passive income such as royalties, dividends, and interest.



US Tax Structure

The disregarded entities are considered part of the offshore CFC. All transactions are then inside the offshore entity, therefore no determination as to whether active or passive.



Prepared by the U.S. Permanent Subcommittee on Investigations, September 2012

Permanent Subcommittee on Investigations
EXHIBIT #1g

Summary of CFC Cash Pool Loans to HP Co. US - Fiscal Year 2009

Entity		Loan Amount	Loan Date	Maturity Date	Fully Repaid Date
HP COORDINATION CTR		$3,800,000,000	11/17/2008	1/2/2009	1/2/2009
		$300,000,000	11/18/2008	1/2/2009	12/17/2008
		$600,000,000	11/20/2008	1/2/2009	1/2/2009
		$300,000,000	11/21/2008	1/2/2009	1/2/2009
		$200,000,000	12/2/2008	1/2/2009	12/10/2008
		$300,000,000	12/5/2008	1/2/2009	12/9/2008
	Total:	**$5,500,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$5,982,200,000	1/2/2009	2/17/2009	2/17/2009
		$125,150,000	1/6/2009	2/17/2009	2/17/2009
	Total:	**$6,107,350,000**			
HP COORDINATION CTR		$4,000,000,000	2/17/2009	4/2/2009	4/2/2009
		$150,000,000	2/25/2009	4/2/2009	2/26/2009
		$750,000,000	3/2/2009	4/2/2009	4/2/2009
		$300,000,000	3/3/2009	4/2/2009	4/2/2009
		$300,000,000	3/13/2009	4/2/2009	4/2/2009
		$200,000,000	3/16/2009	4/2/2009	3/31/2009
	Total:	**$5,700,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$5,800,000,000	4/2/2009	5/18/2009	5/18/2009
	Total:	**$5,800,000,000**			
BRISTOL TECHNOLOGY BV		$5,662,749,478	4/22/2009	4/22/2010	4/22/2010
BRISTOL TECHNOLOGY BV		$195,481,579	4/22/2009	4/22/2010	4/22/2010
	Total:	**$5,858,231,057**			
COMPAQ CAYMAN HOLDINGS CORP.		$350,000,000	4/23/2009	5/18/2009	5/18/2009
		$700,000,000	5/1/2009	5/18/2009	5/18/2009
	Total:	**$1,050,000,000**			
HP COORDINATION CTR		$4,100,000,000	5/18/2009	7/2/2009	7/2/2009
		$100,000,000	5/26/2009	7/2/2009	7/2/2009
		$200,000,000	6/3/2009	6/10/2009	6/10/2009
		$100,000,000	6/3/2009	7/2/2009	7/2/2009
		$450,000,000	6/10/2009	7/2/2009	7/2/2009
		$500,000,000	6/15/2009	7/2/2009	7/2/2009
		$300,000,000	6/25/2009	7/2/2009	7/2/2009
		$200,000,000	6/29/2009	7/2/2009	7/2/2009
		$352,000,000	7/1/2009	7/2/2009	7/2/2009
	Total:	**$6,302,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$6,655,053,000	7/2/2009	8/17/2009	8/17/2009
	Total:	**$6,655,053,000**			
HP COORDINATION CTR		$6,400,000,000	8/17/2009	10/2/2009	10/2/2009
		$520,000,000	8/24/2009	10/2/2009	10/2/2009
		1,000,000,000	8/25/2009	10/2/2009	10/2/2009
		200,000,000	8/31/2009	10/2/2009	10/2/2009
		200,000,000	9/3/2009	10/2/2009	10/2/2009
		$500,000,000	9/24/2009	10/2/2009	10/2/2009
	Total:	**$8,820,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$5,664,712,000	10/2/2009	11/17/2009	11/17/2009
	Total:	**$5,664,712,000**			
HP BERMUDA INTERNATIONAL LP		$400,000,000	10/29/2009	12/15/2009	12/15/2009
	Total:	**$400,000,000**			
HP INTERNATIONAL II LP		$1,800,000,000	10/29/2009	12/15/2009	12/15/2009
	Total:	**$1,800,000,000**			

Prepared by the Permanent Subcommittee on Investigations, September 2012

Permanent Subcommittee on Investigations

EXHIBIT #1h

Summary of CFC Cash Pool Loans to HP Co. US - Fiscal Year 2010

Entity		Loan Amount	Loan Date	Maturity Date	Fully Repaid Date
HP COORDINATION CTR		$5,000,000,000	11/17/2009	1/4/2010	1/4/2010
		$2,000,000,000	11/18/2009	1/4/2010	1/4/2010
		$1,500,000,000	12/15/2009	1/4/2010	1/4/2010
		$500,000,000	12/16/2009	1/4/2010	1/4/2010
		$500,000,000	12/16/2009	1/4/2010	1/4/2010
		$400,000,000	12/31/2009	1/4/2010	1/4/2010
	Total:	**$9,900,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$6,565,465,100	1/4/2010	2/17/2010	2/17/2010
	Total:	**$6,565,465,100**			
HP COORDINATION CTR		$350,000,000	2/17/2010	4/1/2010	3/30/2010
		$550,000,000	2/23/2010	4/1/2010	3/30/2010
		$7,000,000,000	2/17/2010	4/1/2010	4/1/2010
		$300,000,000	2/26/2010	4/1/2010	4/1/2010
		$1,300,000,000	3/9/2010	4/1/2010	4/1/2010
		$350,000,000	3/24/2010	4/1/2010	4/1/2010
	Total:	**$9,850,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$6,561,190,000	4/1/2010	5/17/2010	5/17/2010
	Total:	**$6,561,190,000**			
HP COORDINATION CTR		$6,800,000,000	5/17/2010	7/2/2010	7/2/2010
		$1,200,000,000	5/26/2010	7/2/2010	7/2/2010
		$100,000,000	5/27/2010	7/2/2010	6/3/2010
		$500,000,000	6/1/2010	7/2/2010	6/23/2010
		$165,000,000	6/2/2010	7/2/2010	6/10/2010
		$150,000,000	6/7/2010	7/2/2010	7/2/2010
		$280,500,000	6/21/2010	7/2/2010	7/2/2010
	Total:	**$9,195,500,000**			
HEWLETT PACKARD MUNICH B.V.		$6,565,460,000	7/2/2010	8/17/2010	8/17/2010
	Total:	**$6,565,460,000**			
HP COORDINATION CTR		$8,000,000,000	8/17/2010	10/1/2010	9/1/2010
		$450,000,000	8/19/2010	10/1/2010	9/1/2010
	Total:	**$8,450,000,000**			
HP JAPAN NK		$1,000,000,000	1/11/2010	2/26/2010	2/26/2010
		$1,000,352,986	2/26/2010	3/9/2010	3/9/2010
	Total:	**$2,000,352,986**			
BRISTOL TECHNOLOGIES BV		$5,961,506,436	4/22/2010	7/22/2010	7/22/2010
	Total:	**$5,961,506,436**			
HEWLETT PACKARD COLORADO		$2,684,726,206	4/30/2010	4/15/2015	Outstanding
	Total:	**$2,684,726,206**			
BRISTOL TECHNOLOGIES BV		$5,955,249,908	7/22/2010	10/22/2010	10/22/2010
		$5,955,249,908	10/22/2010	1/24/2011	Rollover
	Total:	**$11,910,499,816**			
SPARTAN FUNDING		$23,840,220	10/29/2010	10/14/2011	10/14/2011
	Total:	**$23,840,220**			

Prepared by the Permanent Subcommittee on Investigations, September 2012

Summary of CFC Cash Pool Loans to HP Co. US - Fiscal Year 2011

Entity		Loan Amount	Loan Date	Maturity Date	Fully Repaid Date
HEWLETT-PACKARD DUSSELDORF BV		$600,000,000	12/15/2010	12/31/2010	12/31/2010
	Total:	**$600,000,000**			
HEWLETT-PACKARD ARNHEM BV		$600,000,000	12/20/2010	12/31/2010	12/31/2010
		$600,054,313	12/31/2010	12/16/2030	10/27/2011
	Total:	**$1,200,054,313**			
HEWLETT-PACKARD DUSSELDORF BV		$600,079,000	12/31/2010	12/16/2030	Outstanding
	Total:	**$600,079,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$1,000,000,000	1/4/2011	2/17/2011	2/17/2011
		$300,000,000	1/7/2011	2/17/2011	2/17/2011
	Total:	**$1,300,000,000**			
BRISTOL TECHNOLOGY BV		$5,955,249,908	1/24/2011	4/25/2011	4/25/2011
		$5,955,249,908	4/25/2011	4/25/2012	4/25/2012
	Total:	**$11,910,499,816**			
COMPAQ CAYMAN HOLDINGS CORP.		$433,349,000	1/25/2011	2/17/2011	2/17/2011
	Total:	**$433,349,000**			
HP COORDINATION CTR		$1,500,000,000	2/17/2011	4/4/2011	4/4/2011
		$1,600,000,000	2/22/2011	4/4/2011	4/4/2011
		$400,000,000	3/21/2011	4/4/2011	4/4/2011
	Total:	**$3,500,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$1,735,485,000	4/4/2011	5/17/2011	5/17/2011
		$135,322,000	4/28/2011	5/17/2011	5/17/2011
	Total:	**$1,870,807,000**			
HP COORDINATION CTR		$3,500,000,000	5/17/2011	7/5/2011	7/5/2011
		$300,000,000	5/23/2011	7/5/2011	7/5/2011
		$500,000,000	5/24/2011	7/5/2011	6/2/2011
		$1,100,000,000	6/22/2011	7/5/2011	7/5/2011
	Total:	**$5,400,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$1,871,918,000	7/5/2011	8/17/2011	8/17/2011
	Total:	**$1,871,918,000**			
HP COORDINATION CTR		$2,500,000,000	8/17/2011	10/3/2011	10/3/2011
		$420,000,000	8/19/2011	10/3/2011	9/7/2011
		$1,080,000,000	8/24/2011	10/3/2011	9/7/2011
		$20,000,000	8/25/2011	10/3/2011	10/3/2011
		$250,000,000	8/31/2011	10/3/2011	10/3/2011
		$280,000,000	9/1/2011	10/3/2011	9/28/2011
		$1,000,000,000	9/19/2011	10/3/2011	9/28/2011
		$600,000,000	9/22/2011	10/3/2011	10/3/2011
	Total:	**$6,150,000,000**			
COMPAQ CAYMAN HOLDINGS CORP.		$500,000,000	10/31/2011	11/17/2011	11/17/2011
	Total:	**$500,000,000**			
HEWLETT PACKARD COLOGNE BV		$1,416,391	10/26/2011	12/8/2011	12/8/2011
	Total:	**$1,416,391**			
BRISTOL TECHNOLOGY BV		$3,108,234,103	10/27/2011	10/15/2012	Outstanding
	Total:	**$3,108,234,103**			

Prepared by the Permanent Subcommittee on Investigations, September 2012

S&P 500: Cumulative Indefinitely Reinvested Earnings, 2004 - 2008

($ in billions)	2008	2007	2006	2005	2004
Health Care	$229.1	$190.4	$136.9	$91.7	$147.2
Information Technology	178.3	131.0	85.6	63.6	93.0
Energy	152.3	137.0	113.9	85.1	53.6
Industrials	137.3	118.7	84.3	65.8	61.6
Consumer Staples	111.9	94.7	75.0	57.0	74.5
Financials	75.3	80.1	58.6	44.0	34.9
Consumer Discretionary	60.0	49.9	40.8	28.7	39.7
Materials	51.7	48.5	40.4	34.1	43.4
Utilities	3.1	2.6	2.2	1.8	2.7
Telecom	0.8	0.9	3.0	3.0	5.1
	$999.8	$853.8	$640.6	$474.7	$555.9
Firm count	298	284	269	250	247
Year-to-year change	$148.3	$201.3	$154.9	($84.6)	

Source: 10-K filings. S&P 500 composition as of May, 2009.

