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$100B Pfizer Tie-Up Plan Puts Focus On US Corporate Exodus

By **Karlee Weinmann**

Law360, New York (April 29, 2014, 6:09 PM ET) -- Pfizer Inc. this week outlined a prospective $100 billion merger with British rival AstraZeneca PLC that could suck billions of tax dollars out of the U.S., shining a brighter spotlight on the fast-rising number of stateside companies, some of them giants, eyeing cross-border moves in part to lighten their tax loads.

By some estimates, New York-based Pfizer would save $1 billion or more in taxes each year over the next decade if it moves across the Atlantic. The shift would follow several other companies that recently have sought out inversion deals, ones that provide a pathway out of a murky U.S. corporate tax climate and into a more tax-friendly jurisdiction.

Attorneys expect another wave of inversion announcements over the next several months as potential reforms loom and companies try to guarantee deal completion before the end of the year. Possible rule changes remain unclear but would likely tighten restrictions on U.S. firms considering overseas moves.

"There's a lot of attention and I think that's ultimately going to result in greater scrutiny and there will probably be political consequences," said Jason Bazar, co-chair of the tax transactions and consulting practice at Mayer Brown LLP.

The size of Pfizer's potential deal and the drug company's long-standing legacy in the U.S. have thrust it — and the broader inversion strategy — into view in Washington, where policymakers have hinted that they plan to clamp down on inversions as the structure's popularity skyrockets.

For now, U.S. companies have seized successful inversions as blueprints to steer transactions under existing law, giving way to a deluge of deals over the past several months. Even companies as big as Pfizer, which has a market capitalization of more than $201 billion, can fit the contours.

"The lines drawn by the anti-inversion rules are reasonably clear, so if you're on the right side of the line, a transaction can certainly be crafted to benefit the company and can often be combined with subsequent transactions to access cash offshore," said Linda Swartz, who leads the tax group at Cadwalader Wickersham & Taft LLP.

Under the loose framework that Pfizer presented on Monday, the combined company would keep a sizable slice of its operations anchored in New York, including its headquarters, stock listing and a chunk of its executive team. Some of its management team would work out of a British office, and U.S. rules require at least 20 percent of shares in the combined company to fall under foreign ownership.

As a U.K. company, Pfizer could deploy the cash it holds abroad — more than 70 percent of its $49 billion in reserves, its CEO has said — without having to pay comparatively hefty U.S. taxes. The company has also touted the prospective AstraZeneca merger as a way to free up cash to distribute among its various businesses as part of a long-term growth plan.

Companies abroad have trumpeted similar benefits as they pitch themselves as ideal inversion partners for U.S. outfits, seeking to sweeten their deal-making prospects by appealing to the exploding interest in merger-based tax relief. Nearly half of about 50 inversions inked to date came in the past year, according to a recent report.

Activist shareholders have also begun to fuel the push. Earlier this month, a group of unnamed investors in Walgreen Co. pressed the drug store chain to use its multibillion-dollar acquisition of Swiss rival Alliance Boots GmbH to move its longtime Illinois headquarters to a tax-friendly jurisdiction abroad.

If they proceed with plans to move, Walgreen and Pfizer would be among the largest and most prominent companies to cut ties with the U.S. tax regime for more favorable treatment elsewhere.

Pfizer's buzzed-about plans to pursue a new legal home ramped up pressure on the U.S. government to address the deal-making rush that has lured away a slew of big-name companies, including Chiquita Brands International Inc. and multibillion-dollar drugmaker Perrigo Co. PLC.

A regulatory crackdown on inversions traces back to 2004, to an American Jobs Creation Act provision requiring companies to have substantial operations in any country that could serve as a new home. Since then, the government has gradually built up its opposition to inversion deals, essentially restricting such transactions to mergers between U.S. heavyweights and overseas partners.

Last week, the Internal Revenue Service hardened its stance by saying that certain shareholders in U.S. companies most likely must pay taxes on their holding even if they are only getting shares in the combined company through an inversion, limiting their tax-free treatment.

Already, the agency had set tough mandates for most corporations considering an inversion to keep at least a quarter of their assets, employees and income in their new home country — a difficult standard for major multinationals that frequently seek out cross-border deals, said Julie Divola, who leads the San Francisco tax practice atPillsbury Winthrop Shaw Pittman LLP.

"Very legitimate companies with worldwide operations don't have that," she said in an interview last month. "To expect them to have have 25 percent of activists in the jurisdiction where they're organized isn't realistic."

Critics have questioned whether the Obama administration and Congress could go too far in trying to limit inversions, potentially imposing rules that could keep foreign buyers from acquiring U.S. companies in mergers of equals or other noninversion transactions.

Companies and deal proponents have called on Congress to consider a tax overhaul that would make the U.S. a more appealing corporate tax destination, rather than implementing more reactionary changes to make it tougher to move outside U.S. borders — a path they say could curtail cross-border M&A activity in general.

"There will be continued interest on the part of businesses and I think there will be an increased focus in the government on how they feel they need to address this," Bazar said. "The big question will be the approach that they ultimately decide to take."

--Editing by John Quinn and Katherine Rautenberg.
