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Directed Tax Holidays: Economic Stimulus or Corporate Dream?

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DIRECTED TAX HOLIDAYS: ECONOMIC STIMULUS OR CORPORATE DREAM?

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ABSTRACT

U.S. corporations currently have more than $2.4 trillion stashed in the accounts of their overseas subsidiaries—a sum that costs the domestic economy billions of dollars every year. A directed tax holiday is one potential method of inducing repatriation of those funds and stimulating the domestic economy. Although a previous tax holiday failed to meet expectations, current proposals from the public and private sectors suggest that a directed tax holiday could fund much-needed infrastructure investment. A review and economic analysis of these proposals shows that a directed tax holiday that channels revenue into expanding and updating infrastructure will greatly benefit the domestic economy.

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INTRODUCTION

In April 2016, Oxfam America released a report revealing that the top fifty U.S. corporations are holding more than $1.4 trillion in offshore cash.[1] While the dollar figure was not particularly surprising—U.S. corporations have held large sums of cash offshore for decades—the report also claimed that the U.S. government is missing out on $130 billion annually as a result of corporate offshoring practices.[2] Just a month later, the German newspaper Süddeutsche Zeitung released a 2.6 terabyte data leak comprising roughly 11.5 million documents regarding billions of dollars that Panamanian law firm Mossack Fonseca assisted clients to hide in tax havens.[3] Since that time, intense mainstream media focus has brought the public's attention to the facts that economists and accountants have known for years—American corporations hoard cash offshore to avoid paying domestic taxes.[4] A Citizen's for Tax Justice report from March 2016 pegged the total amount held offshore by U.S. corporations at $2.4 trillion,[5] a number equivalent to France's 2015 GDP.[6]

Just as the world economy would suffer if the French economy ceased to exist, so does the American domestic economy when corporations hoard funds offshore.[7] Simply put, $2.4 trillion held offshore is a missed opportunity for domestic investment.[8] There

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[1] OXFAM AMERICA, BROKEN AT THE TOP: HOW AMERICA'S DYSFUNCTIONAL TAX SYSTEM COSTS BILLIONS IN CORPORATE TAX DODGING 1–2 (Apr. 14, 2016).

[2] *Id.* at 2.

[3] Frederik Obermaier et al., *About the Panama Papers*, SÜDDEUTSCHE ZEITUNG 1, 3 (2016), http://panamapapers.sueddeutsche.de/articles/56febff0a1bb8d3c3495adf4/.

[4] CITIZENS FOR TAX JUSTICE, FORTUNE 500 COMPANIES HOLD A RECORD $2.4 TRILLION OFFSHORE 1 (Mar. 3, 2016), https://ctj.org/pdf/pre0316.pdf [https://perma.cc/GQU9-MXEC].

[5] *Id.*; OXFAM AMERICA, *supra* note 1, at 8; Jeff Sommer, *A Stranded $2 Trillion Overseas Stash Gets Closer to Coming Home*, N.Y. TIMES (Nov. 4, 2016), https://www.nytimes.com/2016/11/06/your-money/strategies-corporate-cash-repatriation-bipartisan-consensuss.html?_r=0 (discussing potential domestic revenue from a repatriation event).

[6] WORLD BANK, GROSS DOMESTIC PRODUCT 2015 1 (Oct. 11, 2016), https://web.archive.org/web/20161010225636/http://databank.worldbank.org/data/download/GDP.pdf.

[7] *See, e.g.*, CITIZENS FOR TAX JUSTICE, *supra* note 4, at 1, 4.

[8] *See* Sommer, *supra* note 5, at 2.

are numerous proposals for how to return these funds to the United States, all of which have benefits and flaws.[9] In this Note, I examine the merits of a directed tax holiday[10] as a repatriation method. I review past attempts at a tax holiday and analyze existing and recent tax holiday proposals. Using projected figures and historic returns on investment, I conclude that a directed tax holiday will stimulate the U.S. economy by creating new jobs, reviving crumbling infrastructure, and prompting investment in green technology.

In Part I, I briefly review the U.S. corporate tax system for foreign earnings and explain why corporations have so much money stored overseas. In Part II, I review the American Jobs Creation Act of 2004 and discuss its shortcomings. In Part III, I discuss pending legislation in Congress, proposals from the 2016 Presidential candidates, and proposals from industry analysts. In Part IV, I examine the projected positive externalities that a directed tax holiday will bring. In Part V, I examine and rebut some of the negative externalities associated with tax holidays. I conclude that a directed tax holiday would greatly benefit the U.S. economy.

I. How Did $2.4 Trillion End Up Overseas?

Before discussing how to bring $2.4 trillion back to the United States, it is worthwhile to briefly discuss how such a huge sum of money ended up overseas.

American corporations pay a 35 percent effective rate on their earnings, the highest rate in the developed world.[11] The United States employs a residence-based tax system, meaning that American corporations are taxed on all of their income,

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[9] Citizens for Tax Justice, *supra* note 4, at 4.

[10] I make a somewhat artificial distinction in this Note between a "tax holiday" and a "directed tax holiday." I define a "directed tax holiday" as a tax holiday that requires certain corporate investments for repatriated funds and earmarks federal revenues for a designated purpose. A "tax holiday" is merely a time period during which participating entities pay a reduced tax rate.

[11] Donald J. Marples & Jane G. Gravelle, Cong. Research Serv., R40178, Tax Cuts on Repatriation Earnings as Economic Stimulus: An Economic Analysis 2 (2011). U.S. corporations pay taxes on their overseas earnings to the governments of the various countries that they do business in. When U.S. corporations bring their overseas funds back to the U.S., they pay the statutory rate of 35 percent minus a tax credit equal to the taxes paid to foreign governments.

regardless of where it is earned, but foreign corporations are only taxed on income earned in the United States.[12] Accordingly, U.S. corporations that operate overseas through a foreign subsidiary can avoid paying U.S. taxes indefinitely so long as the foreign subsidiary retains control over the earnings and reinvests those earnings abroad.[13] The U.S. firm only pays taxes on its foreign earnings when the money is repatriated into the U.S. as an intra-firm dividend or other form of income.[14] This system gives corporations significant incentives to keep their money abroad, preferably in a tax haven.[15]

A. How Corporations Avoid Paying Taxes

American corporations use a number of complex methods to avoid paying U.S. taxes on foreign earnings.[16] The practice of keeping cash overseas to avoid the repatriation tax is known as "profit-shifting."[17] Earnings stripping is another common method used to escape U.S. tax liability.[18] Rather than describing these in detail, I would like to highlight the important effects of these entirely legal, but ethically questionable, practices.[19] Thus, while

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[12] *Id.* at 1.

[13] *Id.* at 1–2.

[14] *Id.* at 2.

[15] Eric L. Talley, *Corporate Inversions and the Unbundling of Regulatory Competition*, 101 VA. L. REV. 1649, 1665, 1716 (2015).

[16] For a primer on how this works at the company level, see Walter Hickey, *Apple Avoids Paying $17 Million In Taxes Every Day Through A Ballsy But Genius Tax Avoidance Scheme*, BUS. INSIDER (May 21, 2013, 4:16 PM), http://www.businessinsider.com/how-apple-reduces-what-it-pays-in-taxes-2013-5 [https:// perma.cc/D2HY-YGBS] (detailing Apple, Inc.'s complex organizational scheme to minimize tax liability).

[17] Rob Davies, *U.S. corporations have $1.4tn hidden in tax havens, claims Oxfam report*, GUARDIAN (Apr. 14, 2016), https://www.theguardian.com/world/2016/apr/14/us-corporations-14-trillion-hidden-tax-havens-oxfam [https://perma.cc/XMZ5-TAZJ].

[18] John C. Hamlett, *The Declining Allure of Being "American" and the Proliferation of Corporate Tax Inversions: A Critical Analysis of Regulatory Efforts to Curtail the Inversion Trend*, 93 WASH. U.L. REV. 767, 775 n.78, 776 n.81 (2016).

[19] *See* Nelson D. Schwartz & Charles Duhigg, *Apple's Web of Tax Shelters Saved It Billions, Panel Finds*, N.Y. TIMES (May 20, 2013), http://www.nytimes.com/2013/05/21/business/apple-avoided-billions-in-taxes-congressional-panel-says.html?pagewanted=all.

