Fair Share Act of 2008
Question and Answer

Q: Why is this legislation necessary?
A: Recent news articles have revealed that, under current law, U.S. companies that enter into contracts with the U.S. government can establish foreign subsidiaries in tax haven jurisdictions to compensate their U.S. employees working abroad in connection with the contract, thereby avoiding the responsibility of paying Social Security and Medicare payroll taxes for these employees. According to a March 6th Boston Globe story, Kellogg, Brown, and Root (KBR), the largest U.S. contractor providing services in Iraq, used a foreign subsidiary located in the Cayman Islands to pay their U.S. employees. This arrangement allowed KBR to avoid having to pay millions in Social Security and Medicare payroll taxes for its U.S. employees.

Q: What will the legislation do?
A: The legislation requires U.S. employers that are doing federal contract work for the U.S. government, and using foreign subsidiaries to compensate their U.S. employees working abroad, to begin paying Social Security and Medicare taxes on behalf of these employees.

Q: How does the legislation target these foreign subsidiaries?
A: The legislation will affect any employee of a foreign entity that is performing services in connection with a contract between the U.S. government and any member of any domestically controlled group of entities that includes that foreign entity.

Q. What is a domestically controlled group of entities?
A. It is any U.S. parent corporation with a foreign subsidiary in which the U.S. parent has more than 50 percent ownership.

Q: How does this legislation affect agreements that the U.S. has with other countries to address dual Social Security taxation (note: these agreements are called "totalization agreements and there are 21 such agreements that the U.S. has with foreign countries)?
A: Under present law, employers paying wages that, under a "totalization agreement" between the United States and a foreign country, are subject exclusively to the social security taxes of that foreign country are exempt from U.S. payroll tax obligations for those wages. This exemption will still apply under the proposed legislation.

Q: Does the legislation only apply to U.S. companies that establish foreign subsidiaries in tax havens and pay their U.S. employees working abroad through that foreign subsidiary?
A: No. The legislation applies to any arrangement where a U.S. employer uses a foreign subsidiary for the purpose of paying its U.S. employees working abroad in connection with a contract with the US government and thereby avoiding U.S. payroll taxes. This approach ensures that KBR will not simply move its subsidiary to Iraq, or a similar country, to continue avoiding payroll taxes for its U.S. employees.

Q: What impact will this legislation have on KBR?
A: KBR will be required to begin paying payroll taxes on behalf of its U.S. employees working abroad that are presently receiving their salaries from KBR's foreign subsidiary that is located in the Cayman Islands.

Q: What impact will this legislation have on KBR's U.S. employees that are being paid by the foreign subsidiary?
A: This legislation will require the U.S. employees of the KBR foreign subsidiary to pay into the Social Security and Medicare programs, allowing them to either qualify for, or increase the amount of, benefits that they will receive from these programs when they become eligible for benefits.

Q: How much payroll taxes has KBR been able to avoid?
A: According to the Boston Globe article, KBR has avoided hundreds of millions of dollars in federal Social Security and Medicare taxes.

Q: How many KBR employees will be affected by this legislation?
A: According to the Boston Globe article, there are 10,500 Americans that are listed as working for the KBR foreign subsidiaries that are located in the Cayman Islands.

Q: Is KBR the only company that is going to be affected by this legislation?
A: The legislative language does not single out KBR, so there may be other U.S. companies that are federal contractors and using foreign subsidiaries to avoid payroll taxes for its U.S. employees working abroad in connection with the federal contract that could be impacted.

Q: Doesn't the present arrangement actually save U.S. taxpayers money by allowing the Defense Department to accept the lowest possible bid for its Iraq contract?
A: The law is that U.S. employers and employees are obligated to contribute to the Social Security and Medicare programs. The money that goes into these Trust Funds is then used to pay benefits and build up financial reserves for future retirees. While KBR's ability to avoid remitting payroll taxes for its U.S. employees may result in a lower contract bid amount, it represents an end-run around the U.S. payroll tax system and ultimately weakens Social Security and Medicare for the millions of people in this country that depend on those programs. Moreover, KBR's ability to avoid payroll taxes on its U.S. employees places U.S. companies that contribute to Social Security and Medicare on behalf of their U.S. employees working abroad at a competitive disadvantage relative to KBR.

Q: Will this legislation encourage the Defense Department to contract with foreign employers, rather than U.S. employers, like KBR, that have foreign subsidiaries?
A: This legislation simply puts KBR on equal footing with U.S. companies that are doing federal contract work for the US. Government and contributing to the U.S. payroll tax system on behalf of their U.S. employees working abroad.

Q: Why is the legislation limited to U.S. employers that are federal contractors?
A: The legislation is limited to U.S. employers that are federal contractors because these contracts are paid for by U.S. taxpayers. Moreover, at this time, the news articles that brought the issue to the attention of Congress only involve U.S. companies that are performing contracts for the U.S. government.

Q. Will this legislation encourage U.S. corporations to simply relocate their corporate headquarters offshore?
A. This legislation will not encourage U.S. corporations to move offshore because Congress already addressed corporate inversions in the American Jobs Creation of 2004.

Q: How much revenue will this legislation raise?
A: The Joint Committee on Taxation has not provided a revenue estimate for this legislation yet.