

ISSUE BRIEF

No. 4461 | SEPTEMBER 11, 2015

Congress Should Not Use International Tax Reform to Delay Highway Trust Fund Insolvency

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Some Members of Congress are considering a proposal that would reform international business taxation income and divert revenue generated to the Highway Trust Fund (HTF). Details of the plan are not yet public, but based on information released by the House Ways and Means Committee, chaired by Paul Ryan (R-WI), it would likely work as follows:¹

1. A territorial system mostly eliminating the tax on U.S. businesses' foreign income would replace the outdated worldwide system that taxes those earnings;
2. The accrued foreign earnings of U.S. businesses that have not yet been brought back to the U.S. (repatriated) would be deemed to have been repatriated and taxed at a lower rate than under current law; and
3. Those reforms generate revenue, of which approximately \$90 billion would be diverted to the HTF so that Congress can delay the hard work of reforming an insolvent program for the next six years.

The switch to a territorial system would increase economic growth, create jobs, and increase wage growth.²

Even using dynamic scoring, the Joint Committee on Taxation (JCT) would likely estimate that moving to a territorial system reduces revenues. Deeming accrued foreign earnings as repatriated in order to tax them is acceptable so long as Congress only uses the money from this tax increase to offset a tax cut. Those foreign earnings accumulated overseas because the current worldwide system of taxation is unfair and uncompetitive for U.S. businesses. Congress should only tax that deferred income to undo the damage caused by the worldwide system by establishing a territorial system.³

Taxing deferred foreign income to delay insolvency of the HTF is bad policy for a number of reasons. It would either be a tax hike to increase spending, which would run counter to the House's own budget rules requiring all new spending to be offset with spending cuts, or it would require the House to break its rules in another way to double count the revenue. Both of these troubling scenarios would further delay necessary reforms of the highway programs.⁴

Using Deemed Repatriation to Fund the HTF Is Bad Budget Policy

If Congress uses deemed repatriation funds to fill the HTF, it has two options for diverting revenue into it. Neither of them is sound policy.

Scenario 1: Another Tax-and-Spend Scheme. The first option would be for the deemed repatriation to raise taxes by more than the move to a territorial system would cut them. Congress then could put the additional revenue raised by deemed repatriation

This paper, in its entirety, can be found at <http://report.heritage.org/ib4461>

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into the HTF. This option would result in at least a \$90 billion tax hike (the amount needed for a six-year extension of the HTF Congress desires).

For instance, if the move to a territorial system reduced revenues by \$200 billion (JCT has not scored the change publicly yet), then the deemed repatriation would have to raise \$290 billion. That way the proposal would raise enough revenue to both offset the tax cut from moving to territorial and fill the gap in the HTF, thus remaining deficit-neutral.

In this situation, the net change in revenues is an increase of \$90 billion. This is a tax hike, pure and simple. Since it would directly fund more spending, it would be yet another tax-and-spend scheme resulting in further government growth.

If Congress added the continuation of the tax extenders—a group of expiring tax provisions—to the package, it would not offset the tax cut. Keeping the tax extenders in place is not a tax cut; rather, it prevents a tax increase.⁵

Violates CUTGO. A tax hike to pay for new spending would violate budget rules passed by the House to rein in spending. At the beginning of the 112th Congress, the House adopted the “Cut-As-You-Go” (CUTGO) rule.⁶ CUTGO prohibits the consideration of any bill that causes net increases in mandatory spending, essentially requiring that all direct spending increases be offset not with revenues, but with other mandatory cuts.

Under the current budget resolution, any transfer of funds into the HTF from deemed repatriation would score as additional mandatory budget authority in the House, triggering the CUTGO rule. In the past, baseline budgeting conventions meant that intra-governmental transfers (e.g., transfers from the general fund to the HTF) were not scored as new direct spending. The fiscal year (FY) 2016 concurrent budget resolution (S.Con.Res. 11, 114th Congress) changed this convention, requiring the House to consider any transfers as additional mandatory budget authority.⁷

However, because CUTGO is simply a House rule, and not an enacted statute, it is possible for the House simply to waive the rule through the Rules Committee and move forward on the consideration of the bill in violation of the intent of CUTGO.⁸

Waiving the CUTGO rule—established to prevent the very tax-and-spend agenda now fueling the growth of government—constitutes a violation of the principles of fiscal responsibility to which the House chose to hold itself.

