

# MTC 2010 Annual Meeting

## Income and Franchise Tax Uniformity Subcommittee

Project to Review Tax Haven  
Provisions for Water's Edge  
Returns

# Current Model Statute

## Included Entities:

- Domestically-incorporated unitary
- Entities with more than 20% average factors in US;
- DISCs, FSC's, Export trade corps;
- Domestic-source income of foreign corps;
- Subpart f entities
- Foreign entities deriving 20% or more of their income from intangible property or services deducted from domestic group;
- Or entities doing business in TAX HAVENS—if business is related to tax haven activity
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# Scope of Water's-edge is Broad

- Should prevent "inversion" problems
- Doesn't address income deferral;
- Doesn't include US consolidated filers in Mexico and Canada;

# Tax Haven Definition

- (a) an entity listed as a tax haven by OECD for current year; or
- Is identified as having harmful tax practices in current year by OECD
- Or, a jurisdiction with no or nominal tax rates on relevant income and
  - secrecy laws; or
  - Non-transparent laws;
  - Facilitates establishment of shells
  - Gives advantage to foreign taxpayers;
  - A regime which favors avoidance.

# Problems with Test

- OECD no longer lists tax havens on annual basis;
- No longer lists countries with harmful tax practices
- Alternative MTC test is good but difficult to administer
- Current alternative may not pick up right activities.

# Recent Report of Congressional Research Service

- [http://assets.opencrs.com/rpts/R40623\\_20100604.pdf](http://assets.opencrs.com/rpts/R40623_20100604.pdf).
- Most corporate income shifting is through intangible property transfer pricing;
- Inconsistent use of “check the box” to avoid Subpart f income rules;
- Earnings stripping through interest expense misallocation
- Transfer pricing on goods and services;
- Mislocation of foreign tax credit

# Source of dividends repatriated in 2004 “Jobs Creation Act”

- Netherlands 28.8
- Switzerland 10.4;
- Bermuda 10.2;
- Ireland 8.2;
- Luxembourg 7.5;
- Canada 5.9;
- Cayman Islands 5.9
- United Kingdom 5.1;
- Hong Kong 1.7
- Singapore 1.7;
- Malaysia 1.2

# Possible solutions

- Reference to Host Country tax rates alone;
- Use Subjective Criteria but have lists administered by the states and updated annually;
- Use lists from other sources, such as GAO;
- Abandon definition entirely.