Actavis: The latest Fortune 500 company to "leave" the U.S. for tax reasons

The drugmaker plans to reincorporate in Ireland to reduce its tax burden, but the CEO will stay in New Jersey.

By: Brian O'Keefe – May 21, 2013

Drugmaker Actavis (ACT) announced yesterday that it will buy rival Warner Chilcott PLC for $5 billion in stock and that, as part of the deal, it plans to reincorporate itself in tax-friendly Ireland, where Warner Chilcott (WCRX) is based. This despite the fact that the company's top executives, including CEO Paul Bisaro, will continue to live and work in New Jersey.

"Everybody loves New Jersey too much, so nobody is willing to go," he said on a conference call yesterday.

The move makes Actavis the latest Fortune 500 company to "leave" the U.S. in search of a lower tax rate and thrusts the generic drug giant into the ongoing debate about corporate tax rates in the U.S. alongside tech giant Apple (AAPL).

By basing much of its international operations in Ireland, Apple has been able to save billions of dollars in taxes in recent years, according to the report of a U.S. Senate inquiry that was released yesterday. In testimony before a Senate hearing this morning, Apple CEO Tim Cook said that his company pays an "extraordinary amount" of U.S. taxes and doesn't take advantage of tax "gimmicks" to avoid them, even though the Senate investigation found that Apple had set up structures that allowed it to pay little or no taxes in any country on much of its income.

For Actavis, the acquisition and reincorporation will punctuate a heady period. The company only recently completed a transformative merger and name change and has seen its stock skyrocket of late.

Earlier this month, the maker of generic and specialty drugs, formerly known as Watson Pharmaceuticals, made its debut on the Fortune 500 at No. 432 with $5.9 billion in revenue. On the day the list was officially released, I visited the company's headquarters and interviewed CEO Bisaro for a story on what it's like to join the Fortune 500. "Our intention is to be on the Fortune 500 for a long time," he told me.

But if Bisaro's merger and reincorporation plan goes forward as planned, Actavis will turn out to be a one-year wonder on the 500. Only companies domiciled in the U.S. are eligible for inclusion.

The acquisition of Warner Chilcott will give Actavis more brand-name drugs to balance against its generic portfolio and will bolster its already strong franchise of drugs for women's health. By bulking up, Actavis also may have a better chance to fend off potential suitors. In recent weeks, generic rivals Valeant Pharmaceuticals International (VRX) and Mylan (MYL) have both been rumored to be considering takeover bids for Actavis.

However, in a conference call with analysts to discuss the deal, Bisaro also extolled the added benefit of lowering his company's effective tax rate, which he forecast would drop from 28% to 17%. Based on Bisaro's strongly-held opinions about U.S. corporate tax policy, that must have been a major selling point for the deal.

Near the end of my interview with Bisaro earlier this month, I asked him a broad question about the stock market and he responded by bringing up the subject of corporate tax rates. "My own personal soapbox is that we've got to fix the disadvantage that American companies have -- America-based companies -- vs. other countries around the world," he said. "I know it's not a popular political issue but you've got to find a way to solve the tax problem."

It was clear that the disparity in corporate tax rates was a burning topic for him. "We're competing against companies that have much, much lower tax rates than we do," he went on, with growing excitement. "And we compete for the same investor base. So you can't put us at a disadvantage. We have to find ways around that, and often times it means moving jobs out of the United States. That can't be the policy that the government wants to follow. I think we have to step away from the rhetoric that 'we all need to pay our fair share' and all that other nonsense, and start thinking about, practically-speaking, how do we put more people to work?"

Actavis is hardly the first large, publicly traded company to reincorporate overseas for tax reasons. Two members of last year's Fortune 500, electronics maker Eaton (ETN) and insurance broker Aon (AON), dropped off the list this year after reincorporating to Ireland and the United Kingdom respectively. A 2011 study by Ernst & Young found that the U.S. had lost a total of 46 headquarters of Fortune Global 500 companies over the previous 11 years. Currently, a total of 21 companies currently included in the S&P 500 are technically headquartered overseas.

According to research published by the Cato Institute in September, the U.S. had an effective tax rate of 35.6% on new corporate investment, the fourth highest out of 90 countries studied and almost twice the average rate of the 90 countries.

It is clearly an issue that resonates with Bisaro, who joined Actavis as CEO in 2007 after a long run first as chief counsel and then president and COO of Barr Pharmaceuticals. He has has made significant changes at Actavis in his tenure. A few years ago, he moved the headquarters of the company, still known at the time as Watson Pharmaceuticals, from Corona, Calif., to Parsippany, N.J., in part to be nearer to talent in the pharma-heavy area but also, not incidentally, because Bisaro happens to live in the Garden State.

Last year, Bisaro engineered the acquisition of Swiss drug manufacturer Actavis and the board ultimately decided to adopt the Actavis name (and change its ticker symbol to ACT) because the Watson name is too common around the world and the company ran into copyright issues. The merger with Warner Chilcott is expected to close by the end of this year.

Actavis currently has 17,000 employees globally, about 5,400 of whom are employed in the U.S. Roughly 60% of the company's sales will be generated in the U.S. in 2013. That figure probably won't decrease in the near future. Even though Warner Chilcott is headquartered in Dublin, most of its sales are in North America.

Before my interview with Bisaro concluded, he decided to make his point about the deleterious effect of U.S. corporate tax rates one more time. "It can't be a good policy to say, 'We're going to tax you every time you do something, and therefore you're never going to do anything in the U.S,'" he said. "How is that good for Americans?"

Now he has found a way around that policy, even though he will still be living and driving to work in New Jersey.