U.S. corporations are accused of using accounting "gimmicks" to avoid paying U.S. taxes,[20] and are certainly avoiding the spirit of the law of taxation, there is no law enforcement mechanism currently available to the Federal government.[21]

B. Losses Associated with Offshoring Practices

Offshoring practices, while legal, are harmful to the American economy in several ways.[22] First, offshoring deprives the American economy of domestic investment, and, second, it deprives the Federal government of significant tax revenues.[23]

Ernst & Young estimates that the U.S. economy benefitted from $165 billion worth of private capital investment in 2015.[24] Approximately 22 percent of that came from foreign sources, so U.S. firms invested nearly $128 billion in capital improvements in 2015.[25] This figure is roughly consistent with previous years.[26] The $2.4 trillion held overseas by U.S. firms, therefore, represents almost nineteen years of domestic capital investment.[27]

In addition to lost domestic investment opportunities, offshoring also significantly reduces Federal tax revenues.[28] Tax policy activist group Citizens for Tax Justice (CTJ) estimated

[20] *Offshore Profit Shifting and the U.S. Tax Code—Part 2 (Apple Inc.): Hearing Before the Permanent Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 113th Cong. 14 (2013) (testimony of Apple Inc.).

[21] *Id.* at 10, 16. This fact becomes important later when balancing utilities for repatriation proposals. *See generally* Nigel Green, *In defence of 'Tax Havens': offshore banking is not the same as dodgy dealing*, GUARDIAN (Apr. 13, 2016, 10:29 AM), https://www.theguardian.com/commentisfree/2016/apr/13/offshore-panama-papers-murky-investors [https://perma.cc/W5NL-SHBE] (discussing the legality of using offshore financial centers).

[22] *See* Schwartz & Duhigg, *supra* note 19, at 2.

[23] *See* Davies, *supra* note 17, at 2.

[24] ERNST & YOUNG LLP, 2016 US INVESTMENT MONITOR TRACKING MOBILE CAPITAL INVESTMENTS DURING 2015, at 17 (2016), http://www.ey.com/Publication/vwLUAssets/ey-2016-us-investment-monitor/$FILE/ey-2016-us-investment-monitor.pdf [https://perma.cc/WQW2-H5LA].

[25] *Id.* at 9.

[26] *Id.* at 23–25.

[27] *Id.* at 23.

[28] CITIZENS FOR TAX JUSTICE, *supra* note 4, at 3.

that the $2.4 trillion held offshore is depriving the U.S. government of nearly $700 billion in tax revenue.[29] Economist Kimberly Clausing believes that the CTJ estimate is conservative and puts the lost tax revenue figure closer to $800 billion.[30] Importantly, Clausing also estimates that corporate offshoring practices cost the Federal government some $94 billion annually, a figure that will only continue to rise in coming years.[31]

The losses associated with offshoring suggest that action of some sort is necessary. While a comprehensive reform of the U.S. tax system would be welcome, such action is unlikely to occur soon.[32] Thus, smaller actions appear to be the most feasible path forward for the near future. This brings us to the question of whether a directed tax holiday is a meritorious option.

II. THE AMERICAN JOBS CREATION ACT OF 2004

The idea of a tax holiday is nothing new. It has been discussed, studied, and even attempted in 2004 to disastrous effect.[33]

A. The American Jobs Creation Act

Back in 2003, following the dot com bubble and subsequent recession, U.S. corporations held an estimated $650 billion overseas.[34] In the interest of bringing those funds back to the United

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[29] *Id.*

[30] Kimberly A. Clausing, *The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond*, 69 NAT'L TAX J. 905, 923–24 (2016).

[31] *Id.* at 21.

[32] *See generally* MILLER & CHEVALIER CHARTERED, NAT'L FOREIGN TRADE COUNCIL, 2016 TAX POLICY FORECAST SURVEY (2016), https://www.millerchevalier.com/sites/default/files/resources/2016-Tax-Policy-Forecast-Survey-Full-Report.pdf [http://perma.cc/GF3U-8FK7] (discussing recent attempts at comprehensive reform and the likelihood of comprehensive reform in 2017 and 2018).

[33] Chuck Marr & Chye-Ching Huang, *Repatriation Tax Holiday Would Lose Revenue And Is a Proven Policy Failure*, CTR. BUDGET & POL'Y PRIORITIES (June 19, 2014), https://www.cbpp.org/sites/default/files/atoms/files/6-19-14tax.pdf [http://perma.cc/ZX26-QRFQ].

[34] Bob Bryan, *US companies are 'hoarding' a record $2.5 trillion in cash overseas*, BUS. INSIDER (Sept. 19, 2016, 11:15 AM), http://www.businessinsider.com/us-companies-hoarding-25-trillion-of-cash-overseas-2016-9 [http://perma.cc/A33G-93UP].

States, Congress approved an amendment to I.R.C. § 965(f), which allowed a temporary, undirected tax holiday.[35] The American Jobs Creation Act (AJCA) permitted, *inter alia*, a temporary tax holiday from October 22, 2004 to October 22, 2006 during which U.S. corporations paid an effective rate of 5.25 percent on repatriated cash.[36] Participating corporations were required to have an approved reinvestment plan for repatriated funds before receiving the reduced rate.[37] According to the AJCA, the reinvestment plan could not provide for executive compensation, but could be used in the United States "as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation."[38] Notably, there was no incremental investment requirement obligating participating corporations to demonstrate that the amount spent under the reinvestment plan was greater than either the average amount spent in previous years or the amount budgeted before receiving the dividend.[39] Essentially, the Federal government relied on corporations to act in the spirit of the law, knowing that there was no serious enforcement mechanism to prevent corporations from taking advantage of the vagueness of the law.[40] The stated purpose of the AJCA was to provide economic stimulus in the United States and create new jobs.[41]

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[35] American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 422, 118 Stat. 1418, 1514–19 (2004). Section 422 of the AJCA is officially titled the Homeland Investment Act (HIA), but as the existing literature rarely distinguishes between the AJCA and the HIA, I will continue that trend. Unlike the directed tax holiday that I discuss, revenues from the AJCA were not funneled directly into a single agency or Department budget.

[36] *Id.* The AJCA accomplished this by giving repatriating corporations a "deduction equal to 85 percent of the increase in foreign-source earnings repatriated." MARPLES & GRAVELLE, *supra* note 11, at 2.

[37] MARPLES & GRAVELLE, *supra* note 11, at 5.

[38] American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 422(a), 118 Stat. 1418, 1516 (2004).

[39] M. Mendel Pinson, *Effects of 2004 Int'l Tax Holiday, Recommendations Going Forward*, 132 TAX NOTES 845, 852 (2011).

[40] *See id.*

[41] *Id.*

B. The Effect and Shortcomings of the AJCA

The AJCA did not go according to plan.[42] Congressional representatives anticipated that repatriating corporations would bring $400 billion back into the domestic economy, creating more than 600,000 jobs and reducing the deficit by $163 billion.[43] Although the ACJA holiday generated some $16.4 billion in revenue for the U.S. Treasury,[44] it did not create nearly as many jobs as anticipated.[45]

Corporations brought back about $362 billion of the more than $600 billion held overseas; $312 billion of which qualified for 5.25 percent rate.[46] Unfortunately, most of the funds were not spent on new jobs.[47] Participating corporations increased share buybacks by $60 billion more than non-participating firms—accounting for roughly 20 percent of the total amount repatriated.[48] There is also no evidence that the AJCA created very many jobs.[49] The Congressional Research Service found that many of the largest participating

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[42] Michelle Leder, *The $104 Billion Refund: The most absurd corporate tax giveaway of 2005*, SLATE: MONEYBOX (Apr. 13, 2006, 12:33 PM), http://www.slate.com/articles/business/moneybox/2006/04/the_104_billion_refund.html [http://perma.cc/CB7D-UX3R].

[43] This is according to House Ways and Means Committee member Phil English, R-Pa., who drafted the bill. *See* Roy Clemons & Michael R. Kinney, *An Analysis of the Tax Holiday for Repatriation Under the Jobs Act*, 52 TAX NOTES 759, 760 (2008).

[44] Matthew Jerome Mauntel, *Stimulating the Stimulus: U.S. Controlled Subsidies and I.R.C. 965*, 33 B.C. INT'L & COMP. L. REV. 107 (2010). There is some debate on the success of this point, as the amount repatriated would have generated $128 billion in tax revenue without the tax holiday. *See also* Pinson, *supra* note 39, at 853. However, there is no indication that U.S. firms had any intention of repatriating funds at the 35 percent rate, so it is difficult to accept the proposition that the Treasury lost money because of the holiday. *Id.*

[45] Michael Mundaca, *Just the Facts: The Costs of a Repatriation Tax Holiday*, U.S. DEP'T OF THE TREASURY: TREASURY NOTES (Mar. 23, 2011), https://www.treasury.gov/connect/blog/Pages/Just-the-Facts-The-Costs-of-a-Repatriation-Tax-Holiday.aspx [http://perma.cc/Z2S2-SFR3].