Permanent Subcommittee on Investigations
EXHIBIT #2a

S&P 500: Cumulative Indefinitely Reinvested Earnings, 2011 Vs. 2006

	Year End Balance of Untaxed Indefinitely Reinvested Earnings:					
($ in billions)	2011	2010	2009	2008	2007	2006
Technology	$371.3	$285.4	$221.3	$178.0	$124.9	$83.8
Health Care	336.1	284.6	241.6	223.3	183.7	132.0
Industrials	198.9	174.5	153.0	137.1	118.0	84.2
Consumer Staples	177.6	149.7	131.1	109.7	92.4	74.7
Financials	152.6	132.8	112.0	88.2	84.0	61.9
Energy	141.4	123.8	113.8	136.7	124.9	105.6
Consumer Discretionary	87.7	70.6	54.9	47.4	39.1	31.0
Materials	70.1	63.7	57.6	52.8	48.8	40.2
Utilities	5.6	3.9	3.1	3.0	2.4	2.1
Telecom	1.5	1.2	1.1	0.8	0.9	3.0
Total	$1,542.8	$1,290.2	$1,089.5	$977.0	$819.1	$618.5
$ Change:	$252.6	$200.7	$112.5	$157.9	$200.6	
% Change:	*20%*	*18%*	*12%*	*19%*	*32%*	

Source: 10-K filings. S&P 500 composition at 2/29/2012, including companies with fiscal years as of that date.

Permanent Subcommittee on Investigations

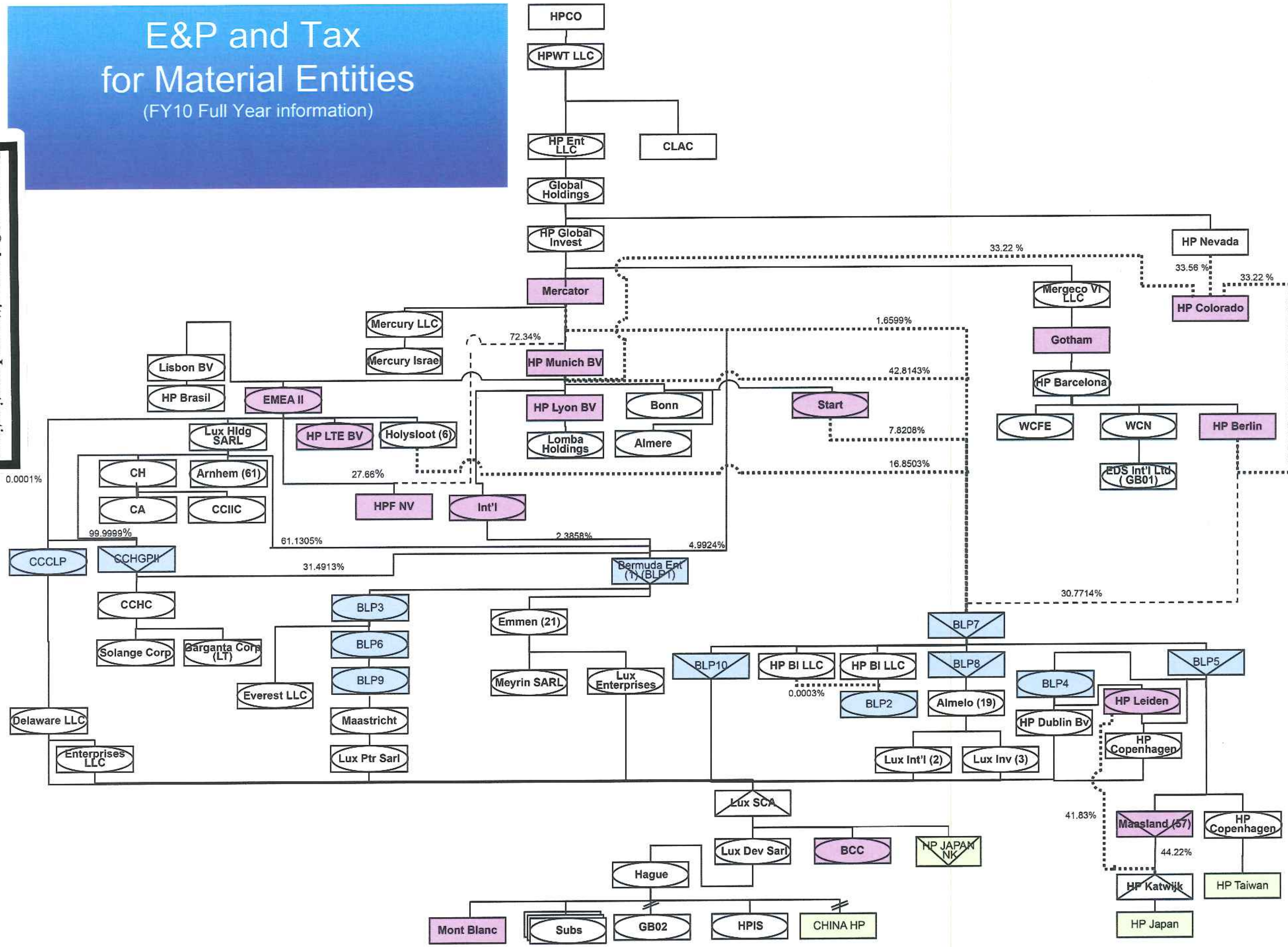
EXHIBIT #2b

Permanent Subcommittee on Investigations

EXHIBIT #3a

E&P and Tax for Material Entities

(FY10 Full Year information)



Short Term Liquidity Update

October 7th., 2008

HP Confidential

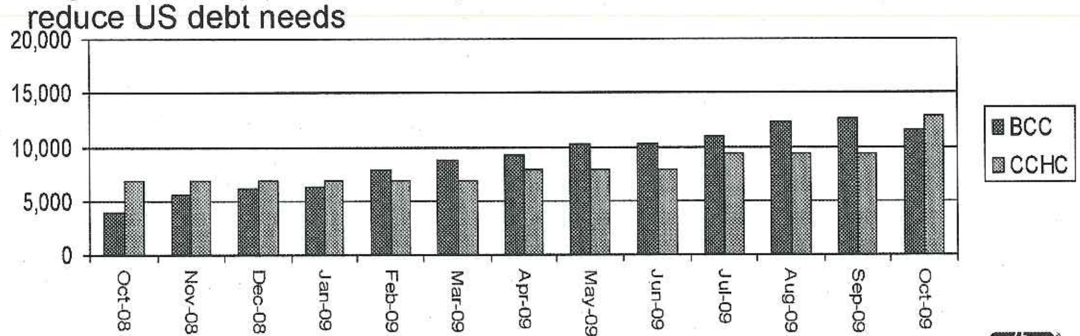
Executive Summary

- The overall commercial paper market has experienced a significant reduction in size and an unwillingness of investors to purchase longer-term paper
- The market for Tier-1 industrial issuers of CP such as HP continues to be relatively stable, but demand for HP paper maturing beyond December has been limited
- The company has $[redacted]bn of lines of credit meant to be used if the CP market should become unavailable to HP. However, should the CP market disappear generally, the demand for draws on lines of credit would overwhelm the banking system.
- The term debt market is practically frozen, which has led HP to have more reliance on CP than had originally been expected. However, as long as the CP market remains, HP's debt costs will be exceptionally low.
- What follows is a review of HP's liquidity situation and alternatives.

▬ = Redacted by the Permanent Subcommittee on Investigations

Offshore cash pools

- HP's cash generation mainly flows into two foreign pools
- The pools alternately loan to HP US for 45-day periods. This is the most important source of US liquidity for repurchases and acquisitions.
- Chart shows expected balance in each pool over the next year
- Because HP can already access half of its foreign cash in the US, only 50% of any permanent repatriation of foreign earnings goes to reduce US debt needs



invent

Access to offshore cash

- At any point in time, most of the money in one foreign pool is loaned to the US
- At 9/30/08, the $11bn of cash on the balance sheet could be broken down as follows:
  - $1bn already in US
  - $2bn not accessible
  - $3bn used for operational needs across subsidiaries
  - $5bn available for cash pool / US borrowing needs
- Without planning, repatriation of foreign earnings could lead to tax payments, though no EPS impact.
  - First $8bn of foreign earnings repatriation expected to generate no more than $500m of taxes
  - Other strategies, such as prepaid royalties, are available at lower or no tax cost

Hewlett-Packard Co. Repatriation History

hp

Presentation Title

Permanent Subcommittee on Investigations

EXHIBIT #3c

Repatriation History

- HP repatriated $14.5B in FY05 associated with the Homeland Investment Act
- Since Q406, HP has permanently repatriated an additional $17.7B
  - $8.7B in prepaid royalties
  - $6B in PTI (previously taxed income)
  - $3B from "other" tax strategies
- In addition to the permanently repatriated cash, HP has increased it's alternating loans from offshore cash pools by approximately $6B over the last three years
- While HP will likely always have some amount of offshore cash that could be repatriated at zero or low cost, this is not the "same" cash year after year, as we are continuously repatriating that cash and replacing it with other zero/low tax cash