Scenario 2: Budget Gimmick. The second option for the use of deemed repatriation to plug the HTF would be that Congress double counts the money it raises. In this scenario, there is no tax hike because deemed repatriation would increase revenue the same amount as the move to a territorial system would cut it. Congress would credit the HTF with the funds from deemed

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1. Jim Puzzanghera, “Bipartisan Support Grows for Corporate Tax Change Tied to Highway Trust Fund,” *Los Angeles Times*, July 14, 2015, <http://www.latimes.com/business/la-fi-corporate-tax-plan-20150714-story.html> (accessed September 8, 2015).
 2. Curtis S. Dubay, “A Territorial Tax System Would Create Jobs and Raise Wages for U.S. Workers,” Heritage Foundation *Background* No. 2843, September 12, 2013, <http://www.heritage.org/research/reports/2013/09/a-territorial-tax-system-would-create-jobs-and-raise-wages-for-us-workers>.
 3. Curtis Dubay, “Congress Should Only Make Changes to Repatriation Policy When Establishing a Territorial System,” testimony before the Subcommittee on Select Revenue Measures, Committee on Ways and Means, U.S. House of Representatives, June 24, 2015, <http://www.heritage.org/research/reports/2015/06/congress-should-only-make-changes-to-repatriation-policy-when-establishing-a-territorial-system>.
 4. Paul Winfree, Romina Boccia, Curtis Dubay, and Michael Sargent, “Blueprint for Congressional Fiscal Action in the Remainder of 2015,” Heritage Foundation *Background* No. 3052, September 2, 2015, <http://www.heritage.org/research/reports/2015/09/blueprint-for-congressional-fiscal-action-in-the-remainder-of-2015>.
 5. Curtis S. Dubay, “Senate Can Use Tax Extenders as an Opportunity to Improve the Tax Code,” Heritage Foundation *Issue Brief* No. 4437, July 28, 2015, <http://www.heritage.org/research/reports/2015/07/the-senate-can-use-tax-extendere-as-an-opportunity-to-improve-the-tax-code>.
 6. Karen L. Haas, “Rules of the House of Representatives,” Clerk of the House of Representatives, Rule XXI, Clause 10, January 6, 2015, <http://clerk.house.gov/legislative/house-rules.pdf> (accessed August 28, 2015).
 7. “Concurrent Resolution on the Budget for Fiscal Year 2016,” Sec. 3302, April 29, 2015, <http://www.gpo.gov/fdsys/pkg/CRPT-114hrpt96/pdf/CRPT-114hrpt96.pdf> (accessed August 28, 2015).
 8. PAYGO does not count transfers between government accounts as new spending. Therefore, under it Congress would not need to offset new spending on highways.
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repatriation. The example for this maneuver was set in the previous Congress in the tax reform plan proposed by then-Chairman of the House Ways and Means Committee, Dave Camp (R-MI).⁹

The second option clearly involves double counting because the new revenue generated from deemed repatriation matches the amount of the tax cut from the territorial system. The revenue baseline remains unchanged and hence there is no impact on the deficit. If Congress claims that those same dollars are simultaneously delaying HTF insolvency, then the money is funding spending and is not available to offset the territorial tax cut.

The money cannot be in two places at the same time. Any argument to the contrary should be treated as another gimmick meant to disguise Congress's lack of fiscal discipline and the will to make the necessary changes to the highway program.

Violates Budget Resolution. To carry out this double counting scenario, Congress could not count the transfer of money to the HTF as new budget authority, as the FY 2016 concurrent budget resolution requires. Thus, Congress would have to violate the budget resolution by waiving the rule. Rules meant to control spending are meaningless if Congress waives them whenever convenient.

Unsound Transportation Policy

The use of deemed repatriation to delay HTF insolvency, in addition to being bad budget policy, would be poor transportation policy. Congress has traditionally funded highways on the sensible user-pays principle as exemplified by the gas tax. Taxing foreign-earned incomes of multinational businesses, which are unrelated to highway use, would break that commonsense policy.¹⁰

Rather than tie international tax reform to transportation, Congress should implement structural reforms for surface transportation spending that would address the HTF's protracted overspending and refocus the federal role in transportation to matters of national significance.

To accomplish these ends, Congress should retool the federal surface transportation program to focus only on national priorities like the interstate highway system, while ending federal funding for projects like mass transit that are best addressed at the local or state level. The best solution that implements these priorities before Congress is the Transportation Empowerment Act (TEA), introduced in the Senate by Senator Mike Lee (R-UT) and in the House of Representatives by Representative Ron DeSantis (R-FL).¹¹

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9. U.S. House of Representatives, Committee on Ways and Means, "Tax Reform Act 2014 Discussion Draft Section-by-Section Summary," p. 144, http://waysandmeans.house.gov/UploadedFiles/Ways_and_Means_Section_by_Section_Summary_FINAL_022614.pdf (accessed August 25, 2015).

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

11. Press Release, "Lee, DeSantis Introduce Transportation Empowerment Act," Office of U.S. Senator Mike Lee, June 11, 2015, <http://www.lee.senate.gov/public/index.cfm/press-releases?ID=6d4eb932-8f75-41b5-aaa4-16c044b397ed> (accessed September 10, 2015).