[46] Melissa Redmiles, *The One-Time Received Dividend Deduction,* 27 STAT. INCOME BULL. 102, 103 (2008).

[47] Floyd Norris, *Tax Break for Profits Went Awry*, N.Y. TIMES (June 4, 2009), http://www.nytimes.com/2009/06/05/business/05norris.html ("About 92 percent of it went to shareholders ....").

[48] Jennifer Blouin & Linda Krull, *Bringing It Home: A Study of the Incentives Surrounding the Repatriation of Foreign Earnings Under the American Jobs Creation Act of 2004*, 47 J. ACCT. RES. 1027, 1051 (2009).

[49] Mundaca, *supra* note 45; Leder, *supra* note 42.

companies actually cut jobs in fiscal years 2005 and 2006—even though the U.S. economy as a whole added jobs in those years.[50]

Economist Martin Sullivan described the AJCA's reinvestment plan requirements as a "ridiculous fig leaf" that accomplished nothing: "If I'm going to give you $100 to buy lunch, ... but you spend $500 a year anyway on lunch, you then bring back receipts showing you bought $100 in lunch."[51] Corporations used repatriated funds as they promised, but this freed up funds that had already been set aside for the same purpose.[52] This allowed corporations to increase executive compensation, increase share buybacks, and pay large dividends without violating the AJCA guidelines.[53]

Adding insult to Congressional injury, U.S. corporations actually increased the amount of foreign earnings reinvested permanently overseas in both relative and absolute terms in the years following the AJCA holiday.[54] Furthermore, a study by the National Bureau of Economic Research conducted several years after the holiday closed concluded that 92 percent of the repatriated funds were spent on dividends, share buybacks, or executive bonuses.[55] The bureau's report stated, "[r]epatriations did not lead to an increase in domestic investment, employment, or R.&D., even for the firms that lobbied for the tax holiday stating these intentions."[56]

III. IF AT FIRST YOU DON'T SUCCEED ...

Although the AJCA failed to meet government expectations, and may have even harmed the U.S. economy, the idea of a tax

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[50] Mundaca, *supra* note 45.

[51] Lynnley Browning, *One-time tax break saved 843 U.S. corporations $265 billion*, N.Y. TIMES (June 24, 2008), http://www.nytimes.com/2008/06/24/business/worldbusiness/24iht-24tax.13933715.html (internal quotations omitted).

[52] *Id.*

[53] *Id.*

[54] Thomas J. Brennan, *What Happens After a Holiday?: Long-Term Effects of the Repatriation Provision of the AJCA*, 5 NW. J.L. & SOC. POL'Y. 1, 16 (2010); Pinson, *supra* note 39, at 852.

[55] Schwartz & Duhigg, *supra* note 19. A private study published in the Journal of Finance demonstrated a statistically significant positive correlation between increases in repatriations under the AJCA and "an increase of $.60 to $.92 in payouts to shareholders, largely in the form of share repurchases." Dhammika Dharmapala et al., *Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act*, 66 J. FIN. 753, 782 (2011).

[56] Schwartz & Duhigg, *supra* note 19, at 2.

holiday has refused to fade.[57] Since the AJCA window closed in 2006, the idea of a tax holiday with different terms has resurfaced roughly every two to three years.[58] Current proposals are based on proposals for a tax holiday that began surfacing in 2011, gained impetus in 2013, and were introduced in Congress in 2014 and 2015.[59]

A. Current Proposals in Congress

1. The Invest in Transportation Act

The Invest in Transportation Act (ITA) is evidence that Congress learned the lessons of the AJCA.[60] The Act, sponsored by Senators Rand Paul and Barbara Boxer, allows corporations to repatriate income, but with significant strings attached.[61] Participating corporations may repatriate overseas income earned prior to 2015 at an effective rate of 6.5 percent.[62] Corporations are required to establish a domestic reinvestment plan requiring 25 percent of all repatriated income to be invested in the U.S. economy via increased hiring, wages, pension contributions, energy efficiency, environmental and capital improvements, and research and development.[63] Tax revenues from repatriated earnings will be directed towards infrastructure improvements, specifically highways, bridges, and green energy investments.[64]

The Invest in Transportation Act makes four significant improvements on the AJCA framework.[65] First, corporations will

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[57] Mundaca, *supra* note 45.

[58] *Id.*

[59] ROBERT J. SHAPIRO & APARNA MATHUR, NEW DEMOCRAT NETWORK, THE REVENUE AND ECONOMIC EFFECTS OF THE PAUL-BOXER PLAN TO ENCOURAGE THE REPATRIATION OF FOREIGN-SOURCE EARNINGS BY U.S. MULTINATIONAL CORPORATIONS, NDN 1 (2015).

[60] Invest in Transportation Act, S. 981, 114th Cong. § 2(c) (2015).

[61] *Id.* § 2(a)–(d).

[62] *Id.* § 2(b).

[63] *Id.* § 2(d)(ii).

[64] *Id.*

[65] *Sens. Paul, Boxer Introduce Bipartisan "Invest in Transportation Act,"* RAND PAUL U.S. SENATOR FOR KENTUCKY (Apr. 16, 2015), https://www.paul.senate.gov/news/sens-paul-boxer-introduce-bipartisan-%E2%80%9Cinvest-transportation-act%E2%80%9D [https://perma.cc/667E-P9HH].

not be permitted to use the repatriated funds for executive compensation.[66] Second, the minimum domestic investment requirement is 25 percent rather than 15 percent.[67] This investment requirement is in addition to previously considered funding and cannot supplant previously earmarked funds.[68] Third, the ITA forbids participating companies from inverting at any time in the ten taxable-year period following the passage of the ITA.[69] Companies that elect to invert will be taxed at 20 percent, with interest, on all repatriated funds.[70] Fourth, and most importantly, Federal revenues are channeled directly into the Highway Trust Fund coffers for investment.[71] Companies have up to five years to complete their repatriations, but must begin to do so in the first year of the holiday window.[72]

Senator Boxer, like the various House Representatives who championed the AJCA, is optimistic that the ITA will stimulate both GDP and job growth.[73] Citing various studies done on similar repatriation proposals, Senator Boxer's press release implied that the ITA will increase GDP by between $178 and $400 billion and provide an increase of between 1.3 and 3.5 million jobs.[74]

B. 2016 Presidential Candidates' Proposals

Ms. Clinton and Mr. Trump agreed on very few things, but both emphasized the need to reform America's tax system during their campaigns.[75] Although Mr. Trump was the only candidate to

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[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

[71] *Testimony of the Staff of the Joint Committee on Taxation: Hearing on the Taxation of the Repatriation of Foreign Earnings*, 114th Cong. 7–8 (2015) (statement of Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation), https://www.jct.gov/publications.html?func=startdown&id=4797 [http://perma.cc/ZB24-PUMY].

[72] *Id.* at 8–9.

[73] *Boxer-Paul "Invest in Transportation Act,"* BARBARA BOXER U.S. SENATOR FOR CALIFORNIA (Jan. 29, 2015), https://web.archive.org/web/20150212171417/http://www.boxer.senate.gov/press/related/BoxerPaulWhitePaper012915.pdf.

[74] *See id.*

[75] *See* ERNST & YOUNG, TRUMP VS. CLINTON: POLICY PERSPECTIVES 2–7 (Aug. 2016), http://www.ey.com/Publication/vwLUAssets/ey-trump-vs-clinton-policy

set forth a concrete written proposal, both acknowledged the need to increase investment in the domestic economy while simultaneously decreasing corporate offshore cash holdings.[76]

1. Ms. Clinton's Proposals

Ms. Clinton allegedly talked on several occasions about a tax holiday, but did not provide any concrete written proposal.[77] Her official tax plan stated that her administration would provide companies with "incentives" to repatriate funds.[78] Additionally, Ms. Clinton proposed $275 billion in infrastructure spending that would be funded by "business tax reform."[79] Tax analyst Henrietta Treyz believed that this is code for repatriations.[80]

Ms. Treyz's belief was seemingly well supported by remarks given by the Clintons.[81] Speaking to a CNBC reporter at the Clinton Global Initiative Annual Meeting in September 2016, Mr. Clinton stated that he supports a repatriation initiative that requires investment in a national infrastructure program.[82] WikiLeaks also released the transcripts of several paid speeches given by Ms. Clinton in 2013 and 2014 to various corporate groups

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-perspectives/%24FILE/ey-trump-vs-clinton-policy-perspectives.pdf [http://perma.cc/E3HP-CXER].