Alternating Loans

- The majority of our offshore cash rolls up to the BCC (Belgium Coordination Center) cash pool, which can loan to HPCO for 45 days within the fiscal quarter (but not over quarter end)
- CCHC (Compaq Cayman Holding Company) is a stagnant cash pool with $6.65B which can be loaned to HP for 45 days that cover the fiscal quarter end
- We have the ability to move cash from BCC to CCHC in FY10, which would result in increased access over quarter end – the amount we move, if any, will depend on the outlook of other tax repatriation strategies and cash levels
- Essentially all of the repatriation strategies are ultimately funded by the BCC, which keeps the build up of BCC cash in check

Hewlett-Packard Company Cash Profile

Treasury/Tax Council
May 23, 2011

Permanent Subcommittee on Investigations
EXHIBIT #3d

Cash profile

— HP's tax strategy influences the location of cash balances (majority residing outside the US)

— Most offshore cash is accessible into the US but permanent distributions would likely have tax implications; repatriation opportunities and trade-offs are constantly being evaluated

- Opportunities may exist to further minimize the "excess" cash that resides in offshore entities, although current operating procedures already provide flexibility in addressing US operating cash needs
- Cash "Blocked" due to regulation would be cost prohibitive and/or legally difficult to repatriate

Legend

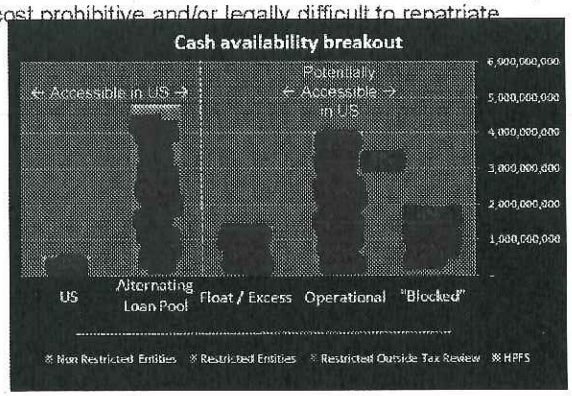
US: Operational cash balances held domestically

Alternating Loan Pool: Main offshore cash pools that distribute cash into the US via intercompany loans; these pools are also the source of more permanent distributions of cash into the US

Float/Excess: Offshore entities retain cash above operational needs; this generally results from excess cash buffers that build because of the timing of currency conversions and float balances that exist due to cash sweep timing

Operational: Offshore entities' required cash for local operational needs

"Blocked": Cash that is trapped in an offshore entity either for regulatory reasons or due to the high tax cost of expatriation



* Restricted entities outside of Tax review are India – Mphasis, Mercury Israel, Argentina and Brazil

* Cash availability breakout is based on April ending cash balances of $12.7B

Cash Balances

US: $547,715,088
BCC/CCHC: $4,815,712,516
Float/Excess (Non Restricted): $[redacted]
Trapped (Restricted): $[redacted]
Trapped (Non Restricted): [redacted]
Operational (Restricted): [redacted]
Operational (Non Restricted): [redacted]
HPFS: [redacted]

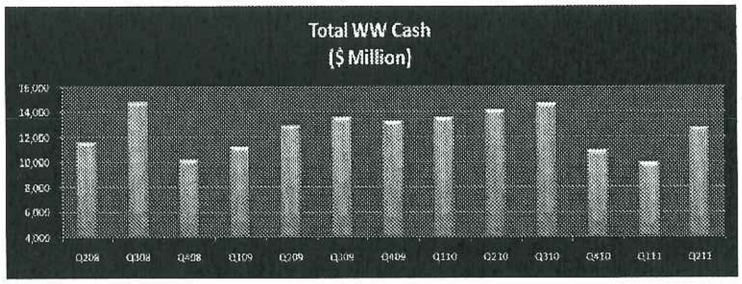
——— = **Redacted by the Permanent Subcommittee on Investigations**

Restricted Entities: Venezuela, China – H3C, China, India, Korea, Taiwan, South Africa, Romania and Bulgaria

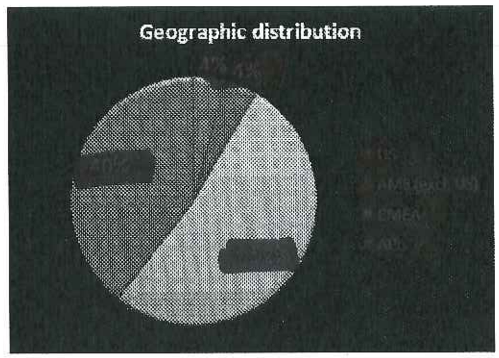
Trapped (Non Restricted) Entities : India – Mphasis, Mercury Israel, Argentina and Brazil

Cash balances

— HP has consistently maintained a cash balance above $10B for the past several years



— The vast majority of HP's cash resides outside the US



* Geographic distribution is based on April ending cash balances

[redacted] = Redacted by the Permanent Subcommittee on Investigations

FY09

Lender	Borrower	Loan Amount	Any funds considered "indefinitely" reinvested foreign earnings	Loan date	Mat date	Fully repaid date	Whether loan extended over lender's quarter	How the cash was moved from Lender to Borrower (wire, JE)	Location of account that originated the loan	Location of account that received the loan	What was the money used for? (**)
HP COORDINATION CTR	Hewlett Packard Co	3,800,000,000	HP does not designate	17-Nov-08	2-Jan-09	2-Jan-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	18-Nov-08	2-Jan-09	17-dec-08	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	600,000,000	HP does not designate	20-Nov-08	2-Jan-09	2-Jan-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	21-Nov-08	2-Jan-09	2-Jan-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	200,000,000	HP does not designate	2-Dec-08	2-Jan-09	10-dec-08	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	5-Dec-08	2-Jan-09	9-dec-08	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	4,000,000,000	HP does not designate	17-Feb-09	2-Apr-09	2-Apr-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	150,000,000	HP does not designate	25-Feb-09	2-Apr-09	26-Feb-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	750,000,000	HP does not designate	2-Mar-09	2-Apr-09	2-Apr-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	3-Mar-09	2-Apr-09	2-Apr-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	13-Mar-09	2-Apr-09	2-Apr-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	200,000,000	HP does not designate	16-Mar-09	2-Apr-09	31-Mar-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	4,100,000,000	HP does not designate	18-May-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	100,000,000	HP does not designate	26-May-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	200,000,000	HP does not designate	3-Jun-09	10-Jun-09	10-Jun-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	100,000,000	HP does not designate	3-Jun-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	450,000,000	HP does not designate	10-Jun-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	500,000,000	HP does not designate	15-Jun-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	25-Jun-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	200,000,000	HP does not designate	29-Jun-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	352,000,000	HP does not designate	1-Jul-09	2-Jul-09	2-Jul-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	6,400,000,000	HP does not designate	17-Aug-09	2-Oct-09	2-Oct-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	520,000,000	HP does not designate	24-Aug-09	2-Oct-09	2-Oct-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	1,000,000,000	HP does not designate	25-Aug-09	2-Oct-09	2-Oct-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	200,000,000	HP does not designate	31-Aug-09	2-Oct-09	2-Oct-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	200,000,000	HP does not designate	3-Sep-09	2-Oct-09	2-Oct-09	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	500,000,000	HP does not designate	24-Sep-09	2-Oct-09	2-Oct-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	5,982,200,000	HP does not designate	2-Jan-09	17-Feb-09	17-Feb-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	125,150,000	HP does not designate	6-Jan-09	17-Feb-09	17-Feb-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	5,800,000,000	HP does not designate	2-Apr-09	18-May-09	18-May-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	350,000,000	HP does not designate	23-Apr-09	18-May-09	18-May-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	700,000,000	HP does not designate	1-May-09	18-May-09	18-May-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	6,655,053,000	HP does not designate	2-Jul-09	17-Aug-09	17-Aug-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	5,664,712,000	HP does not designate	2-Oct-09	17-Nov-09	17-Nov-09	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	999,790,000	HP does not designate	8-Oct-09	17-Nov-09	17-Nov-09	NO	WIRE	UK	USA	See comment below
BRISTOL Technology BV	Hewlett Packard Co	5,662,749,478	HP does not designate	22-Apr-09	22-Apr-10	22-Apr-10	YES	WIRE	UK	USA	See comment below
BRISTOL Technology BV	Hewlett Packard Co	195,481,579	HP does not designate	22-Apr-09	22-Apr-10	22-Apr-10	YES	WIRE	UK	USA	See comment below
HP BERMUDA INTERNATIONAL LP	Hewlett Packard Co	400,000,000	HP does not designate	29-Oct-09	15-Dec-09	15-Dec-09	YES	WIRE	UK	USA	See comment below
HP INTERNATIONAL II LP	Hewlett Packard Co	1,800,000,000	HP does not designate	29-Oct-09	15-Dec-09	15-Dec-09	YES	WIRE	UK	USA	See comment below

(**) General Corporate Purposes such as: Commercial Paper repayment, Stock Repurchase, Dividend Payments, InterCompany Netting Payments, Microsoft Royalty, Foreign Exchange Losses, Account payables, Payroll, US Taxes)

