(C) Tax Analysts 2013. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

From the Editor:

Corporate Tax Reform Might Feature More Losers Than Winners

By Jeremy Scott — jscott@tax.org

The United States has one of the highest corporate tax rates in the world. Because of a corporate rate cut in Japan, the 35 percent rate in the United States is an outlier in the developed world. This has left businesses and policymakers clamoring for corporate tax reform. In fact, there seems to be bipartisan agreement that the corporate rate should be cut below 30 percent. But corporations should be careful what they wish for — a revenue-neutral corporate rate cut might leave many worse off than they are now.

Almost anyone who follows the corporate tax debate knows that few, if any, U.S. companies are actually taxed at a 35 percent rate. The combination of loose transfer pricing rules and a variety of tax incentives pushes the actual marginal rate of tax much lower. In fact, many multinationals can very easily achieve a negative tax rate, according to Martin Sullivan (p. 698). He uses some calculations from a recent paper by Harry Grubert of Treasury and Rosanne Altshuler of Rutgers University to show how many companies are able to achieve negative U.S. tax rates using low-tax countries and tax havens. Negative tax rates complicate the corporate tax reform discussion because they show how many multinationals are very comfortable with the current system. Sullivan writes that although some might disagree with the assumptions used by Grubert and Altshuler, it is difficult to discount all of their findings.

The problem with corporate tax reform discussions in Washington is that the seeming consensus is superficial. The business community wants a lower tax rate, but any attempt to pay for it causes its membership to splinter. Marie Sapirie writes that comments on tax reform proposals show that the tax incentives being bandied about as possible pay-fors are incredibly popular and that many companies aren't likely to accept their demise as the price of a lower rate (p. 703). The AFL-CIO and manufacturing companies have no interest in trading depreciation for a lower rate. Multinationals would not accept an end to deferral or tough antibase erosion rules, even if the rate were cut to 25 percent (they are already paying a much lower effective rate). If corporate tax reform has to be revenue neutral, the bipartisan front in favor of it is likely to fracture very quickly.

Loving

The district court's decision in *Loving* shocked many tax observers. The court held that the IRS's attempts to impose greater regulations on the return preparer industry were invalid, and specifically threw out wider PTIN registrations, continuing education, and other aspects of the carefully constructed preparer regime. The court's decision was praised by many groups that thought the government had overreached without legislation, but the holding was heavily criticized by those in favor of increased regulation of the sometimes shadowy return preparation industry. National Taxpayer Advocate Nina Olson writes that the court's decision was based on an outdated understanding of return preparation and filing (p. 767). In her special report, Olson makes the case for expanded preparer regulation and presents data showing the importance of the preparer industry to the tax system. The problems in today's tax system are directly analogous to the problems Congress sought to address in its original grant of regulatory authority to Treasury, she concludes.

Commentary

Late regulatory elections under section 9100 are not pleasant. Someone has to admit there was an error in filing an election to begin with, and then a taxpayer has to hope that the IRS is generous. But the process has gotten easier, according to Jasper Cummings, Jr. (p. 743). Treasury has moved toward a more lenient section 9100 relief policy over time and should continue to do so, he writes. Cummings explores the history of section 9100, including its strange existence outside the tax code, and discusses how the regulations function. He also examines how courts have treated section 9100 in the past.

Personal exemption phaseouts and so-called Pease limitations on itemized deductions are back. They were reinstated by ATRA earlier this year. While both are backdoor tax increases, they are widely characterized as base broadeners, writes Thomas Hungerford (p. 757). He argues that this misperception might allow for even wider base broadening. He points out that across the board, policies that affect personal exemptions are highly

regressive. PEP should not be considered a base broadener, in his opinion. But he argues in favor of limiting specific itemized deductions, which can be progressive. Pease limitations could be a substantial part of a major base-broadening effort if tax reform continues to progress in Congress, he concludes.

The quest to eradicate offshore tax abuse and dismantle bank secrecy is no longer being led by the United States. William Sharp writes that it has become a cooperative undertaking involving many foreign governments, the OECD, and even some private sector organizations (p. 779). He discusses how FATCA fits into this new compliance framework and looks at increased information sharing among tax administrators. Sharp has several recommendations for how practitioners and taxpayers can deal with the push for greater compliance and information disclosure.

Puerto Rico has responded to mass emigration by enacting a series of tax and economic incentives. As a result, its economy has rapidly improved. Many U.S. taxpayers might even want to relocate there, both for tax and economic reasons. Mark Leeds and Gabriel Hernandez explore U.S. and Puerto Rico income tax considerations for individuals considering relocation (p. 790). There are many pitfalls for those wanting to relocate because of rules about built-in gains and investment income, they write. While the benefits of new Puerto Rican tax laws are attractive, these benefits can be tempered by existing U.S. rules, which are designed to protect the federal tax base, they conclude.

Reuven Avi-Yonah recently summarized the case for and against territoriality in remarks to the American Tax Policy Institute. In an article based on those remarks, he talks about how territoriality is the wrong path to take for short-term reform (p. 797). He points out that the OECD might be about to recommend worldwide consolidation as part of its BEPS project. That would make most of the arguments in favor of territoriality and against the abolishment of deferral obsolete, Avi-Yonah says.

Thirty-five years ago, California voters changed the politics of taxation by passing Proposition 13, which radically altered the state's property tax. The proposition was widely seen as the beginning of a nationwide tax revolt. That revolt changed the face of the Republican Party and how U.S. taxpayers perceive taxes and their relative burden. Bruce Bartlett writes that the proposition was far more important politically than economically (p. 801). California did not radically cut government services as a result of the proposition's passage, he writes. He also shows that the overall tax burden in California today is almost the same as it was before Proposition 13. However, its passage gave critical impetus to tax cuts in Washington, although such cuts might have been inevitable, Bartlett concludes.

Robert Wood and Jonathan Van Loo examine the future of PFICs and FATCA in this week's Woodcraft (p. 805). The offshore disclosure programs offered by the IRS have provided an alternative mark-to-market tax regime for PFICs, they write. Wood and Van Loo show that both PFICs and FATCA are here to stay, and they offer some tips on how to reform PFICs in the future. ■

(C) Tax Analysts 2013. All rights reserved. Tax Analysts does not claim copyright in any public domain or third party content.

© Tax Analysts 2013. All rights reserved. Users are permitted to reproduce small portions of this work for purposes of criticism, comment, news reporting, teaching, scholarship, and research only. Any use of these materials shall contain this copyright notice. We provide our publications for informational purposes, and not as legal advice. Although we believe that our information is accurate, each user must exercise professional judgment, or involve a professional to provide such judgment, when using these materials and assumes the responsibility and risk of use. As an objective, nonpartisan publisher of tax information, analysis, and commentary, we use both our own and outside authors, and the views of such writers do not necessarily reflect our opinion on various topics.