[76] *Id.*

[77] Jon Schwarz, *Hillary Clinton Hints at Giant, Trump-Like Giveaway to Corporate America*, INTERCEPT (June 27, 2016), https://theintercept.com/2016/06/27/hillary-clinton-hints-at-giant-trump-like-giveaway-to-corporate-america/ [http://perma.cc/YBY9-J6QP].

[78] *The Briefing: Factsheets,* HILLARY CLINTON (2016), https://web.archive.org/web/20170902125217/https://www.hillaryclinton.com/briefing/factsheets/2015/12/08/ending-inversions-and-investing-in-america [http://perma.cc/H9X3-FMLK].

[79] Lynnley Browning, *Trump's Offshore Tax-Cut Pitch Falls Flat*, BLOOMBERG (Aug. 24, 2016, 5:00 AM), https://www.bloomberg.com/news/articles/2016-08-24/trump-s-offshore-tax-cut-pitch-falls-flat-in-silicon-valley [http://perma.cc/BS3P-JPE9].

[80] *Id.*

[81] *Id.*

[82] Tom DiChristopher, *Bill Clinton supports lower corporate tax rate, says reasoning for TPP clear*, CNBC (Sep. 21, 2016, 8:04 AM), http://www.cnbc.com/2016/09/21/bill-clinton-supports-lower-corporate-tax-rate-says-reasoning-for-tpp-clear.html [http://perma.cc/8AM7-MFM9].

in which she allegedly intimated that she was interested in a "lower rate—a really low rate" for repatriations if participants were willing to "invest a percentage in an infrastructure bank."[83]

Although none of this is conclusive evidence of what a Clinton administration would have pushed for, it seems reasonable to believe that Ms. Clinton's repatriation plan would have functioned in a similar fashion to the ITA.

2. President Trump's Proposals

In contrast, President Trump proposed a one-time, no-strings-attached tax holiday with a 10 percent effective rate.[84] President Trump briefly outlined this proposal in a speech delivered at the Economic Club of New York in September 2016.

> [W]e will bring back trillions in business wealth parked overseas and tax it at a 10 [percent] rate. Some people say there are $2 trillion dollars overseas, I think it's $5 trillion. By taxing it at 10 [percent] instead of 35 [percent], all of this money will come back into our country. We will turn America into a magnet for new jobs—and that means jobs in our poorest communities.[85]

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[83] Brianna Gurciullo, *WikiLeaks: Clinton talked infrastructure in paid speeches*, POLITICO (Oct. 13, 2016, 10:00 AM), http://www.politico.com/tipsheets/morning-transportation/2016/10/wikileaks-clinton-talked-infrastructure-in-paid-speeches-216837 [http://perma.cc/Q3EP-AFY3].

[84] *Tax Plan*, DONALD J. TRUMP FOR PRESIDENT (2016), https://web.archive.org/web/20170208174336/https://www.donaldjtrump.com/policies/tax-plan/?/positions/tax-reform [http://perma.cc/4SE2-VCEA]. The language of Mr. Trump's proposal is interesting, as it states that his administration "will provide a *deemed* repatriation of corporate profits held offshore at a one-time tax rate of 10 percent." *Id.* (emphasis added). Analysts have questioned whether only repatriated funds will be taxed at this rate or all overseas cash holding will be taxed. Yoni Heisler, *How Donald Trump's tax plan might save Apple billions of dollars*, BGR (Nov. 14, 2016, 5:24 PM), http://bgr.com/2016/11/14/donald-trump-tax-plan-apple-overseas-cash-holiday/ [http://perma.cc/F6RC-HNRC].

[85] Tessa Berenson, *Republican Presidential Candidate Donald Trump, Address at the Economic Club of New York*, TIME (Sept. 15, 2016) (transcript available at http://time.com/4495507/donald-trump-economy-speech-transcript/) [http://perma.cc/68KD-7583]. In that same speech, Mr. Trump also stated "[c]rumbling roads and bridges can become gleaming new infrastructure" and promised that his administration "will also allow U.S.-based manufacturers to fully expense the cost of new plants and equipment." *Id.*

Following his election, President Trump made a few additional statements reiterating this basic outline, but has not elucidated it further.[86] Despite the lack of additional facts, industry analysts became convinced that repatriated funds would be used for infrastructure investment.[87]

This conclusion appears to be accurate. During the election campaign, Wilbur Ross and Peter Navarro, two of the Trump campaign's senior policy advisors, published a policy paper outlining how repatriation can fund infrastructure investment.[88] Under their proposal, tax funds received from the 10 percent repatriation tax would be spent directly on infrastructure.[89] However, corporations would also be given the opportunity to further offset their tax liability by using the tax credit to invest in infrastructure equity.[90] Participating corporations would therefore be making equity investments in infrastructure projects rather than paying taxes.[91] The U.S. government would receive no tax revenue under this scheme, but Ross and Navarro's plan would deliver "more and new infrastructure."[92]

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[86] Leila Abboud & Brooke Sutherland, *Trump and Taxes*, BLOOMBERG: GADFLY (Nov. 9, 2016, 12:32 PM), https://www.bloomberg.com/gadfly/articles/2016-11-09/trump-corporate-tax-plan-may-deter-inverters-but-not-cash-hoards [http://perma.cc/25AU-MGAQ].

[87] Howard Gleckman, *GOP Offering Democrats a Shell Game To Win Their Support For A Tax Cut*, FORBES: BUS. IN THE BELTWAY (Nov. 17, 2016, 2:34 PM), http://www.forbes.com/sites/beltway/2016/11/17/a-tax-on-multinationals-cant-pay-for-both-roads-and-tax-cuts/#bde4d3927dc8 [https://perma.cc/JL5Q-ZYA6]; Laurence Arnold & Sho Chandra, *How Trump Might Try to Fix Bridges and Highways: QuickTake Q&A*, BLOOMBERG: MKTS. (Nov. 14, 2016, 11:12 AM), https://www.bloomberg.com/news/articles/2016-11-14/how-trump-might-try-to-fix-bridges-and-highways-quicktake-q-a [http://perma.cc/4SMN-7SBS].

[88] Wilbur Ross & Peter Navarro, *Trump Versus Clinton on Infrastructure*, PETER NAVARRO (Oct. 27, 2016), http://peternavarro.com/sitebuildercontent/sitebuilderfiles/infrastructurereport.pdf [http://perma.cc/TN2W-KKZ9]. Ross and Navarro claim that every $200 billion in additional infrastructure expenditures increases the wages of "average Americans" by $88 billion and "increases real GDP growth by more than a percentage point." *Id.* at 2. They further claim that "[e]ach GDP point creates 1.2 million additional jobs." *Id.*

[89] *Id.* at 5.

[90] *Id.*

[91] *Id.* at 5–6.

[92] *Id.* at 6. Although not explicitly stated in the Ross and Navarro plan, the fact that this proposed scheme allegedly functions without bureaucratic

C. Industry Proposals

1. Apple, Inc.'s Proposal

Although many companies have called for a tax holiday, Apple, Inc. has been among the most vocal.[93] As America's self-styled "largest corporate tax payer,"[94] Apple has repeatedly called for a tax holiday on virtually the same terms as the AJCA.[95] Tim Cook, Apple's CEO, believes that participating corporations will use repatriated funds for capital and labor investments this time because a high percentage of corporate liquidity is tied up in offshore cash and the need for domestic investment is high.[96] Apple, like Pfizer, Proctor & Gamble, and other major corporations that have lobbied for another tax holiday, has not provided any studies detailing the benefits of such a holiday to the American economy.[97]

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oversight is a key theme throughout the paper. Donald Trump's infrastructure page on his campaign website goes to great lengths to point out the various ways in which regulatory agencies have delayed or prevented infrastructure projects. *See Infrastructure,* DONALD J. TRUMP (2016) (on file with author). *Contra* Tribune News Services, *Trump pushes infrastructure plans but congress blocked Obama on issue*, CHI. TRIB. (Nov. 11, 2016, 8:17 PM), http://www.chicagotribune.com/news/nationworld/politics/ct-donald-trump-infrastructure-spending-20161111-story.html [http://perma.cc/Z953-XPCS] (arguing that private-sector-led infrastructure investment focuses on projects with a guaranteed revenue stream and overlooks the impoverished communities that stand to benefit most from such investment).

[93] *Offshore Profit Shifting and the U.S. Tax Code—Part 2 (Apple Inc.): Hearing Before the Permanent Subcomm. on Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 113th Cong. 8 (2013).

[94] *Id.*

[95] Heidi Moore, *Tim Cook's pitch for a corporate tax holiday suits Washington just fine*, GUARDIAN (May 17, 2013), https://www.theguardian.com/commentisfree/2013/may/17/tim-cook-tax-holiday-suits-politicians [http://perma.cc/TBE2-ZAQN].