Permanent Subcommittee on Investigations

EXHIBIT #3e

Lender	Borrower	Loan Amount	Any funds considered "indefinitely" reinvested foreign earnings	Loan date	Maturity Date	Fully repaid date	Whether loan extended over lender's quarter	How the cash was moved from Lender to Borrower (wire, JE)	Location of account that originated the loan	Location of account that received the loan	What was the money used for? (*)	Section 956 inclusion?
HP COORDINATION CTR	Hewlett Packard Co	5,000,000,000	HP does not designate	17-Nov-09	4-Jan-10	4-Jan-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	2,000,000,000	HP does not designate	18-Nov-09	4-Jan-10	4-Jan-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	1,500,000,000	HP does not designate	15-Dec-09	4-Jan-10	4-Jan-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	500,000,000	HP does not designate	16-Dec-09	4-Jan-10	4-Jan-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	500,000,000	HP does not designate	16-Dec-09	4-Jan-10	4-Jan-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	400,000,000	HP does not designate	31-Dec-09	4-Jan-10	4-Jan-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	7,000,000,000	HP does not designate	17-Feb-10	1-Apr-10	1-Apr-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	350,000,000	HP does not designate	17-Feb-10	1-Apr-10	30-Mar-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	550,000,000	HP does not designate	23-Feb-10	1-Apr-10	30-Mar-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	26-Feb-10	1-Apr-10	1-Apr-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	1,300,000,000	HP does not designate	9-Mar-10	1-Apr-10	1-Apr-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	350,000,000	HP does not designate	24-Mar-10	1-Apr-10	1-Apr-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	6,800,000,000	HP does not designate	17-May-10	2-Jul-10	2-Jul-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	1,200,000,000	HP does not designate	26-May-10	2-Jul-10	2-Jul-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	100,000,000	HP does not designate	27-May-10	2-Jul-10	3-Jun-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	500,000,000	HP does not designate	1-Jun-10	2-Jul-10	23-Jun-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	165,000,000	HP does not designate	2-Jun-10	2-Jul-10	10-Jun-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	150,000,000	HP does not designate	7-Jun-10	2-Jul-10	2-Jul-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	280,500,000	HP does not designate	21-Jun-10	2-Jul-10	2-Jul-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	8,000,000,000	HP does not designate	17-Aug-10	1-Oct-10	1-Sep-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HP COORDINATION CTR	Hewlett Packard Co	450,000,000	HP does not designate	19-Aug-10	1-Oct-10	1-Sep-10	NO	WIRE	UK	USA	See comment below	See note 1 below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	6,565,465,100	HP does not designate	4-Jan-10	17-Feb-10	17-Feb-10	NO	WIRE	UK	USA	See comment below	See note 1 below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	6,561,190,000	HP does not designate	1-Apr-10	17-May-10	17-May-10	NO	WIRE	UK	USA	See comment below	See note 1 below
HEWLETT PACKARD MUNICH B.V.	Hewlett Packard Co	6,565,480,000	HP does not designate	2-Jul-10	17-Aug-10	17-Aug-10	YES	WIRE	UK	USA	See comment below	See note 2 below
HP JAPAN NK	Hewlett Packard Co	1,000,000,000	HP does not designate	11-Jan-10	26-Feb-10	26-Feb-10	YES	WIRE	UK	USA	See comment below	See note 2 below
HP JAPAN NK	Hewlett Packard Co	1,000,352,986	HP does not designate	26-Feb-10	9-Mar-10	9-Mar-10	YES	WIRE	UK	N/A	See comment below	See note 2 below
BRISTOL TECHNOLOGY BV	Hewlett Packard Co	5,961,506,436	HP does not designate	22-Apr-10	22-Jul-10	22-Jul-10	YES	WIRE	UK	USA	See comment below	See note 3 below
BRISTOL TECHNOLOGY BV	Hewlett Packard Co	5,955,249,908	HP does not designate	22-Jul-10	22-Oct-10	22-Oct-10	YES	WIRE	UK	USA	See comment below	See note 3 below
BRISTOL TECHNOLOGY BV	Hewlett Packard Co	5,955,249,908	HP does not designate	22-Oct-10	24-Jan-11	N/A Rollover	YES	Rollover	UK	USA	See comment below	See note 3 below
Hewlett-Packard Colorado BV	Hewlett Packard Co	2,684,726,206	HP does not designate	30-Apr-10	15-Apr-15	N/A Outstanding	YES	WIRE	UK	USA	See comment below	See note 4 below
SPARTAN FUNDING	ELECTRONIC DATA SYSTEMS CORP	23,840,220	HP does not designate	29-Oct-10	14-Oct-11	14-Oct-11	YES	JE	N/A	N/A	See comment below	See note 5 below

(*) General Corporate Purposes such as: Commercial Paper repayment, Stock Repurchase, Dividend Payments, InterCompany Netting Payments, Microsoft Royalty, Foreign Exchange Losses, Account payables, Payroll, US Taxes)

NOTES:

1. No section 956 inclusion. Each of these loans (or groupings of loans in the case of HP Coordination Center) were short term that did not exist over a quarter end and for which there was a sufficient quiet period between loans per Rev. Rul 89-73.
2. No section 956 inclusion. Although these loans existed over a quarter end (with the two loans from HP Japan considered as one continuous loan), they were short enough in duration to satisfy Notice 2008-91 as extended in this year by Notice 2010-12.
3. No section 956 inclusion. Although current year investment income was subject to subpart F, resulting in some PTI, there were no current or accumulated Earnings & Profits for any section 956 inclusion.
4. Partial section 956 inclusion. For the first period ending April 30, PTI was available ($2.1B). For the period ending October 31, PTI remains $2.1B and Earnings & Profits is $401,094,336. The Section 956 inclusion is the full $401,094,336.
5. No section 956 inclusion. Amount fully covered by PTI.

FY11

Lender	Borrower	Loan Amount	Any funds considered "indefinitely" reinvested foreign earnings	Loan date	Mat date	Fully repaid date	Whether loan extended over lender's quarter	How the cash was moved from Lender to Borrower (wire, JE)	Location of account that originated the loan	Location of account that received the loan	What was the money used for? (*)
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	1,000,000,000	HP does not designate	4-Jan-11	17-Feb-11	17-Feb-11	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	300,000,000	HP does not designate	7-Jan-11	17-Feb-11	17-Feb-11	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	433,349,000	HP does not designate	25-Jan-11	17-Feb-11	17-Feb-11	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	1,735,485,000	HP does not designate	4-Apr-11	17-May-11	17-May-11	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	135,322,000	HP does not designate	28-Apr-11	17-May-11	17-May-11	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	1,871,918,000	HP does not designate	5-Jul-11	17-Aug-11	17-Aug-11	NO	WIRE	UK	USA	See comment below
COMPAQ CAYMAN HOLDINGS CORP.	Hewlett Packard Co	500,000,000	HP does not designate	31-Oct-11	17-Nov-11	17-Nov-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	1,500,000,000	HP does not designate	17-Feb-11	4-Apr-11	4-Apr-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	1,600,000,000	HP does not designate	22-Feb-11	4-Apr-11	4-Apr-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	400,000,000	HP does not designate	21-Mar-11	4-Apr-11	4-Apr-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	3,500,000,000	HP does not designate	17-May-11	5-Jul-11	5-Jul-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	300,000,000	HP does not designate	23-May-11	5-Jul-11	5-Jul-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	500,000,000	HP does not designate	24-May-11	5-Jul-11	2-Jun-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	1,100,000,000	HP does not designate	22-Jun-11	5-Jul-11	5-Jul-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	2,500,000,000	HP does not designate	17-Aug-11	3-Oct-11	3-Oct-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	420,000,000	HP does not designate	19-Aug-11	3-Oct-11	7-Sep-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	1,080,000,000	HP does not designate	24-Aug-11	3-Oct-11	7-Sep-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	20,000,000	HP does not designate	25-Aug-11	3-Oct-11	3-Oct-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	250,000,000	HP does not designate	31-Aug-11	3-Oct-11	3-Oct-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	280,000,000	HP does not designate	1-Sep-11	3-Oct-11	28-Sep-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	1,000,000,000	HP does not designate	19-Sep-11	3-Oct-11	28-Sep-11	NO	WIRE	UK	USA	See comment below
HP COORDINATION CTR	Hewlett Packard Co	600,000,000	HP does not designate	22-Sep-11	3-Oct-11	3-Oct-11	NO	WIRE	UK	USA	See comment below
HEWLETT PACKARD DUSSELDORF BV	Hewlett Packard Co	600,000,000	HP does not designate	15-Dec-10	31-Dec-10	31-Dec-10	YES	WIRE	UK	USA	See comment below
HEWLETT PACKARD DUSSELDORF BV	Hewlett Packard Co	600,079,000	HP does not designate	31-Dec-10	16-Dec-30	Outstanding	YES	Rollover/outstanding	UK	USA	See comment below
HEWLETT-PACKARD ARNHEM BV	Hewlett Packard Co	600,000,000	HP does not designate	20-Dec-10	31-Dec-10	31-Dec-10	YES	WIRE	UK	USA	See comment below
HEWLETT-PACKARD ARNHEM BV	Hewlett Packard Co	600,054,313	HP does not designate	31-Dec-10	16-Dec-30	27-Oct-11	YES	WIRE	UK	USA	See comment below
BRISTOL Technology BV	Hewlett Packard Co	5,955,249,908	HP does not designate	24-Jan-11	25-Apr-11	25-Apr-11	YES	WIRE	UK	USA	See comment below
BRISTOL Technology BV	Hewlett Packard Co	5,955,249,908	HP does not designate	25-Apr-11	25-Apr-12	25-Apr-12	YES	ollover & repayment by w	UK	USA	See comment below
BRISTOL Technology BV	Hewlett Packard Co	3,108,234,103	HP does not designate	27-Oct-11	15-Oct-12	Outstanding	YES	Rollover/outstanding	UK	USA	See comment below
HEWLETT PACKARD COLOGNE B.V.	PALM INC	1,416,391	HP does not designate	26-Oct-11	8-Dec-11	8-Dec-11	YES	WIRE	UK	USA	See comment below

(*) General Corporate Purposes such as: Commercial Paper repayment, Stock Repurchase, Dividend Payments, InterCompany Netting Payments, Microsoft Royalty, Foreign Exchange Losses, Account payables, Payroll, US Taxes.

Hewlett-Packard Company
Historical APB 23 Summary

	FY06	FY07	FY08	FY09	Forecast FY10
Indefinitely Reinvested Earnings	3.1	7.7	12.9	16.5	24.7
Taxed Earnings	[redacted]				
Minority Interest & Other	[redacted]				
Positive Foreign Retained Earnings	[redacted]				
Noncash Foreign Assets	[redacted]				
Foreign Cash	13.1	9.9	8.8	12.5	17.4
U.S. Cash	3.3	0.5	1.3	0.8	0.4
Total Cash	16.4	10.4	10.2	13.3	17.8

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Category	$M				
	FY10	FY11	(11/1/11 to 7/31/12) FY12 YTD	FY10 - FY 12 YTD	FY11 - FY 12 YTD
Average Alternating Loan	5,963	2,166	845	3,186	1,600
Average Commercial Paper	[redacted]				
New Long Term US Debt Issued	[redacted]				

Total HP Ending Debt	[redacted]				
Average Alternating Loan as Percentage of Ending Debt	27%	7%	3%	11%	5%

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EXHIBIT #3g

Walkthrough Template – SOX Process Review

Entity	Hewlett-Packard Company WW	Workpaper Ref.	Federal Income Tax
Subsidiary or Division		Prepared by	Francisco Salinas, HP Internal Audit Rodrigo Reyes, HP Internal Audit
Financial Statement Date	10/31/2011	Reviewed by	Shankar Srinivasan HP Internal Audit

Significant Class of Transactions/Process name: Income Tax Provision - Federal U.S.

Process Owners & Subject Matter Experts:

Organization	Name	Title	Region/ Location	Process Description	Process ID
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Tax	Al Cirelli	International Tax Director	Plano, US	LST Loan Review and Preparation of Loan Summary	C019331/ C44728

KEY CONTROLS IDENTIFIED IN THIS PROCESS: List all Controls identified during the walk through interviews or from process documentation

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EXHIBIT #3h

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Key Control # C019331 - LST Loan Review and Preparation of Loan Summary

Tax Dept's Treasury Single Point Of Contact (SPOC) or delegate reviews IC loans to HPCo or other US HP entities ("HP-US") from the 2 primary non-US cash pools, BCC and CCHC plus other IC loans to HP-US at each quarter end to ensure that loans are consistent with the guidance discussed to avoid IRC section 956 exposure. In addition, all foreign-to-foreign IC loans are reviewed to ensure no indirect IRC section 956 exposure.

