

## The Lesser of Two Evils

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Prime Minister Gordon Brown's struggling Labour government in Britain released its final budget last week, prompting a flurry of criticism, and even anger, from the British press. Conservatives and other critics of Brown bemoaned the fact that the U.K. debt-to-GDP ratio was being allowed to soar to new heights, creating an almost inevitable need for new taxes and sources of government revenue. This probably sounds a bit familiar to readers in the United States.

President Obama hasn't even released his final budget, and Congress is still bogged down reconciling the House and Senate budget resolutions, but economists have already taken the administration to task on many of the same issues. And as Martin Sullivan points out, as bad as the U.K. plan seems to be, the Democrats' plans in the United States are even worse. In two charts, Sullivan explains that Brown's budget shows the British debt-to-GDP ratio on a downward slope after the present spike, while all three U.S. budget proposals will result in the U.S. ratio continuing to rise. Sullivan dourly notes that as weak as the U.K. standard for fiscal sustainability has become, the likely U.S. budget still wouldn't meet it. (For Sullivan's look at the two budgets, see p. 383.)

It is sobering to compare American politicians' attitudes about runaway government spending, deficits, and debt to the approach being taken overseas. While nations such as Italy have forgone virtually all stimulus efforts, and the French and British governments have grappled with how to pay for their recent splurges once the crisis ends, Congress and the Obama administration simply continue to propose new, bigger spending programs. Despite the recession and the costs of the stimulus, Obama seems determined to force new outlays on healthcare and the environment. Brown and the Labour Party are likely to pay for their budget and economic policies with the loss of their majority. The consequences of Obama and the Democrats' failure to face fiscal reality in the United States won't be known until November 2010.

### Tax Policy Analysis

Sullivan continues his look at proposals to combat offshore tax evasion, turning his focus to the reform efforts of Senate Finance Committee

Chair Max Baucus. While dismissing Baucus's efforts as "mostly fluff," Sullivan does write that the Montana Democrat's plan to require banks to report more cross-border wire transfers is a good idea. In a mock memo to the president from the Treasury secretary, Sullivan strongly advocates additional reporting requirements. Such a requirement would strengthen law enforcement efforts to crack down on money laundering, reduce tax evasion, and raise revenue. (For the review of Baucus's proposals, see p. 371. For the memo, see p. 374.)

Lee Sheppard takes note of Labour's struggles in Britain, writing that the release of the Brown budget cast a pall over the performance of three soccer squads in the Champions League semifinals (p. 375). Sheppard does argue that the United Kingdom's approach on derivatives is closer to being correct than the United States' method. She also analyzes the tax treatment of derivatives in Switzerland, the Netherlands, and Spain.

David Cay Johnston writes about the misguided nature of the tea party protests that took place on tax day. Opening with a critique of the protesters' understanding of the Boston Tea Party, which was about tax preferences and not tax levels, Johnston attacks several tax provisions that favor film productions in Missouri and Michigan. He believes that these types of tax favors are just another way tax codes distribute wealth up the income ladder. Johnston closes by arguing that if low taxes mean fewer government services, it probably isn't the average tea party protester who would benefit from that kind of a tax system. Johnston's Take is on p. 479.

### Estate Taxes

Congressional Republicans hate the estate tax and when they were in the majority during the George W. Bush administration, they probably thought they had killed it. Unfortunately, their convoluted phaseout and repeal structure might have been too clever for its own good, and when the estate tax returns after a one-year hiatus in 2010, outright repeal seems unlikely. But that hasn't stopped them from trying to dilute the nation's most progressive tax. An alliance of Republicans and 10 Senate Democrats inserted language in the Senate budget resolution that would raise the exemption levels to \$5 million for single-filers and cut the tax rate to 35 percent, lower than the 2009 levels of \$3.5 million and 45 percent. Blue Dog Democrats

oppose those provisions, and some language in the House budget resolution about statutory “pay as you go” rules might have been their attempt to thwart further reduction in estate tax revenues. For coverage of the pay-go gambit by Blue Dogs, see p. 394.

David Austill and Mehmet Kocakülâh believe that estate taxes play an important role by raising revenue, redistributing wealth, and limiting large concentrations of wealth. They are critical of efforts to repeal so-called death taxes, and their special report highlights problems with the complicated regime existing today, makes the case against outright repeal, and offers several proposals for reforming estate taxes and the generation-skipping transfer tax (p. 433).

#### Commentary

The American Recovery and Reinvestment Act of 2009 contains several provisions dealing with cancellation of indebtedness income, including deferral in limited circumstances. Temporary section 108(i), added by the act, has drawn a lot of attention from practitioners. James Sowell gives his take on section 108(i)'s applicability to partnerships and real estate on p. 429. Sowell writes that several restrictions in the new rules will limit the section's usefulness for some parties. He highlights those limitations and gives some suggestions for planning a client's affairs in light of the new provision.

Robert Wood's article looks at whether a plaintiff in civil litigation can recover damages for adverse tax consequences (p. 423). Noting that this is a thorny issue, Wood nevertheless concludes that a plaintiff who can prove a but-for link should be able to recover for that item of damage. He points to a

recent Third Circuit decision to support his position. Patricia Cain follows up on her 2006 *Tax Notes* article on the IRS's position on California registered domestic partners by looking at a recent IRS internal legal memorandum that deals with how to compute the limitation on mortgage interest deductions for unmarried couples. She feels that the IRS's position in the memorandum is directly counter to the language in section 163(h)(3). Cain's article appears on p. 473. Prof. Calvin Johnson's Shelf Project this week calls for an employer-level tax on fringe benefits, arguing that current law creates an incentive to shift cash compensation to excluded fringe benefits, such as supper money, employer-provided meals, and recreation facilities (p. 483). In *Of Corporate Interest* Robert Willens analyzes Citigroup's impending recapitalization (p. 491).

The Supreme Court decision in *Department of Revenue v. Davis* to sustain the states' widespread practice of exempting from tax interest from in-state, but not out-of-state, municipal bonds inspired seven separate opinions from the justices and a flurry of interested and disinterested analysis. Walter Hellerstein and Eugene Harper focus their special report on only a footnote of the decision, arguing that Congress, and not the courts, should settle the question whether discrimination occurs between the treatment of municipal and private-activity bonds (p. 447). In a separate court-related article, Jasper Cummings takes another look at *Gregory v. Helvering*, criticizing a 2001 academic work by Prof. Maureen Cavanaugh that used Aristotle to relate tax law to homonyms. Cummings finds himself largely at odds with the article's conclusions and method of analysis. ■

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