[96] Tim Higgins, *Tim Cook's $181 Billion Headache: Apple's Cash Abroad*, BLOOMBERG: TECH. (July 22, 2015), https://www.bloomberg.com/news/articles/2015-07-22/tim-cook-s-181-billion-headache-apple-s-cash-held-overseas [http://perma.cc/XJ2R-9BXJ].

[97] This lack of transparency has led to no small amount of frustration among tax reform advocates who see Apple's calls as an assumption that what is good for Apple is good for America. *See* Moore, *supra* note 95.

2. *Standard & Poor's Proposal*

In October 2016, Standard & Poor Global (S&P) proposed that American companies should be allowed to repatriate funds at a 0 percent (*zero*) tax rate if they invest 15 percent of the money in certain U.S. infrastructure projects.[98] S&P projects that, even if companies only brought back half of the $2 trillion held overseas, then it would result in a $150 billion investment in infrastructure, create 307,000 infrastructure-related jobs, and add $189.5 billion to the U.S. GDP through the multiplier effect within the first several years.[99]

The S&P plan has the benefit of being very straightforward. Participating companies must commit to purchasing—and holding—infrastructure bonds issued by the government[100] within a certain period of time following repatriation.[101] Importantly, these infrastructure bonds will pay for "repair[ing] and refurbish[ing] the roads, bridges, water systems, and rail networks that the American Society of Civil Engineers grades a 'D+'".[102] Corporations that fail to purchase the bonds within the time period will be forced to pay the full statutory rate plus penalties.[103] After purchasing the bonds, participating corporations may spend their repatriated funds however they please.[104]

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[98] Beth Ann Bovino et al., *Rebuilding Through Repatriation: How Corporate Cash Can Save America's Infrastructure*, S&P GLOBAL (Oct. 5, 2016), https://www.spglobal.com/our-insights/Rebuilding-Through-Repatriation-How-Corporate-Cash-Can-Save-Americas-Infrastructure-.html [https://perma.cc/T8D2-A9EP].

[99] *Id.* at 2. The multiplier effect is the well-understood economic phenomenon whereby a given input produces a larger output. *See id.* at 3 (explaining the multiplier effect). A multiplier of 1.5x therefore indicates that every $1 of investment will produce a $1.50 return.

[100] S&P suggests state and local levels of government act as the bond issuers. *Id.* at 6. This is unique among the surveyed proposals, all of which contemplate infrastructure projects initiated by federal agencies.

[101] *Id.* at 6.

[102] *Id.* at 2. This is especially important when calculating the multiplier effect, as multipliers tend to be higher in struggling economies. *See id.* Focusing on projects in areas that struggle the most will therefore produce the highest returns. *See generally 2013 Report Card for America's Infrastructure,* AM. SOC'Y CIV. ENGINEERS (2013), http://www.infrastructurereportcard.org/ [https://perma.cc/7KYG-GA89] (explaining the ASCE infrastructure grading system).

[103] Bovino et al., *supra* note 98*,* at 6–7.

[104] *Id.* at 7.

S&P offers several well-reasoned arguments in support of their proposal.[105] First, S&P believes that corporations will be enthusiastic to participate in this repatriation holiday.[106] Although corporate overseas cash holdings have continually increased, the debt of the top fifteen U.S. corporations has grown even more quickly.[107] S&P suggests this means that many corporations have exhausted their domestic cash flows and are instead financing stock repurchases and dividends using debt.[108] S&P believes that corporations prefer repatriation and domestic investment to debt and overseas cash and will therefore participate.[109] Another inspiring factor is the increasing willingness of supranational tax authorities, such as the European Union Tax Commission, to pursue these funds.[110] Most importantly, corporations will be making an investment rather than simply paying taxes.[111] This will induce corporations to participate and, in S&P's words, "save America's infrastructure."[112]

IV. A NEWER DEAL: PROJECTED POSITIVE EXTERNALITIES

The AJCA's failure to stimulate anything beyond shareholder buybacks means that proposals for another tax holiday deserve strict scrutiny.[113] Statistics may be a class of damned lies, but any proposal that promises economic growth should be judged primarily using a cost/benefit analysis.[114] If a directed

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[105] *Id.* at 7–9.
[106] *See id.* at 5, 9.
[107] *Id.* at 5.
[108] *Id.*
[109] *Id.*
[110] *Id. See also* David Kocieniewski & Lynnley Browning, *Apple's $14.5 Billion EU Bill May Press U.S. on Tax Overhaul*, BLOOMBERG (Aug. 30, 2016, 4:57 PM), https://www.bloomberg.com/news/articles/2016-08-30/apple-s-14-5-billion-eu-bill-may-pressure-u-s-on-tax-overhaul [https://perma.cc/2WED-K3XT] (discussing U.S. multinationals whose taxes are currently being investigated by the E.U.); Juliette Garside, *War of words hots up between US and EU over tax avoidance*, GUARDIAN (Aug. 25, 2016, 1:36 PM), https://www.theguardian.com/business/2016/aug/25/war-of-words-eu-us-tax-avoidance-starbucks-apple-amazon [https://perma.cc/CL8P-287L] (presaging more active E.U. tax investigations into U.S. multinationals).
[111] Bovino et al., *supra* note 98, at 6.
[112] *Id.* at 9.
[113] *See* MARPLES & GRAVELLE, *supra* note 11, at 6.
[114] *See id.* at 5.

tax holiday will produce greater net economic benefits than perpetuating the status quo, then Congress should pursue such a holiday.[115] In this section, I set out the framework for determining the costs and benefits of each proposal and compare the cost/benefit differential for each proposal.

A. The Cost of a Tax Holiday

Although each proposal involves differing sums and effective rates, the theoretical cost analysis for each proposal is identical.[116] Under each proposal, a certain sum will be repatriated.[117] Every company that would participate in a repatriation tax holiday could hypothetically repatriate that same sum at the statutory rate.[118] The difference between these is the basic cost of the plan to the Federal government.[119] This basic cost figure is then modified using the Government Purchases Multiplier (GPM) to determine the cost of each proposal to the U.S. economy.[120]

For the purposes of this Note, I assume two things. First, I assume that the Federal government would allocate the repatriation revenue (from corporations paying the statutory 35 percent rate) evenly across government rather than concentrating it in a single agency or department. Second, I assume that all revenue will be spent on government purchases rather than on interest payments or transfers. These assumptions enable the use of the general multiplier for Federal purchases of goods and services.[121]

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[115] *See id.*

[116] *See id.* at 1–2.

[117] Denoted in the following equations as "Amount Repatriated."

[118] Government Revenue at Statutory Rate = (Amount Repatriated) x (Domestic Effective Rate). Domestic Effective Rate = (Domestic Statutory Rate – Overseas Effective Rate). Note that this equation takes the fact that corporations pay a certain percentage of their tax overseas into account. *See* MARPLES & GRAVELLE, *supra* note 11, at 1–2.

[119] Basic Cost = (Government Revenue at Statutory Rate) – (Government Revenue at Tax Holiday Rate).

[120] Cost to U.S. Economy = (Basic Cost) x (Government Purchases Multiplier).

[121] The Government Purchases Multiplier (GPM) is one of several different government spending multipliers that model the results of different types of government spending. The GPM excludes interest payments and transfers and examines government-wide spending. *See generally* Giancarlo Corsetti et al., *What Determines Government Spending Multipliers?* (IMF Working Paper (WP/12/150) (2012)), https://www.imf.org/external/pubs/ft/wp/2012/wp12150.pdf [https://perma.cc/NL3M-9QPP].

Although the exact multiplier is debated—estimates range between 0.5x and 1.0x[122]—existing empirical studies support 0.9x as an acceptably accurate figure for middle-of-the-road economic situations such as that which currently exists.[123]

1. The ITA Proposal[124]

The New Democratic Network (NDN) estimates that U.S. corporations would repatriate about $1.4 trillion under the terms proposed by the ITA.[125] If corporations pay an average 10 percent effective rate on their overseas earnings, that $1.4 trillion would add $350 billion to Federal coffers if repatriated under current tax rules.[126] When modified by the GPM, that $350 billion would produce a $315 billion benefit to the U.S. economy.[127] If corporations repatriate that same $1.4 trillion at a 6.5 percent effective rate to foreign governments under the ITA, then Uncle Sam nets a mere $91 billion in taxes.[128] If this revenue was simply spent on government purchases, then it would produce a benefit to the U.S. economy of $81.9 billion.[129] Thus, the ITA plan to

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[122] *See* Robert E. Hall, *By How Much Does GDP Rise If the Government Buys More Output?*, *in* BROOKINGS PAPERS ON ECON. ACTIVITY: FALL 2009 183, 195 (David H. Romer & Justin Wolfers eds., 2009) (reviewing the empirical studies on the effects of government defense purchases). Hall also raises the interesting proposition that the GDP multiplier may go as high as 1.7x "when monetary policy becomes passive with a zero nominal interest rate." *Id.* at 187. *See generally* Corsetti et al., *supra* note 121.