Process Risk:

Insufficient or lack of communication between the LST SPOC or LST and Treasury may result in IC loans from HP's non-US cash pools not being properly reviewed producing unexpected Section 956 implications. In addition, inadequate or untimely information needed for the tax review could result in funding from inappropriate cash pools causing unexpected tax consequences not reflected in tax accounts.

Test Strategy:

1. Verify the loans transactions for the period if any.
2. Verify the meeting minutes if any to discuss the loan with the LST meeting and the outcome of that meeting.
3. Verify the approvals for the loans transaction SPOC.
4. Ensure that IC loans details on reports maintained by the tax dept and the Treasury dept are tied to each other and all differences are investigated and resolved timely

Process Walkthrough and Test Results:

Narrative:
IA interviewed Al Cirelli, International Tax Director, (Email: Alfred.d.cirelli@hp.com) and Andre Warren, International Tax (@ andre.warren@hp.com) to gain an understanding of the process. IA reviewed the Leverage planning & Procedure policy of the Legal Structure Team (LST) to get an understanding of the process. The LST is responsible for the development and maintenance of policies and procedures related to Hewlett-Packard`s legal structure.

Note: The leveraged policy relates to IC Loans to Non-US entities and not to IC Loans to HP Company or other entities.

The new "Staggered" loan program became effective on January 2, 2008, replacing the "quarterly" and "bridge" loan program. HP Finance (Now Bristol Technology) will no longer be a "bridge lender," but a non-US cash pool. The Belgian Coordination Centre (BCC) and Compaq Cayman Holdings Company (CCHC) are the remaining non-US cash pools lending short-term to HP Company and can alternatively lend HP Company up on as needed basis inside the schedule and up to the amount needed.

The following schedule defines the "windows" for loans to HP Company:

From CCHC	From BCC
Jan 2 - Feb 17	Feb 17 - Apr 2
Apr 2 - May 17	May 17 - Jul 2
Jul 2 - Aug 17	Aug 17 - Oct 2
Oct 2 - Nov 17	Nov 17 - Jan 2

When non-US cash pools are accessed by the HP Company in the form of IC loans, there is a risk that Internal Revenue Code (IRC) Sec. 956 may be triggered. Unless an exception applies, IC loans outstanding at quarter-end or deemed outstanding at quarter end over 30 days (since extended to up to 180 days if so elected by the taxpayer), through the application of the provisions of section 956, will be considered a deemed dividend to HP Company, thereby increasing taxable income and associated US income taxes. The current guidelines established by Tax and followed by Treasury are intended to avoid the application of section 956.

Treasury has been instructed to maintain HP`s three primary non-U.S. cash pools separately. To effectively monitor IC loans for potential Sec. 956 exposure, co-mingling of these non-U.S. cash pools is not allowed under any circumstances, directly or indirectly, including through combinations of deposit from and/or lending to other related entities. To ensure there are no Sec. 956 implications, the Treasury Single Point Of Contact (SPOC) reviews all loans made between the three non-US cash pools and HP Company. Loans made from these cash pools must be made in strict adherence to the tax planning guidelines agreed by the Treasury SPOC and Treasury.

At the beginning of the year, the Treasury department reviews HP`s cash forecast to determine the timing and the amount of cash that will be needed in the U.S. to finance its working capital requirements throughout the year. Cash forecasts are updated quarterly and presented to a high level review group that includes James T Murrin (HP WW Controller) and Lester Ezrati (WW Senior VP Tax). These forecasts include the use of cash from the non-US cash pools but only to the extent access to such cash follows the strict rules and guidelines agreed in advance between Treasury and the Treasury SPOC (see above). From time to time, Treasury requests advice from the Treasury SPOC to ensure full compliance with the tax rules to avoid conflict with Sec. 956.

There are no meetings to discuss these loans with LST. LST need not approve any IC loans including these. Treasury is well aware of the restrictions for when loans can and cannot be made to HPCo and Tax is copied on all proposed loans in advance giving time to catch something in advance that may be in error. As stated by Steve Weisberger, Senior Tax Counsel there have not been any errors since this staggered loan program began in 2008.

The discussion included timing and amount of the IC loans and repayments of the loans including principal and interest. Ever since the new staggered loan policy was initiated, however, this agenda topic was removed from the LST meetings as it was no longer viewed as a contentious issue and was handled when necessary through monthly US Treasury meetings where the Treasury SPOC was in attendance.

Per Al's comments, the newly implicated "staggered" loan process, which became effective January 2, 2008, allows the BCC and CCHC to alternately lend HP Company available cash during prescribed windows throughout the year and provided any such loans are repaid within said prescribed windows, adverse tax consequences under Sec. 956 will be avoided. The process and procedures were discussed with the Treasury team, giving them permission to lend within the windows without seeking approval for each loan transaction. (Ref. Tax Treasury Knowledge Transfer I June 17 2008) Thus, Steve no longer pre-approves IC loans to the US. Treasury determines what cash is available in the respective non-US cash pools and initiates loans on an as-needed basis following the strict rules and guidelines and copies Joey Williams (TAX Group) on all loan documents. Jennifer summarizes the IC loan results on a quarterly basis into the loan analysis worksheet.

Testwork Results:

IA obtained the Q2 FY11 loan analysis summary worksheet, IA haphazardly selected one (1) samples for walkthrough.

IA selected a CCHC loan transaction that occurred 4/25/2011 for the amount of USD 1.735 Billion. This loan amount is included in the FY11 Loan Analysis Summary worksheet, prepared by Jennifer Wazny (Link 12 - Tab: US Loans Activity, Line 302). IA obtained the 4/4/2011 Credit Spread form (Please refer to Link 2) for the amount of USD 1,735,485,000.00 between Compaq Cayman Holdings Company (CCHC) and Hewlett – Packard (HP). This form/contract shows the amount of the loan and be paid in full date of on May 17, 2011; this date is within the CCHC window of Apr 2 - May 17. Also IA received from the tax team evidence of no outstanding debt for this particular loan. Please refer to link 4.

IA obtained the Sec.956 Analysis file included on Link 1 summary page as an word document and analysis tab, which includes the IC loan details and HP BW IC Loan Report for the Q2 2011 prepared by Jennifer Wazny - US International tax team (No longer in the company) provided by Al Cirelli. This document sorts the summary into a more user-friendly format and provides it to Al Cirelli for review, in `Version Control` tab. Al's review will ensure consistency with the guidance provided to Treasury.

IA also obtained the Sec. 956 Memorandum summarizing Section 956 at Q2FY10 and it states that "CCHGPII does not have any loans receivable from other related foreign entities that could be considered on-lent to the US and thus, includible under Section 956." Please refer to Link 3 page 3

IA also requested SPOC review evidence and IA received an e-mail response from the current SPOC Steve Weisberger saying that the policy allows the Treasury SPOC to delegate the responsibility to analyze the IC loan activity at quarter end. Thus, the person who does the loan summary reports is no longer the same person as the SPOC. (Please refer to Link 3)

Message

From:	Schreiber, John [/O=COMPAQ/OU=CORP/cn=Recipients/cn=schreibj]
on behalf of	Schreiber, John
Sent:	3/11/2010 1:17:10 AM
To:	'Thomas, Rusty' [rcthomas@kpmg.com]
Subject:	RE: apb 23 question
Attachments:	Q1 FY10 Indefinitely Reinvested Earnings Memo.docx

Rusty,

Thanks. Please take a look at the attached and let me know if you see any "lightning rods."

Thanks
John

From: Thomas, Rusty [mailto:rcthomas@kpmg.com]
Sent: Wednesday, March 10, 2010 4:24 PM
To: Schreiber, John
Subject: RE: apb 23 question

John, I will give you my opinion and our firm's view. I would recommend not using tax consequences as a factor in APB23 documentation. The reason is that APB23 deferral is predicated on affirmative plans of indefinite reinvestment. If there is excess cash offshore sitting in an investment account and the rationale for not repatriating is simply the tax cost, we would not view this as a sound basis for arguing indefinite reinvestment. Sitting on cash to avoid tax cost on repatriation doesn't equate to reinvestment plans, in our view. So we have seen almost universally that companies no longer reference tax cost considerations in their APB23 documentation. It can be a lightning rod for a reviewer (e.g., PCAOB) to second guess the deferral. Moreover, usually there are ample other areas (e.g., offshore acquisitions) to point to that are much harder for a reviewer to question. Hope this helps. Rusty

> **From:** Schreiber, John [mailto:john.schreiber@hp.com]
> **Sent:** Wednesday, March 10, 2010 3:20 PM
> **To:** Thomas, Rusty
> **Subject:** apb 23 question
>
> Hi Rusty,
>
> Is it acceptable for a company to cite tax considerations when determining indefinite reinvestment? The attached cites APB 23, paragraph 8. Do you see references to income tax consequences as a factor in APB 23 official documentation?
>
> Thanks,
> John

Permanent Subcommittee on Investigations

EXHIBIT #3i

US CASH FORECAST

FY11 (in M$)	Q1 FY11 November	 December	 January	Q2 FY11 February	 March	 April	Q3 FY11 May	 June	 July	Q4 FY11 August	 September	 October
Opening HP cash balance												
CP Issuance												
Total available cash												
Net Accounts Receivables/Payables												
Payroll, 401k and Benefits												
Royalty												
Netting												
FX Gain (Loss)												
Subtotal												
Payables related to Financing												
Maturing CP												
Stock repurchase												
Collateral Management - Margin Calls												
Quarterly Loans/956 Loan	0	0	1733	1367	-600	-630	2430	-700	-1730	1120	-2020	-470
1/4/11 borrowed from CCHC			1000									
1/7/11 borrow from CCHC			300									
1/25/11 borrow from CCHC			433									
2/17/11 paid back to CCHC				-1733								
2/17/11 borrowed from BCC				1500								
2/22/11 borrowed from BCC				1600								
3/21/11 borrowed from BCC					400							
3/28/11 paid back to BCC					-1000							
4/4/11 paid back to BCC						-2500						
4/4/11 borrowed from CCHC						1735						
4/28/11 borrowed from CCHC						135						
5/17/11 paid back to CCHC							-1870					
5/17/11 borrowed from BCC							3500					
5/23/11 borrowed from BCC							300					
5/24/11 borrowed from BCC							500					
6/2/11 paid back to BCC								-500				
6/16/11 paid back to BCC								-100				
6/22/11 borrowed from BCC								1100				
6/30/11 Paid back to BCC								-1200				
7/1/11 paid back to BCC									-500			
7/5/11 paid back to BCC									-3100			
7/5/11 borrowed from CCHC									1870			
8/17/11 paid back to CCHC										-1870		
8/17/11 borrowed from BCC										2500		
18/18/11 paid back to BCC										-500		
8/19/11 borrowed from BCC										420		
8/22/11 paid back to BCC										-100		
8/23/11 paid back to BCC										-150		
8/24/11 borrowed from BCC										1080		
8/25/11 borrowed from BCC										20		

