Debating the Tax Treatment of Charities

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What constitutes a real charity? Should some charities have greater tax advantages than others? Should an art museum have the same tax-favored status as a soup kitchen?

Questions like that were debated recently at a meeting of tax law professors in Rotterdam. According to Lee Sheppard, some participants argued that charitable activities that replace government functions should get bigger tax breaks than activities that are less socially valuable. There also was disagreement about whether a charity's commercial activity could be considered a public benefit; one participant said it could not because trying to make a profit is incompatible with charity. However, his opponent said it is possible to ensure that profits go toward charitable purposes. The VAT also came up, with several participants opining that charities should not be exempt from the tax. (For Sheppard's analysis, see p. 1293.)

Going Territorial?

A television ad for tax-free municipal bonds features an exasperated man sitting at his kitchen table poring over his earnings from his taxable investments and wishing he could keep more of his hard-earned money. Some U.S. corporations have found a way to do that by relocating to Ireland and other countries. For example, one insurance company recently announced it is moving its corporate headquarters from Chicago to London to take advantage of a significant corporate rate reduction.

The moves abroad have prompted speculation that in an effort to get companies to stay home, the United States will adopt a territorial system acceptable to business. But Martin Sullivan offers several reasons why he thinks that won't happen, the most important being that no politician would be willing to propose tax increases to pay for a territorial system. (For Sullivan's analysis, see p. 1302.)

In news analysis, David Brunori discusses the decision of Facebook co-founder and multibillionaire Eduardo Saverin to renounce his U.S. citizenship and move to Singapore, a decision that enraged some U.S. senators and prompted them to propose legislation that would impose a 30 percent tax on all capital gains of wealthy expatriates and ban them from reentering the United States. Brunori asks what the fuss is all about, pointing out that people have the right to change their citizenship for any reason (p. 1305).

IRS Releases Draft FATCA Forms

The IRS has released two draft forms for use by foreign financial institutions to certify the status of beneficial account owners that otherwise would be subject to U.S. tax withholding because of changes necessitated by implementing the Foreign Account Tax Compliance Act. Practitioners said creating two forms so that entities can report their information separately is helpful because individuals were confused about what to report when there was only a single form. Now the practitioners are eagerly awaiting form instructions. (For coverage, see p. 1298).

Capital Gains

Alan Viard says the capital gains preference has no clear rationale and is not part of an ideal tax system. But he credits it with reducing the lock-in effect, the tax bias against equity-financed investment by C corporations, and the tax penalty on savings. Therefore, the preference should not be eliminated unless and until more sweeping reforms are enacted to address those distortions, he writes (p. 1401).

One idea for reform of the capital gains tax, offered by Alan Auerbach, is to shift the tax from new investment to existing assets and modify the method of realization-based taxation. That could result in progressive tax reform that would reduce the lock-in effect, the limits on capital losses that discourage risk-taking, the incentives for recharacterizing other income as capital gains, and the incentives for corporate borrowing, he writes (p. 1399).

40th Anniversary

In an article from 1994, William J. Wilkins and Kenneth Gideon opposed replacing the federal approach to determining the income of multinational enterprises with worldwide formula apportionment, which they argued would almost certainly lead to disagreement among taxing countries (p. 1351). In another 1994 article, Paul Caron discussed the myths that tax lawyers are different from other lawyers and that tax law is different from other areas of the law (p. 1358).

Commentary

David Rosenbloom reacts to a recent article by a Swiss law professor that criticized U.S. efforts to obtain information about offshore accounts held by U.S. persons. The professor described some U.S. efforts as ''no better than extortion'' and defended banking secrecy. Rosenbloom offers rebuttals to the professor's arguments, which he believes are representative of Swiss views, but concludes by suggesting that the United States should try to understand Swiss sensitivities about privacy (p. 1389).

David Chamberlain, Sean Foley, and Weston Krider write that countries should negotiate transfer pricing penalties in mutual agreement procedure cases whenever a taxpayer has made a serious attempt to meet documentation requirements. They also think the U.S. competent authority should promote the negotiation of transfer pricing penalties (p. 1391).

Bradley Kay says the tax whistleblower statute was improved when it was amended in 2006 but that it still lacks many protections for whistleblowers and taxpayers whose information the whistleblowers disclose. He offers ideas for adding more protections on p. 1367.

The Obama administration and the aircraft manufacturing industry are at odds over the depreciation of corporate jets. The dispute is about the length of the depreciation period for corporate aircraft: five years, as currently permitted, or seven years, the recovery period for most planes. Michael Watts and Robert Smith write that the difference is not as large as some decision-makers might think and that the dispute is ''much ado about little'' (p. 1396).

In his column, Robert Wood looks at a case involving competing claims to a lottery ticket that led to litigation. The case, he says, is an illustration of what not to do with litigation claims (p. 1407).

On p. 1403, Bruce Bartlett examines arguments for allowing the wealthy to donate funds to the government instead of having their taxes increased. He says that although the idea of financing government without taxes may be attractive to some, only a small fraction of the functions the government performs can be funded without broad-based taxes like the individual income tax. (Bartlett's book, *The Benefit and the Burden: Tax Reform — Why We Need It and What It Will Take*, is reviewed on p. 1413 by Joel Newman.)

David Culp and V. Moore review the mechanics of converting a corporate charitable contribution carryover into a net operating loss carryover. They say the provision is not altruistic but instead is meant to avoid a double deduction of the charitable contribution, although the provision can extend the useful tax life of some carryovers that otherwise would expire (p. 1381). ■