[123] Hall, *supra* note 122, at 195; Robert J. Barro & Charles J. Redlick, *Macroeconomic Effects From Government Purchases and Taxes*, 126 Q.J. ECON. 51, 72 (2011); Giovanni Ganelli & Juha Tervala, *The Welfare Multiplier of Public Infrastructure Investment* (IMF Working Paper (WP/16/40) (2015)); Valerie A. Ramey, *Can Government Purchases Stimulate the Economy?*, 49 J. ECON. LITERATURE 673, 675 (2011).

[124] The analysis for the ITA proposal can be extended to the Clinton proposal given the similarities between the two. *See supra* Section III.B.1.

[125] SHAPIRO & MATHUR, *supra* note 59, at 36.

[126] Government Revenue at Statutory Rate = (Amount Repatriated) x (Domestic Effective Rate) = ($1.4 trillion) x (0.35 – 0.10) = $350 billion.

[127] Benefit to U.S. Economy = (Government Revenue at Statutory Rate) x (Government Purchases Multiplier) = ($350 billion) x (0.9) = $315 billion.

[128] Government Revenue at Holiday Rate = (Amount Repatriated) x (Holiday Rate) = ($1.4 trillion) x (0.065) = $91 billion.

[129] Benefit to U.S. Economy = (Government Revenue at Holiday Rate) x (GPM) = ($91 billion) x (0.9) = $81.9 billion.

repatriate funds at a reduced rate and invest them must add at least \$233.1 billion worth of but-for growth to the U.S. economy to justify a tax holiday.[130]

2. S&P Global

This calculation is somewhat easier for the Standard & Poor proposal. S&P is less optimistic than the NDN on the amount that will be repatriated and estimates that only about \$1 trillion of all overseas funds would be repatriated during a tax-free (0 percent effective rate) holiday.[131] Assuming this figure is correct, and corporations already pay a 10 percent rate to foreign governments, then the Federal government would be giving up \$250 billion of revenue.[132] When modified by the GPM, the net cost to the U.S. economy is \$233.1 billion and the S&P plan must better that figure to produce a net benefit.[133]

3. President Trump's Proposal

President Trump's repatriation proposal is the most simplistic. He has stated that there is somewhere between \$2 and \$5 trillion stashed overseas and that a 10 percent rate will induce corporations to bring their entire overseas cash home.[134] President Trump's upper-bound estimate of \$5 trillion is wildly out of line with industry analyses,[135] so I will use \$2 trillion as

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[130] Break-Even Amount = (Benefit to U.S. Economy at Statutory Rate) – (Benefit to U.S. Economy at Holiday Rate) = (\$315 billion) – (\$81.9 billion) = \$233.1 billion. Note that this is but-for growth; the total amount that the ITA plan would need to generate to produce a net benefit to the U.S. economy remains \$315 billion.

[131] *See* Bovino et al., *supra* note 98, at 2.

[132] Government Revenue at Statutory Rate = (Amount Repatriated) x (Domestic Effective Rate) = (\$1 trillion) x (0.35 – 0.10) = \$250 billion. Government Revenue at Holiday Rate = (Amount Repatriated) x (Holiday Rate) = (\$1 trillion) x (0.0) = \$0.

[133] Benefit to U.S. Economy at Statutory Rate = (Government Revenue at Statutory Rate) x (GPM) = (\$250 billion) x (0.9) = \$233.1 billion.

[134] *Tax Plan*, *supra* note 84.

[135] *Compare* Bovino et al., *supra* note 98, at 3 (stating that U.S. corporations hold more than \$2 trillion overseas), *and* CITIZENS FOR TAX JUSTICE, *supra* note 4, at 2 (stating that U.S. corporations hold about \$2.4 trillion overseas), *with* Berenson, *supra* note 85.

the total sum to be repatriated. $2 trillion repatriated at the statutory rate generates $500 billion in revenue for the Treasury and $450 billion of economic benefit to the United States.[136] A 10 percent holiday rate would reduce the Treasury's revenue to $200 billion and,[137] if the Federal government spent the revenue on purchases, produce an economic benefit of $180 billion.[138] President Trump's plan must therefore generate a massive $270 billion worth of but-for growth to simply break even.[139]

4. Summary

The basic revenues and benefits of the plans are summarized below in Figure 1.

Plan	**Amount Repatriated**	**Holiday Rate**	**Revenue at Statutory Rate**	**Revenue at Holiday Rate**	**Benefit to U.S. Economy at Statutory Rate**
ITA	$1.4 trillion	6.5%	$350 billion	$91 billion	$315 billion
S&P	$1 trillion	0% (15%)	$250 billion	$0	$233.1 billion
Trump	$2 trillion	10%	$500 billion	$200 billion	$450 billion

Figure 1: Basic Revenues and Benefits

[136] Government Revenue at Statutory Rate = (Amount Repatriated) x (Domestic Effective Rate) = ($2 trillion) x (0.35 – 0.10) = $500 billion. Benefit to U.S. Economy = (Government Revenue at Statutory Rate) x (GPM) = ($500 billion) x (0.90) = $450 billion.

[137] Government Revenue at Holiday Rate = (Amount Repatriated) x (Holiday Rate) = ($2 trillion) x (0.10) = $200 billion.

[138] Government Revenue at Holiday Rate = (Amount Repatriated) x (Holiday Rate) = ($2 trillion) x (0.10) = $200 billion.

[139] Break-Even Amount = (Benefit to U.S. Economy at Statutory Rate) – (Benefit to U.S. Economy at Holiday Rate) = ($450 billion – $180 billion) = $270 billion. Once again, the purpose of this figure is to illustrate how much *more* lucrative infrastructure investment must be to justify a tax holiday.

B. The Benefits of Infrastructure Investment

Calculating the benefits of each plan is somewhat more difficult because the benefits of infrastructure investment fluctuate significantly based on existing economic conditions.[140]

1. Precedent: The New Deal and Interstate Creation Act

America has a long, well-documented history of successfully reinvigorating the domestic economy via infrastructure investment.[141] In 1933, at the height of the Great Depression, President Franklin D. Roosevelt introduced a New Deal for Americans.[142] As part of this New Deal, the Federal government invested huge sums into public works projects such as highways, bridges, and dams.[143] Notably, many of these projects are still providing significant benefits to the U.S. economy.[144] Massive investment in highways under the Eisenhower Administration further boosted the U.S. economy and provided a framework around which the U.S. enjoyed an unprecedented period of growth and prosperity.[145] Notably, the benefits of transportation infrastructure investment are not limited to new projects and may even be greater when investment is directed towards "plain old maintenance" and upgrading existing infrastructure such as highways.[146]

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[140] *See* Bovino et al., *supra* note 98, at 3–4.

[141] For a technical analysis of the economic benefits associated with public infrastructure expenditure in 20th century America, see David Alan Aschauer, *Is Public Expenditure Productive?*, 23 J. MONETARY ECON. 177 (1989). *See generally* Adam J. White, *Infrastructure Policy: Lessons from American History*, 35 NEW ATLANTIS 3 (2012) (reciting America's lucrative history of large-scale investment in infrastructure).

[142] White, *supra* note 141, at 3.

[143] *Id.* at 3, 24.

[144] THE DEP'T OF THE TREASURY & COUNCIL OF ECON. ADVISORS, AN ECONOMIC ANALYSIS OF INFRASTRUCTURE INVESTMENT (Oct. 11, 2010), https://www.treasury.gov/resource-center/economic-policy/Documents/infrastructure_investment_report.pdf [https://perma.cc/39UD-JJJP].

[145] Edward M. Gramlich, *Infrastructure Investment: A Review Essay*, 32 J. ECON. LITERATURE 1176, 1178 (1993).