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EXHIBIT #3j

EY-PSI-00069529

	November	December	January	February	March	April	May	June	July	August	September	October
8/26/11 paid back to BCC										-180		
8/29/11 paid back to BCC										-50		
8/30/11 paid back to BCC										-300		
8/31/11 borrowed from BCC										250		
9/1/11 borrowed fromBCC											280	
9/2/11 paid back to BCC											-100	
9/6/11 paid back to BCC											-500	
9/7/11 paid back to BCC											-1500	
9/19/11 borrowed from BCC											1000	
9/22/11 borrowed from BCC											600	
9/27/11 paid back to BCC											-300	
9/28/11 paid back to BCC											-1500	
10/3/11 paid back to BCC												-970
10/31 /11 borrowed from CCHC												500
Prepaid Royalties												
PTI/Basis Distribution												
Dividend repatriation												
Debt (repaid)/issued												
Dividend												
Subtotal												
Payables related to Investing												
other payments/receipts												
other payments/receipts(M&A)												
Closing HP cash position												
Outstanding CP Issuance EOM												

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Closing M&A Cash Positions	Q1 FY11			Q2 FY11			Q3 FY11			Q4 FY11		
(in M$)	November	December	January	February	March	April	May	June	July	August	September	October
Other Investments (High Tech, Tall Tree)								-	-	-	-	-
3Com								-	-	-	-	-
Palm								-	-	-	-	-
3PAR								-	-	-	-	-
Arcsight								-	-	-	-	-
Fortify								-	-	-	-	-
Total US Cash Position								-	-	-	-	-

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Message

From: Lesjak, Cathie [/O=COMPAQ/OU=TDM/CN=RECIPIENTS/CN=AM-153283]
Sent: 6/8/2006 3:46:57 PM
To: Lesjak, Cathie [/O=COMPAQ/OU=TDM/cn=Recipients/cn=am-153283]; LaRose, Brian (Investor Relations) [/O=COMPAQ/OU=TDM/cn=Recipients/cn=LaRoseBr]
Subject: RE: Questions on Cash

Brian,

I should also add that for accounting purposes we provide tax on some portion of the offshore earnings under APB23 so even if we started to repatriate earnings more aggressively we wouldn't necessarily see any impact on the P&L for about the first $15B.

Cathie

-----Original Message-----
From: Lesjak, Cathie
Sent: Thursday, June 08, 2006 8:34 AM
To: LaRose, Brian (Investor Relations)
Subject: RE: Questions on Cash
Importance: High

Brian,

Except for now until 9 am and then from 9:30-10 am, I am booked until 3:30 pm (all PST). Below you will see my answers. Just an FYI, these are really good (tough) questions.

Cathie

-----Original Message-----
From: LaRose, Brian (Investor Relations)
Sent: Thursday, June 08, 2006 8:04 AM
To: Lesjak, Cathie
Subject: RE: Questions on Cash

Hi cathie

I hope you are well. I received this email from Eric Garfunkel, who is the associate for Toni Sacconaghi. I am currently in norway and on my way to sweden later. Would you have any time to have a quick call with me when I land in sweden? It would probably be noon or one pst?

There are some questions that I certainly don't want to answer. Such as what level of repatriated cash do we have left, particularly since eric is using buybacks and dividends as the use of repatriated cash. He is generally assuming that since the cash is fungible, then he can make these conclusions. I would like to get him some answers. I fear that he may be building a thesis that our ability to buy back shares is becoming compromised since under his math we are running out of repatriated cash. I also fear that he may be building a thesis that our tax rate can only go up. He and Toni have been looking for bearish angles to back up their call on hp.

Please let m know if you are around. Alternatively. PlEase shoot me some thoughts in email if you have a chance.

Thanks.

Brian

-----Original Message-----
From: Garfunkel, Eric C [mailto:eric.garfunkel@bernstein.com]
Sent: Thu Jun 08 09:46:50 2006
To: LaRose, Brian (Investor Relations)
Cc: Sacconaghi, Toni M
Subject: Questions on Cash

Brian,
Below please find our questions on HP's cash balance.

1) HP repatriated $14.5B as a result of the Jobs Creation Act, which was essentially all of the cash on the balance sheet at the time. Was any cash onshore at the time of the repatriation?**There wasn't any

Permanent Subcommittee on Investigations
EXHIBIT #3k

cash onshore when we did the repatriation. All the cash on the BS today is offshore so we need to be careful here for all the reasons you mention plus if we just answer his question it is mis-leading. Btw, we were open in NY/Boston that the cash on the balance sheet was all offshore...didn't really know that that was a secret. Also, we are not limited to cash on hand: we are constantly juggling onshore and offshore cash with no tax consequences; we have our debt capacity; and we are currently looking at innovative ideas to bring back cash that have very probability of no tax consequences.**

2) HP's tax rate is well below the 30% US corporate rate and the company repatriated cash equal to its cash balance last year. Is it reasonable to assume that 90% or more of HP's current operating profits and cash flow are being captured offshore? **The answer here is yes. The hedge maybe 'that has been true in recent history, but as the company improves so does the U.S. position since the bulk of the R&D is owned onshore and the royalty flows are picking up.**

3) If the vast majority of HP's cash is generated offshore, how do you bring enough back into the US for day-to-day operations. **There are intercompany flows that result in cash in the U.S. without tax consequences.** Does HP repatriate some of this cash and pay tax on it? **No is the answer, but it is never that clear cut. We don't 'repatriate' cash in the sense that we pay dividends to get the cash back and therefore have to pay tax on that. We do use intercompany transactions that are not dividends and are effectively not taxed as heavily or not at all. What tax rate do companies typically pay when repatriating cash?**You pay whatever your marginal tax rate is on repatriated earnings. We pay 35% when we are a full U.S. taxpayer less any foreign tax credits or other tax attributes. Are there other ways a company can repatriate offshore cash in a more tax efficient way? **By definition these would not be repatriations in the classic sense of earnings via dividends coming back to the U.S., but there are intercompany transactions that result in cash in the U.S.**

4) Roughly how much of HPs current cash balance is onshore? (we estimate about 30% - HP repatriated $14.5B, spent $8B on buybacks since Q105, $1.4B on dividends). **The answer is all. The math is not right because we didn't just repatriate $14.5B we also brought back other cash dividends totaling $2.5B; we also didn't just use the repatriated cash for share buybacks we also used it to finance the U.S. operations and debt reduction.**

5) Can HP continue to use a similar percentage of its free cash flow to repurchase shares as it has in the past, or has the percentage of cash generated offshore changed materially and therefore serves as a limiting factor on share buybacks? **Cash generation should not be a limiting factor for share repurchase, but we may have other uses for the cash like investing in our businesses or M&A.**

6) How much of the repatriated cash is still available for use? Since the beginning of 2005, HP has repurchased $8B billion worth of shares, spent $1.4B on dividends and also repayed some debt. **Zero, but it is really not that simple so all of the answers above.**

Thanks!

Eric

Eric C. Garfunkel, CFA

Associate Analyst, IT Hardware

Sanford C. Bernstein & Co., LLC

A subsidiary of AllianceBernstein L.P.

Phone: 212-969-6965

Email: eric.garfunkel@bernstein.com

From: CN=Marjorie A. Rollinson/OU=National/OU=TAX/O=EYLLP/C=US
Sent: Sunday, September 30, 2007 12:09 AM
To: CN=Beth A. Carr/OU=NATL/OU=TAX/O=EYLLP/C=US@EY-NAmerica; CN=Sadler Nelson/OU=NCalifornia/OU=TAX/O=EYLLP/C=US@EY-NAmerica
Cc: CN=David Latz/OU=NATL/OU=TAX/O=EYLLP/C=US@EY-NAmerica
Subject: 956 Issues

Beth and Sadler,

Thank you for talking through the HP section 956 issue with us. David and I have talked about it some more, and wanted to send along the following. Let us know how you want to proceed.

To simplify things, lets consider an easy set of facts where a US corporation owns two CFCs; one CFC makes a loan to US Parent for less than 90 days, and upon the retirement of that debt the other CFC makes a loan to the parent for less than 90 days, and the pattern then repeats. Because the two CFCs have differing year-end dates for tax purposes, each loan is never outstanding at the end of the CFC's quarterly period. The hope is that because the loans are not outstanding at the quarter end, they will not constitute US property. As we discussed on the phone, and we discuss in a little more detail below - it is important that neither CFC be considered to have advanced funds to the other.

In Jacobs Engineering Group (79 AFTR 97-674 (C.C. Calif. 1997)) a US Parent entered into a series of twelve short-term loan transactions with its CFC. Although the parent repaid each loan within two months, it invariably took out another loan within a few days of the repayment. The borrowed funds remained within the control of the US Parent 93.5% of the two and a half year period in question. The court applied the step-transaction and substance over form doctrines to treat the twelve short-term loans as a single loan lasting two and a half years, noting that the US Parent had violated the spirit of section 956. (This was back when section 956 was a year-end determination.)

In Rev. Rul. 89-73, the IRS considered two cases of a "rollover" loan between a US Parent and its CFC. Under the prior year-end rules of section 956 (that is, rather than the current quarterly testing), the IRS found that a two month hiatus period would trigger a recharacterization of the loans and invoke section 956; however, a six and a half month hiatus period was long enough to avoid recharacterization and thus avoid section 956 treatment. Commentators have questioned whether it is proper for the IRS to impute the ownership of assets to a company that clearly does not own those assets (for example, the first case of Rev. Rul. 89-73 where the IRS recast two loans separated by a two and a half month hiatus as a single loan subject to section 956). However, the legislative history of the 1993 Act changes to section 956 specifically cited Rev. Rul. 89-73 with approval as setting forth the types of arrangements that the IRS viewed as indicating a principal purpose of avoiding the application of section 956. Moreover, CCA 200137005, discussed below, seems to build upon judicial willingness (in Jacobs Engineering Group) to impose the substance over form doctrine to a set of transactions.

Specific documentation that a series of transactions is intended to circumvent section 956 may tempt the IRS to recharacterize the transactions, using, for example, the substance-over-form doctrine. In CCA 200137005, the IRS disregarded back-to-back loans involving intermediary CFCs and treated the transactions as a loan from one domestic corporation to another domestic corporation (and not as an investment in US property). Domestic Parent (A) had two domestic subs (DC1 and DC2). DC2 wholly-owned a CFC (FC1), which in turn wholly-owned another CFC (FC2). DC2 loaned cash to FC1, which loaned the same amount to FC2, which loaned the same amount to DC1. DC2 then claimed a deemed foreign tax credit for a portion of FC2's foreign income tax. FC2 then distributed a dividend up the chain to DC2, which it claimed was not taxable as PTI. The IRS found that the back-to-back loan transactions were interposed between the true parties to the transaction for the purpose of claiming the deemed paid foreign tax credit under section 960(a). Notably, a corporate document contemplated entering into the series of back-to-back loans (the CCA did not identify the author of the document); furthermore, a workpaper of FC2 indicated that the purpose of the FC2 loan to DC1 was to effectuate a section 956 dividend. The IRS specifically noted the first document when considering the binding commitment test of the step transaction doctrine, and the fact that the IRS included the existence of the workpaper in the published facts suggests that it influenced their considerations as well. Although the purpose of the taxpayer in CCA 200137005 was to effectuate a section 956 dividend (rather than to avoid it), the principals of the substance-over-form doctrine applied by the IRS are similar to earlier IRS and court rulings, as in Rev. Rul. 89-73 and Jacobs Engineering Group. Notably, however, CCA 200137005 did not cite either Rev. Rul. 89-73 or Jacobs Engineering Group in applying the substance-over-form doctrine.

Thus, it appears that both the courts and the IRS may seek to apply the substance over form to transactions that it views as abusive. However, we do believe that we can get comfortable with a "should" level of opinion, assuming HP avoids behavior that could be interpreted as abusive. Documents and/or workpapers that indicate an intention to circumvent or otherwise abuse the spirit of section 956 could prove particularly troublesome and thus should be avoided. Furthermore, there should be no loans between the two CFCs themselves, such that the IRS might argue that the CFC was merely a conduit for repatriating funds from other foreign sources. We should probably give this more thought as there has been some cash pooling. There should also not be a loan schedule, contemplating a series a of loans to be made and retired at specific times. Varying term amounts would also be helpful.

And, as you saw, the section 898 issue is now moot - I think we can confidently change the year end to get the one month deferral.

Let us know how you would like to proceed,

Margie

****

Margie Rollinson
Ernst & Young
1101 New York Avenue, NW
Washington, D.C. 20005
(202) 327 5757 (direct)

[redacted]
EY Mobile fax numbers: [redacted]
EYComm: 9267655
email: margie.rollinson@ey.com

Assistant - Jan Goodwin - (202) 327-7511

= Redacted by the Permanent Subcommittee on Investigations

From: CN=Beth A. Carr/OU=NATL/OU=TAX/O=EYLLP/C=US
Sent: Thursday, April 1, 2010 9:07 PM
To: Weisberger, Steve <steve.weisberger@hp.com>
Cc: Long.Hua@ey.com <Long.Hua@ey.com>; SADLER.NELSON@ey.com <SADLER.NELSON@ey.com>
Subject: RE: Your 956 Question

Steve,

Two points - we think that there should be modifications made to make the quiet period at least equal - whether through staggered loan alternatives or the 5day alternative using HPCo cash.

We agree the HPCo loan to Munich and Berlin is acceptable.

Steve - the one item we want to bring up as well (and we would expect BCC to have sufficient coverage here) is that Munich and Berlin are likely to own a small amount of HPCo shares after the "A" reorg. This obviously would be a 956 potential issue but likely PTI coverage.

Regards,

Ernst & Young ®
Ernst & Young LLP
Beth A. Carr | Partner | International Tax Services

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From: "Weisberger, Steve" <steve.weisberger@hp.com>
To: "SADLER.NELSON@ey.com" <SADLER.NELSON@ey.com>, "Beth.Carr@ey.com" <Beth.Carr@ey.com>
Cc: "Long.Hua@ey.com" <Long.Hua@ey.com>
Date: 04/01/2010 01:07 PM
Subject: RE: Your 956 Question

Thanks for your comments. Just to be clear, I do not think we are considering having any loans or investments over a quarter end. A loan will be for only a few extra days during what would otherwise be the quiet period (for BCC). If we add these extra days to the days loans are currently outstanding to HPCo, then it is more likely that the period during which loans or investments are outstanding will be longer than the resulting quiet period unless we make modifications. For example, if there are loans outstanding to HPCo for 45 days (followed by a quiet period of 45 days) and there is a loan from BCC to Munich and Berlin for 5 days during the middle of the quiet period, then there are loans or investments for a total of 50 days and the quiet period is reduced from 45 days to 40 days. Both of you indicated this may create a potential problem. I think we could amend the staggered loans so the quiet period and all subsequent loan periods are 50 days and we can continue this until we make the "distribution" from Gotham without crossing a quarter end but this will be considered only if necessary. In other words, if you both agree that we can avoid this problem by just having HPCo lend to Munich and Berlin for the 5 days (rather than have BCC make the loan) and then once the A reorg is completed and 3COM is no longer considered owned by Munich or Berlin we have BCC lend to Munich and Berlin and each repays HPCo and the loan from BCC remains in place and HPCo only suffers a few days of CP costs, then that is what we will recommend. Do you both agree that this solution is acceptable? Thanks

Regards,
Steve
Steven Weisberger
Senior Tax Counsel
Hewlett-Packard Company

[redacted] = Redacted by the Permanent Subcommittee on Investigations

PHONE: 713.669.9505 PLEASE NOTE THAT THIS IS A NEW NUMBER
CELL: [redacted]
FAX: 713.669.9505
EMAIL: steve.weisberger@hp.com

From: SADLER.NELSON@ey.com [mailto:SADLER.NELSON@ey.com]
Sent: Thursday, April 01, 2010 1:35 AM
To: Beth.Carr@ey.com
Cc: Long.Hua@ey.com; Weisberger, Steve
Subject: Re: Your 956 Question

Beth,

I agree with you. On your first point, I agree that we would need to get through the anti-abuse provisions for this to be a concern. Although not a principal purpose, I am concerned that they might say, given the history of BCC loaning to HP Co, that BCC could have lent the cash longer to HP Co and then it could loan to Munich/Berlin - that would just be one potential avenue to skip through the principal purpose issue in the anti-abuse rules and try to pressure the "quiet period". Another could be that the loan is not directly to the US but rather to Munich/Berlin and then contributed to a US corporation.

With regards to RR 89-73 specifically, I further agree that it seems to lean heavy on actual loans for testing periods but then at times talks in general investment in US property terms, which makes me concerned that any investment in US property could be included for purposes of the testing period.

I would think taking into account the 4 days for the testing periods would be a prudent process to make sure the appropriate ratios are still met.
With regards to Notice 2008-91, I think that is solely focused on "obligations" which would seem to focus on the loans rather than shareholdings. That could be helpful to meet the less than 60 days and 180 day tests in the Notice.

Regards,

Sadler

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303 Almaden Blvd, San Jose, California 95110, United States of America
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— = Redacted by the Permanent Subcommittee on Investigations

From: Beth A. Carr/NATL/TAX/EYLLP/US
To: "Weisberger, Steve" <steve.weisberger@hp.com>
Cc: Sadler Nelson/NCalifornia/TAX/EYLLP/US@EY-NAmerica, Long Hua/FS2/TAX/EYLLP/US@EY-NAmerica
Date: 03/31/2010 09:43 PM
Subject: Your 956 Question

[attachment "Rev. Rul 89-73.pdf.zip" deleted by Sadler Nelson/NCalifornia/TAX/EYLLP/US]
Steve,

I thought some more about our discussion - and I think its a good point...does the loan to Munich/Berlin and their ownership of 3COM for 4 days get added to "quiet period" testing.

First, as we talked about, this is not merely an application of the quiet period rules of 89-73 but in addition of the anti-abuse provisions of 1.956-1T(b)(4).

A few thoughts on why I would argue we are ok under 89-73 -

Is a principal purpose of the loan to Munich/Berlin - the avoidance of 956? I would argue no - we are trying to fund a purchase with both offshore and onshore cash and have the offshore cash purchase foreign operations and US cash used to purchase US businesses.

There is some interesting language in the ruling that does seem to point to the substance of when a dividend is created being more focused on loans rather than other types of investments:

The facts and circumstances of each case must be reviewed to determine if, in substance, there has been a repatriation of the earnings of the controlled foreign corporation. If a controlled foreign corporation lends earnings to its U.S. shareholder interrupted only by brief periods of repayment which include the last day of the controlled foreign corporation's taxable year, there exists, in substance, a repatriation of the earnings to the U.S. shareholder within the objectives of section 956.

There are other similar statements, but having said that I do get concerned with investments in US shareholdings - like Gotham. If treasury can take on the CP for four days I don't see any reason not to go down that route. However, as long as the total off period is more than the on period (including the 4 days), I also think that is a strong argument that we do not run afoul of 89-73.

Further and maybe the most convincing argument is that I would think, again as long as the off period is greater than the on period, we also satisfy 2008-91.

Sadler - your thoughts would be appreciated as well.

Steve - let us know if you would like to talk further tomorrow.

Regards,

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From: CN=Mark V. Sever/OU=LakeMichigan/OU=AUDIT/O=EYLLP/C=US
Sent: Thursday, September 29, 2011 10:39 PM
To: CN=Richard R. Jones/OU=Accounting/OU=National/O=EYLLP/C=US@EYI-AMERICAS
Subject: Re: APB 23 and Congress

Rich, my concern is with a future assertion after a company has twice taken advantage of opportunities presented by Congress. Fool me once, shame on you; fool me twice, shame on me.

Mark

From: Richard R. Jones/Accounting/National/EYLLP/US@EYI-AMERICAS
To: Mark V. Sever/LakeMichigan/AUDIT/EYLLP/US@EY-NAmerica
Date: 09/29/2011 05:33 PM
Subject: Re: APB 23 and Congress

We issued a q.and a a few years ago that I think addressed this - willndig it up but I thought we accepted an assertion based on current law so.long as a change was not pending/ assured

----
Ernst & Young

----- Original Message -----
From: Mark V. Sever
Sent: 09/29/2011 10:34 AM CDT
To: Richard Jones
Subject: APB 23 and Congress

Rich, under the APB 23 exception, clients are presumed to repatriate foreign earnings but do not need to provide deferred taxes on those foreign earnings that are "indefinitely or permanently reinvested." We are doing a better job these days challenging management's assertion as to the need for those earnings to in fact be permanently reinvested. A few years ago, Congress changed the law to provide for a one-time lower tax on repatriated earnings. We had companies provide the 5% cash tax but viewed the change in law as a one-time event and continued to allow companies to not provide tax on foreign earnings as long as they could justify their reinvestment. I suspect that we agreed to this assertion even if the company had previously asserted it needed those earnings for future investment in its continuing foreign operations.