[146] *Id.* at 1184. Gramlich demonstrates a historic 35 percent lifetime return on investment from projects maintaining existing highway conditions from 1948–90. *Id.*

2. Think Tank Thoughts: EPI and IRENA

Infrastructure as stimulus is just as valid today as it was in the 1930s and 1950s.[147] A 2014 study of different infrastructure investment proposals conducted by Washington-based think tank Economic Policy Institute (EPI) estimated an average 1.6x multiplier based on data from the Congressional Budget Office, Council of Economic Advisors, and Moody's Analytics.[148] The study examined infrastructure spending on green building technologies and utilities[149] in addition to highways and bridges, transportation systems and water systems.[150]

Investment in green technology such as renewable energy plants and "green cities" is a new, but reliable, form of economic stimulus.[151] A 2016 report from the International Renewable Energy Agency, an Abu Dhabi–based think tank, found that doubling investment in renewables in the United States would result in a $110–150 billion GDP boost[152] and create more than a million permanent new jobs over the next decade.[153]

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[147] Josh Bivens, *The Short- and Long-Term Impact of Infrastructure Investments on Employment and Economic Activity in the U.S. Economy* 47 (2014) (Econ. Pol'y Inst. Briefing Paper 347), http://www.epi.org/files/2014/impact-of-infrastructure-investments.pdf [https://perma.cc/P5NB-JNMV].

[148] *Id.* at 21.

[149] *Id.* at 13–14. EPI found that green technologies were a particularly good investment, yielding a multiplier of between 2.8x and 6.0x based on the economic conditions of the areas of the projects. *See generally* S. Pacala & R. Socolow, *Stabilization Wedges: Solving the Climate Problem for the Next 50 Years with Current Technologies*, 305 SCI. 968, 968–72 (2004).

[150] Bivens, *supra* note 147, at 15–17.

[151] Rabia Ferroukhi et al., *Renewable Energy Benefits: Measuring the Economics,* IRENA 27–28 (2016), http://www.irena.org/-/media/Files/IRENA/Agency/Publication/2016/IRENA_Measuring-the-Economics_2016.pdf [https://perma.cc/PLZ8-6PVS].

[152] *Id.* at 25. In 2015 the U.S. public and private sectors invested a $44 billion into renewable energy projects. Rebecca Harrington, *The US is actually leading the way on clean energy*, BUS. INSIDER (May 6, 2016, 12:06 PM), http://www.businessinsider.com/us-2015-renewable-energy-investments-2016-5 [https://perma.cc/5LGW-ETWV].

[153] Ferroukhi et al., *supra* note 151, at 41.

3. Industry Analysis: S&P Global & Moody's Analytics

Standard & Poor projects that a $150 billion investment in infrastructure will create 307,000 infrastructure-related jobs and add $189.5 billion to the U.S. GDP through the multiplier effect within the first several years.[154] S&P estimates that this multiplier would average around 1.3x, but could be as high as 1.7x in the correct conditions.[155]

Moody's Analytics is somewhat more optimistic than S&P and estimates a 1.78x multiplier for stable periods of time in the business cycle.[156]

4. Summary and Application

This evidence demonstrates that we may safely assume a multiplier somewhere in the 1.3x to 1.8x range given that relative stability of the U.S. economy at the present.[157] In Figure 2, below, I present each proposal and its potential benefits under each multiplier from the range, rounded to the nearest tenth. The

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[154] Bovino et al., *supra* note 98, at 4.

[155] *Id.* at 3–4. The reason for this variation is differing economic conditions; a strong economy will produce a lower multiplier while a stagnant or struggling economy will produce a greater multiplier. *Id.* The upper-bound estimate is interesting because it is equal to Robert Hall's calculation for the federal purchases multiplier in economies with a zero nominal interest rate. *See* Hall, *supra* note 122, at 187. This raises the argument that it does not matter whether the federal government purchases goods and services or invests in infrastructure because the benefit to the domestic economy will essentially be the same. While this argument may have some merit, Hall's calculation is based on a ten-year model and it seems highly unlikely that the Federal Reserve will allow rates to remain around zero for that long. *See* David Harrison, *Fed Minutes Show Officials Expect to Raise Rates 'Relatively Soon*,*'* WALL ST. J. (Oct. 12, 2016), http://www.wsj.com/articles/fed-minutes-show-officials-expect-to-raise-rates-relatively-soon-1476295562.

[156] Dan White & Sarah Crane, *U.S. Infrastructure Funding Needs More Than a Quick Fix*, MOODY'S ANALYTICS (Apr. 27, 2015), https://www.economy.com/dismal/analysis/free/254109 [https://perma.cc/X7HW-9UWX].

[157] *See, e.g.*, Kimberly Amadeo, *US Economic Outlook: For 2018 and Beyond*, BALANCE (Jan. 1, 2018), https://www.thebalance.com/us-economic-outlook-3305669 [https://perma.cc/P8DR-WV56].

benefit to the U.S. economy at statutory rate figure generated in the preceding section on cost is presented as the "Break-Even" figure here for comparison purposes.[158]

	Break-Even	Infrastructure Multiplier					
		1.3x	1.4x	1.5x	1.6x	1.7x	1.8x
ITA	$315 billion	$118.3 billion	$127.4 billion	$136.5 billion	$145.6 billion	$154.7 billion	$163.8 billion
S&P	$233.1 billion	$195 billion	$210 billion	$225 billion	$240 billion	$255 billion	$270 billion
Trump	$450 billion	$260 billion	$280 billion	$300 billion	$320 billion	$340 billion	$360 billion

Figure 2: Benefits of Infrastructure Investment

There are several notable takeaways from this chart. First, only the S&P plan produces a net economic benefit. Second, the ITA and President Trump proposals not only fail to break even, but produce substantial losses even at the highest multiplier.[159] These results look like damning evidence that a directed tax holiday will likely be a bad deal for the American economy. If this is the case, then why is a tax holiday is even being contemplated?

V. Balancing Utilities

At this point, it is appropriate to review the arguments against a tax holiday and consider several rebuttals.

A. Arguments Against a Directed Tax Holiday

The argument against a tax holiday is comprised of three basic ideas: tax holidays only benefit corporations, tax holidays encourage bad behavior, and tax holidays are unnecessary.

[158] *See supra* Section IV.A.4.
[159] *See supra* Figure 2.

1. Tax Holidays Only Benefit Corporations

The most common argument against tax holidays is that they only benefit corporations.[160] Looking to the AJCA, opponents of tax holidays argue that another tax holiday will produce the same results.[161] The Federal government will lose revenue,[162] corporations will issue large dividends to shareholders,[163] and the promised new jobs will not be created.[164] Corporate America will benefit while the rest of the country is worse off.[165]

This argument is also extended to proposed directed tax holidays such as the ITA. Critics perform a cost-benefit analysis, reach results similar to those presented in Figure 2, and conclude that the U.S. economy will lose money on a tax holiday.[166]

2. Tax Holidays Encourage Bad Behavior

There is also some evidence to suggest that tax holidays condition U.S. corporations to avoid paying domestic taxes by keeping money overseas.[167] After the 2004 tax holiday, U.S. corporations increased the percentage of foreign earnings held overseas.[168] This suggests that another tax holiday will only encourage U.S. corporations to keep even more foreign earnings overseas in anticipation of a third tax holiday—a classic case of corporate Pavlovian conditioning.[169]

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[160] *See*, *e.g.*, Kristina Peterson, *Report: Repatriation Tax Holiday a 'Failed' Policy*, WALL ST. J. (Oct. 10, 2011, 9:41 PM), https://www.wsj.com/articles/SB10001424052970203633104576623771022129888.

[161] CITIZENS FOR TAX JUSTICE, *supra* note 4.

[162] *Id.*

[163] *See, e.g.*, Robin Wigglesworth, *Where will corporate America's overseas cash pile go?*, FIN. TIMES (Dec. 5, 2016), https://www.ft.com/content/ee554c60-b6ed-11e6-961e-a1acd97f622d.

[164] *See* Mundaca, *supra* note 45.

[165] *See* Schwartz & Duhigg, *supra* note 19.

[166] *See* Richard Rubin, *Repatriation Tax Break from Paul Boxer Would Cost $118 Billion*, BLOOMBERG BUS. (Apr. 30, 2015, 6:07 PM), http://www.bloomberg.com/news/articles/2015-04-30/repatriation-tax-break-from-paul-boxer-would-cost-118-billion [https://perma.cc/9FZ5-LRBL].

[167] Brennan, *supra* note 54, at 4.

[168] *Id.* at 7–8.

[169] *Id.* at 16–17.

A corollary to this is the morality argument that another tax holiday is wrong because it is simply pandering to corporations.[170]

3. Tax Holidays Are Unnecessary

The argument that tax holidays are unnecessary is a response to CEOs' claims that their companies' domestic operations are suffering from a lack of capital because their cash is trapped overseas.[171] The cash is not "trapped" overseas by any sinister government machinations; rather, U.S. corporations are leaving their overseas cash in the hands of their foreign subsidiaries because boards of directors are making a business decision not to repatriate the funds.[172] The United States therefore does not need to take legislative action because boards of directors will decide to repatriate overseas earnings when repatriation becomes a prudent business decision.[173] The argument that a tax holiday is unnecessary is further supported by the shifting international tax environment; which may soon force U.S multinationals to repatriate their funds at the statutory rate.[174] The recent E.U. ruling that Apple Inc.'s tax arrangement with Ireland is illegal sent shock waves through the international tax community and inspired predictions that preferential tax situations around the world will be scrutinized closely in the coming months.[175]

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[170] Chris Sanchirico, *A Repatriation Tax Holiday for US Multinationals? Four Contagious Illusions*, TAX POL'Y CTR.: TAXVOX (Dec. 10, 2014), http://www.taxpolicycenter.org/taxvox/repatriation-tax-holiday-us-multinationals-four-contagious-illusions [https://perma.cc/VU3Z-UZB2]. How pandering is any different from Congress's normal activities is an entirely different issue.

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *The Global Tax Environment in 2016 and Implications for International Tax Reform: Hearing Before the Comm. on Ways and Means U.S. House of Representatives*, 114th Cong. 3 (2016) (testimony of Edward Kleinbard, former Chief of Staff of the Congress's Joint Committee on Taxation).

[175] Simon Bowers, *Europe, Apple, and the money burning a hole in Silicon Valley's wallet*, GUARDIAN (Sept. 3, 2016, 11:00 AM), https://www.theguardian.com/business/2016/sep/03/ireland-apple-silicon-valley-money-burning-hole-wallet [https://perma.cc/W4HB-395D].

B. Realities that Support a Directed Tax Holiday

Careful consideration of the various proposals for a tax holiday and the arguments against them leads to the conclusion that there is no perfect tax holiday solution. There may not even be an ideal solution. Critics of tax holidays make well-reasoned arguments and have valid concerns. However, there are several realities that support a directed tax holiday with revenues invested directly into infrastructure.

1. Any Benefit from a Tax Holiday Is a Windfall Benefit

First and foremost, it is essential to recognize that any benefit from a tax holiday is a windfall benefit.[176] Corporations have trillions of dollars overseas because they have refused to repatriate those funds under the current statutory rate.[177] Thus, *any* benefit added to the U.S. economy because of a tax holiday is but-for growth![178] The Federal government cannot lose revenue because it has realized no tax revenue from overseas corporate cash.[179] This reality is reflected in the fact that the Joint Committee on Taxation, Congress's budget scorekeepers, analyzes revenue produced by a repatriation tax holiday as new revenue.[180]

Understanding and accepting this reality completely changes the supposedly damning results presented in Figure 2. Reproduced below is Figure 3 showing the results of Figure 2, with a modification to the break-even figure that reflects the economic reality of repatriated funds.

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[176] *Presentation of the Staff of the Joint Committee on Taxation: Public Hearing on Present Law and Selected Proposals Related to the Repatriation of Foreign Earnings Before the Select Revenue Subcomm. of the H. Comm. on Ways and Means*, 114th Cong. 15–18 (2015) [hereinafter *Hearing on Repatriation of Foreign Earnings*].

[177] Apple, Inc. CEO Tim Cook has been very candid about the fact that Apple will not repatriate any meaningful sum of money until there are meaningful corporate tax reforms. Jena McGregor, *Tim Cook, the interview: Running Apple "is sort of a lonely job,"* WASH. POST (Aug. 13, 2016), http://www.washingtonpost.com/sf/business/2016/08/13/tim-cook-the-interview-running-apple-is-sort-of-a-lonely-job/?tid=a_inl [https://perma.cc/M8RH-RVXE].

[178] *Hearing on Repatriation of Foreign Earnings*, *supra* note 176, at 15–18.

[179] *Id.*

[180] *Id.*

	Break-Even	Infrastructure Multiplier					
		1.3x	1.4x	1.5x	1.6x	1.7x	1.8x
ITA	$0	$118.3 billion	$127.4 billion	$136.5 billion	$145.6 billion	$154.7 billion	$163.8 billion
S&P	$0	$195 billion	$210 billion	$225 billion	$240 billion	$255 billion	$270 billion
Trump	$0	$260 billion	$280 billion	$300 billion	$320 billion	$340 billion	$360 billion

Figure 3: Tax Holiday Benefits as Windfall Benefits

Thus, a directed tax holiday that funnels money directly into infrastructure investments is not just a good deal for the U.S. economy, it is practically impossible to turn down.

2. America Wants Infrastructure Investment

The American voting public made it clear in 2016 that domestic job growth and infrastructure development are major concerns.[181] A directed tax holiday that channels revenues directly into building infrastructure and repairing old infrastructure will create new jobs and better cities.[182] There is also an intangible morale boost that comes from new infrastructure, particularly green infrastructure.[183] New projects create a sense of hope and optimism[184]—feelings that are especially needed in the decaying urban areas that would benefit most from these infrastructure projects.

3. The Timing Is Right

The international tax environment at present is hostile to U.S. corporations, suggesting that a tax holiday will likely be

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[181] Ben Casselman, *Stop Saying Trump's Win Had Nothing To Do With Economics*, FIVETHIRTYEIGHT (Jan. 9, 2017, 5:00 AM), https://fivethirtyeight.com/features/stop-saying-trumps-win-had-nothing-to-do-with-economics/ [https://perma.cc/N9BV-PNLB].

[182] *See* Bovino et al., *supra* note 98.

[183] *See* Ferroukhi et al., *supra* note 151, at 31–37.

[184] *Id.* at 36–37.

well-received.[185] The recent E.U. court ruling that Ireland had unfairly shielded Apple from paying corporate taxes has made U.S. multinationals uncomfortable leaving large sums of money overseas.[186] Thus, a tax holiday would likely be better subscribed to than the AJCA was.[187] Furthermore, U.S. corporations are currently trapped in a moribund domestic economy and are under increasing pressure from shareholders to reinvest in their underlying business, and in research and development.[188] These factors suggest that the timing is right for a tax holiday.

4. The Moral High Ground Is Relatively Low

The moral concerns of pandering to corporations pale in comparison to the tangible economic good that can be done with billions of dollars in infrastructure investment.[189] Yes, corporations should just pay their taxes like everyone else does. But U.S. multinationals will continue to leave their money overseas in increasingly well-hidden places because the statutory rate is, in the words of Tim Cook, "absolutely crazy."[190] Standing firm on the statutory rate may eventually result in corporations caving in and bringing their money back to the United States, but this result could take years to achieve and America's infrastructure needs are urgent.[191] It seems better to be realistic about what the moral high ground will actually buy—and the answer is not new roads, green energy, or urban regeneration.

CONCLUSION

U.S. corporate tax law is long overdue for a reform—there is very little genuine debate on this point. However, comprehensive

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[185] *See* Bowers, *supra* 175.

[186] *Id.*

[187] *Id.*

[188] Eric Platt, *US Companies' cash pile hits $1.7tn*, FIN. TIMES (May 20, 2016), https://www.ft.com/content/368ef430-1e24-11e6-a7bc-ee846770ec15.

[189] *See* Bovino et al., *supra* note 98, at 2.

[190] Dylan Tweney, *Tim Cook says U.S. tax code is 'absolutely crazy,'* VENTURE BEAT (May 28, 2013, 8:24 PM), http://venturebeat.com/2013/05/28/tim-cook-says-u-s-tax-code-is-absolutely-crazy/ [https://perma.cc/VA46-J9UW].

[191] *See* Bovino et al., *supra* note 98, at 2.

reform of any variety takes time and bipartisan cooperation—qualities that are in short supply in Washington. A tax holiday is not a lasting solution and there are significant dangers to repeating a plan that was only ever meant to be a one-time occurrence. There is a real possibility that American multinationals will develop Pavlovian tendencies and simply stash even more cash overseas in hope of another holiday in the future. Comprehensive reform is the only way to fully resolve these concerns.

Nevertheless, the evidence seems to suggest that a directed tax holiday is a good idea. Economic practicalities suggest that a directed tax holiday would significantly benefit the U.S. economy. The current international tax hostility towards American multinationals suggests that U.S. corporations may be looking for a new place to park their cash. U.S. corporate debts and domestic stagnation suggest that the United States is a prime candidate for investment. History suggests that real, lasting economic growth follows infrastructure investment and the American people recently elected a President who promised to "Make America Great Again."[192] A directed tax holiday channeled into infrastructure investment is a relatively simple way to do that.

[192] President Donald J. Trump, The Inaugural Address (Jan. 20, 2017).