Congress is once again considering another one-time rate adjustment on repatriated earnings. If Congress enacts a similar law and companies repatriate earnings that it previously had needed to be permanently reinvested in foreign operations, what effect does that second repatriation have on a future assertion that any remaining earnings are indefinitely or permanently reinvested. A assertion of indefinite or permanent investment until Congress changes the law allowing cheaper repatriation again doesn't sound permanent.

Let me know your thoughts.

Mark

Permanent Subcommittee on Investigations
EXHIBIT #4c

SELECTED MICROSOFT FINANCIAL DATA

(Extracted from information provided to the Permanent Subcommittee on Investigations)

1.

Microsoft's total undistributed accumulated foreign earnings of all non-U.S. subsidiaries:

	FY09	FY10	FY11
Undistributed accumulated foreign earnings	$22.8 billion	$33.7 billion	$48.6 billion
Percent of total assets	29%	39%	45%

2.

The total amount of U.S. cash, cash equivalents, and short term investments held by Microsoft and the percentage of those assets held in total by non-U.S. subsidiaries.

	FY09	FY10	FY11
Total	$28.2 billion	$36.0 billion	$51.5 billion
Percent held by non-U.S. subsidiaries	73%	88%	91%

* *The amounts and percentages above are based on U.S. dollars and U.S. dollar-denominated cash equivalents and short term investments held by Microsoft, its U.S. subsidiaries, and its non-U.S. subsidiaries.*

3.

Microsoft non-U.S. subsidiaries that own or share economic rights to any intellectual property developed in the U.S. and a brief description of such rights:

Entity Name	Economic Rights
Flat Island Company	Economic rights to IP for certain products in EMEA*
Microsoft Ireland Research	Economic rights to IP for certain products in EMEA
Microsoft Asian Island Limited	Economic rights to IP for certain products in Asia Pacific
Microsoft Operations Puerto Rico, LLC	Economic rights to IP for certain products in the Americas

* *EMEA geography includes Europe, Middle East and Africa.*

Permanent Subcommittee on Investigations

EXHIBIT #5a

5(a).

Microsoft's non-U.S. subsidiaries that paid royalties, funds, or provided any remuneration to domestic Microsoft entities for the development or acquisition of rights to or interest in any intellectual property:

	Acquiring Entity	Entity Receiving Payments*
1.	Microsoft Korea Inc.	Microsoft
2.	Microsoft China Company Limited	Microsoft
3.	Microsoft China Company Limited	Microsoft
4.	Microsoft Operations Private Limited	Microsoft
5.	Flat Island Company	Microsoft
6.	Microsoft Asia Island Limited	Microsoft
7.	Microsoft Asia Island Limited	Microsoft
8.	Microsoft Operations Puerto Rico, LLC	Microsoft
9.	Microsoft Operations Puerto Rico, LLC	Microsoft
10.	Microsoft Ireland Research	Microsoft
11.	Microsoft Ireland Research	Microsoft
[redacted]		[redacted]
[redacted]		[redacted]

* *All entities receiving payments are included in Microsoft's U.S. consolidated tax group.*

5(b).

The amount paid by the acquiring Microsoft subsidiaries in table 5(a) each year to each receiving entity:

		(amounts in millions)		
	Acquiring Entity	**FY09**	**FY10**	**FY11**
1.	Microsoft Korea Inc.	[redacted]	[redacted]	[redacted]
2.	Microsoft China Company Limited	[redacted]	[redacted]	[redacted]
3.	Microsoft China Company Limited	[redacted]	[redacted]	[redacted]
4.	Microsoft Operations Private Limited	[redacted]	[redacted]	[redacted]
5.	Flat Island Company	[redacted]	[redacted]	$183
6.	Microsoft Asia Island Limited	[redacted]	[redacted]	$1034
7.	Microsoft Asia Island Limited	[redacted]	[redacted]	$153
8.	Microsoft Operations Puerto Rico, LLC	[redacted]	[redacted]	$1,900
9.	Microsoft Operations Puerto Rico, LLC	[redacted]	[redacted]	$435
10.	Microsoft Ireland Research	[redacted]	[redacted]	$2,053
11.	Microsoft Ireland Research	[redacted]	[redacted]	$548
[redacted]		[redacted]	-	-
[redacted]		[redacted]	-	-

[redacted] = Redacted by the Permanent Subcommittee on Investigations

5(c).

The description of the right or interest acquired by the Microsoft entities in table 5(a), the date it was acquired, and the type of agreement or transaction through which the right or interest was acquired:

	Acquiring entity	Description of Rights or Interests Acquired	Date Acquired	Type of Agreement
1.	Microsoft Korea Inc.	License Agreement to distribute certain products in Korea	7/1/2002	License
2.	Microsoft China Company Limited	License Agreement to distribute certain products in China	7/1/2000	License
3.	Microsoft China Company Limited	License Agreement to distribute certain products in China	1/1/2004	License
4.	Microsoft Operations Private Limited	License Agreement to distribute certain products in India	7/1/2006	License
5.	Flat Island Company	Economic rights to IP for certain products in EMEA	1/1/2003	Cost Share Agreement
6.	Microsoft Asia Island Limited	Economic rights to IP for certain 'products in Asia Pacific	4/3/2004	Cost Share Agreement
7.	Microsoft Asia Island Limited	Economic rights to IP for certain 'products in Asia Pacific	6/30/2008	Cost Share Agreement
8.	Microsoft Operations Puerto Rico, LLC	Economic rights to IP for certain products in the Americas	6/1/2005	Cost Share Agreement
9.	Microsoft Operations Puerto Rico, LLC	Economic rights to IP for certain products in the Americas	6/1/2005	License
10.	Microsoft Ireland Research	Economic rights to IP for certain products in EMEA	5/1/1999	Cost Share Agreement
11.	Microsoft Ireland Research	Economic rights to IP for certain products in EMEA	6/30/2008	Cost Share Agreement
[redacted]		[redacted]	[redacted]	[redacted]
[redacted]		[redacted]	[redacted]	[redacted]

[redacted] = **Redacted by the Permanent Subcommittee on Investigations**

6(a).

Microsoft non-U.S. subsidiaries that paid any royalties, funds, or provided any remuneration to any non-U.S. subsidiary of the company for the development or acquisition of rights to or interest in any intellectual property:

	Acquiring Entity	Entity Receiving Payments
[redacted]	[redacted]	[redacted]
2.	Microsoft Ireland Operations Limited	Microsoft Island Research
3.	Microsoft Operations Private Limited	Microsoft Asia Island Limited
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
8.	Microsoft Island Research	Flat Island Company
[redacted]	[redacted]	[redacted]

6(b).

The amount paid by the acquiring Microsoft subsidiaries in table 6(a) each year to each receiving entity:

		(amounts in millions)		
	Acquiring Entity	FY09	FY10	FY11
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2.	Microsoft Ireland Operations Limited	[redacted]	[redacted]	[redacted]
3.	Microsoft Operations Private Limited	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	-	-
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	-	-
[redacted]	[redacted]	[redacted]	-	-
8.	Microsoft Island Research	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	-	-

[redacted] = Redacted by the Permanent Subcommittee on Investigations

6(c).

The description of the right or interest acquired by the Microsoft entities in table 6(a), the date it was acquired, and the type of agreement or transaction through which the right or interest was acquired:

	Acquiring entity	Description of Rights or Interests Acquired	Date Acquired	Type of Agreement
1.	[redacted]	[redacted]	[redacted]	[redacted]
2.	Microsoft Ireland Operations Limited	License Agreement to distribute certain products in EMEA	7/1/2007	License
3.	Microsoft Operations Private Limited	License Agreement to distribute certain products in Asia Pacific	4/3/2004	License
4.	[redacted]	[redacted]	[redacted]	[redacted]
5.	[redacted]	[redacted]	[redacted]	[redacted]
6.	[redacted]	[redacted]	[redacted]	[redacted]
7.	[redacted]	[redacted]	[redacted]	[redacted]
8.	Microsoft Island Research	License Agreement to distribute certain products in EMEA	7/1/2007	License
9.	[redacted]	[redacted]	[redacted]	[redacted]

[redacted] = Redacted by the Permanent Subcommittee on Investigations

Selected Microsoft Tax Information

Permanent Subcommittee on Investigations
EXHIBIT #5b

Irish Companies

	2011	2010	2009
Microsoft Ireland Operations Ltd			
Earnings Before Tax	$2,321,682,294		
Foreign Tax	$168,662,211		
Employees	653		
Microsoft Ireland Research			
Earnings Before Tax	$4,600,079,208		
Foreign Tax	$332,564,584		
Employees	391		

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Singapore Companies

	2011	2010	2009
Microsoft Operations Pte Ltd			
Earnings Before Tax	$656,101,505		
Foreign Tax	$63,738,245		
Employees	687		
Microsoft Asia Island Ltd			
Earnings Before Tax	$1,828,448,971		
Foreign Tax	$5,427,790		
Employees	0		

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Summary prepared by the Permanent Subcommittee on Investigations

Selected Microsoft Tax Information

Puerto Rico Company

Microsoft Operations Puerto Rico LCC			
Earnings Before Tax	$4,015,197,658	$4,555,227,906	$4,487,593,591
Foreign Tax	$41,404,300	$43,098,500	$37,433,582
Employees	177	180	179

Summary prepared by the Permanent Subcommittee on Investigations

DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT ("**Agreement**") is effective as of the 1st day of July, 2010 ("**Effective Date**") by and between MICROSOFT OPERATIONS PUERTO RICO, LLC, a Puerto Rican limited liability company ("**MOPR**"), and MICROSOFT LICENSING, GP ("**MLGP**"), a Nevada general partnership.

1. DEFINITIONS

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2. DISTRIBUTOR

2.1 Distributor. MOPR hereby appoints MLGP as its non-exclusive distributor in the Territory to distribute MOPR Products.

2.2 Sales Price. The parties agree that the sales price on amounts invoiced for the purchase of products under Section 2.1 to this Agreement shall be an amount equal to the sum of (a) MOPR's standard cost, adjusted for variances, for MOPR Products (the "Initial Amount"), and (b) forty-

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seven point twenty-seven percent (47.27%) of the Allocable Revenue realized by MLGP on the distribution of the Microsoft Products (the "Remainder Amount"). MLGP agrees to provide MOPR with real-time access to MLGP's Allocable Revenue data from the distribution of Microsoft Products.

2.3

2.4

2.5

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